

FOREST PRACTICES AMENDMENT BILL 2018

CLAUSE NOTES

PART I – PRELIMINARY

Clause 1 - Short title

This clause states that the short title to be used when citing this Act is the *Forest Practices Amendment Act 2018*.

Clause 2 - Commencement

The provisions of this Act commence on a day or days to be proclaimed.

Clause 3 - Principal Act

This clause provides that the *Forest Practices Act 1985* is referred to as the Principal Act.

Clause 4 – Long title amended

This clause amends the long title of the Principal Act by inserting “to provide for the issue of codes of conduct for forest practices officers”. This change reflects an important amendment of this Bill regarding the addition of the authority under the Act to prepare and issue codes of conduct.

Clause 5 - Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended in order to:

- (a) provide a definition of the term **code of conduct**
- (b) provide a definition of the word **rehabilitate**
- (c) provide a definition of the word **revegetate**
- (d) provide a definition of the word **Secretary**

PART IA – FOREST PRACTICES AUTHORITY

Clause 6 - Section 4C amended (Functions of Authority)

Section 4C of the Principal Act is amended in order to:

- (a) enable the Forest Practices Authority to issue and maintain codes of conduct. This will allow the Authority to develop and issue codes of conduct that will provide for Forest Practices Officers to maintain mandatory minimum standards of conduct.
- (b) update the reference to the Policy for Maintaining a Permanent Native Forest Estate, as referred to in the Regional Forest Agreement.

PART III – PLANS

Clause 7 - Section 17 amended (Restrictions on harvesting timber, &c.)

Section 17(4) of the Principal Act is amended by inserting “authorising the carrying out of the activity” after “plan” to clarify the intent of this provision that there must be an existing forest practices plan that authorises the activity in question.

Clause 8 - Section 18 amended (Application for certification of forest practices plan)

Section 18 of the Principal Act is amended in order to:

- (a) require a forest practices plan to specify the period for which the plan is to remain in force.
- (b) clarify the required timeframe for the payment of an application fee.
- (c) provide for the Authority to recover, through court proceedings, the debt created by an application fee that has not been paid in the manner and time required from an applicant (or a person who has been assigned the applicant's responsibilities). This will address situations where an application for certification of a forest practices plan has been submitted and the fee has not been paid. This amendment will allow the recovery of costs of services and advice provided in relation to the assessment of a forest practices plan for certification.

Clause 9 - Section 19 amended (Authority to certify or refuse to certify forest practices plan)

Section 19 (1A) of the Principal Act is amended by inserting subsection (ba) which allows the Authority, when considering an application for the certification of a forest practices plan, to amend the period for which the plan is to remain in force.

Section 19(3) of the Principal Act is amended by omitting "section 17" and substituting "section 18" to correct the existing erroneous reference. A reference to a person who has been assigned the responsibilities of an applicant for a forest practices plan, in accordance with the new section 25D, has also been inserted for consistency.

Clause 10 - Section 21 amended (Contravention, &c., of certified forest practices plan)

Section 21(1)(c) of the Principal Act is amended by inserting “person who is an owner of land, or who is a person to whom the owner’s responsibilities under section 17 have been assigned under section 17(2)” in order to clarify that the land owner’s responsibilities in relation to forest practices on that land may have been assigned to another person, hence who is responsible for any forest practices activities in relation to that land.

Clause 11 - Section 22 amended (Variation of certified forest practices plan at instigation of Authority)

Section 22 of the Act is amended to allow for a person who has been assigned the responsibilities of an applicant for a forest practices plan, to be the relevant person for the purposes of a variation of a forest practices plan process, as instigated by the Authority.

Clause 12- Section 23 amended (Application for variation of certified forest practices plan)

Section 23 of the Act is amended to allow for a person who has been assigned the responsibilities of an applicant for a forest practices plan to be the relevant person in relation to making an application to vary the provisions of the relevant certified forest practices plan.

Clarification has been provided under subsection 2(c) in relation to the land owner’s responsibilities under section 17 and the existing assignment process to other persons at section 17(2).

Clause 13 - Section 24A amended (Revocation of certified forest practices plans)

Section 24A of the Act provides that the Authority can only revoke a forest practices plan once they have given the applicant or owner of the land an opportunity to make submission. This clause provides required amendments to recognise that the applicant’s

responsibilities can be assigned to another person (in accordance with section 25D).

Further amendments have been provided under this section to clarify the person on whom the relevant notices are served.

Clause 14 - Section 25 amended (Appeal in respect of forest practices plan)

Section 25(1) of the Principal Act is amended in order to clarify that the right of appeal to the Tribunal in relation to being aggrieved by a decision of the Authority, extends to a person to whom the responsibilities of the applicant for a forest practices plan have been assigned (in accordance with section 25D).

Clause 15 - Section 25A amended (Forest practices plan compliance reports)

Section 25A(3) of the Principal Act is amended in order to expand the definition of “*responsible person*” to also include a person to whom the applicant for a forest practices plan’s responsibilities under this Division have been assigned in accordance with section 25D.

Clause 16 - Section 25B amended (Forest practices plan progress reports)

Section 25B(2) of the Principal Act is amended by inserting a necessary cross reference to “*responsible person*” within the meaning of section 25A.

Clause 17 - Section 25C amended (Appeal to Tribunal by person aggrieved by notice under section 25B)

Section 25C(1) of the Principal Act is amended by inserting a necessary cross reference to “*responsible person*” within the meaning of section 25A.

Clause 18 - Section 25D inserted (Assignment of responsibility for forest practices plan)

After section 25C of the Principal Act, section 25D has been inserted to allow an applicant under section 18 for a forest practices plan, to transfer to another person by written agreement (under seal) their responsibilities under that certified forest practices plan. A person who has assigned their responsibilities, under the section, must also provide a copy of the written agreement to the Authority and the owner of the land referred to in the plan or the relevant forestry rights holder. A penalty applies for not supplying those copies.

PART V – FOREST PRACTICES TRIBUNAL

Clause 19 - Section 34 amended (Forest Practices Tribunal)

Section 34 of the Principal Act is amended in order to change the appointment process for two members of the Forest Practices Tribunal. These members, under the current provisions, are required to:

- (a) possess a sound knowledge of, and have at least 5 years practical experience in, agriculture and forestry; and
- (b) possess a sound knowledge of, and have at least 5 years practical experience in, conservation science.

The changes require the Minister to call for expressions of interest in two newspapers published in, and circulating generally in, the State, for persons who seek to be appointed as a member of the Tribunal. People who make a submission, and meet the existing criteria can then be nominated for membership of the Tribunal by the Minister.

PART VA – FOREST PRACTICES ADVISORY COUNCIL

Clause 20 - Section 37A amended (Forest Practices Advisory Council)

Section 37A(2) of the Principal Act is amended to provide for additional Council members with the following knowledge and expertise:

- i. a person with knowledge and expertise in the administration of forest policy who is nominated by the Secretary of the relevant Department;
- ii. a person with knowledge and expertise in relation to natural heritage or cultural heritage who is nominated by the Secretary of the Department that is responsible, for the administration of the *Nature Conservation Act 2002*, to the Minister to whom that Act is assigned; and
- iii. a person who is a forest practices officer (who is not the chief forest practices officer).

The amendment formalises an existing arrangement through which the Forest Practices Advisory Council has invited senior representatives from state government agencies who are responsible for forestry policy and the management and conservation of natural and cultural heritage values in Tasmania, to attend and participate at Council meetings. The amendment also provides the inclusion of a forest practices officer in Council membership, who is not the chief forest practices officer.

PART VI – MISCELLANEOUS

Clause 21 - Part VI, Division I: Heading inserted

Part VI of the Principal Act is amended by inserting the heading “Division I – Officers and forest practices officers” before section 38:

Clause 22 - Section 38 amended (Appointment of officers for purposes of Act)

Section 38 of the Principal Act is amended to:

- (a) clarify the appointment process for a forest practices officer for a body corporate that is required to operate under a three year plan;
- (b) details two additional matters for which the Authority is to have regard when assessing whether a nominee is a fit and proper person to be appointed as a forest practices officer under this section. The additional matters being:
 - i. whether the nominee has contravened a code of conduct.
 - ii. whether the nominee has contravened a direction given under this Act to the person by the chief forest practices officer

Clause 23 - Section 39 amended (Forest practices officers)

Section 39 of the Principal Act is amended in order to provide for additional grounds that allow the Authority to revoke the authorisation of a person to be a forest practices officer. The new grounds are that the person concerned:

- i. has contravened a code of conduct; or
- ii. has contravened a direction given under this Act to the forest practices officer by the chief forest practices officer.

Provisions are also included to allow the chief forest practices officer to issue a formal direction to a forest practices officer. The direction must relate to those powers delegated to the forest practices officer, and be reasonable in its required time for compliance with the direction. Any such direction given by the chief forest practices officer cannot be a direction to make a particular decision relating to the officer's delegated powers under the Act.

Clause 24 - Part VI, Division 2 inserted

After section 40 of the Principal Act, the heading “Division 2 – Code of conduct” is inserted in Part VI.

Three new sections, 40A (Code of conduct for forest practices officers), 40B (Contents of Code of conduct) and 40C (Code of conduct to be made available) have been provided for.

Section 40A outlines how the Board of Directors of the Authority may prepare, issue and revoke a code of conduct for forest practices officers. A code is to be prepared in consultation with the Forest Practices Advisory Council and forest practices officers. In order to issue a code of conduct, a copy of the code must have been laid before each House of Parliament and not disallowed by a House of Parliament, within 5 sitting days.

Section 40B includes provisions that set out standard criteria to be included in a code of conduct and other provisions that require officers to conduct themselves in their professional roles in accordance with such a code, and that the code is to be consistent with the Act. Once issued, a code of conduct will be published in the Gazette or in another manner that is considered appropriate by the Board.

Section 40C outlines how the Authority is to make a valid code of conduct available, accordingly the Authority must:

- serve a copy of a code of conduct or notice of its revocation, on each forest practices officer in Tasmania;
- provide a copy of an up-to-date code of conduct upon request; and
- have a copy of the valid code of conduct available to be viewed free of charge, at the office of the Authority during business hours.

Clause 25 - Part VI, Division 3: Heading inserted

Part VI of the Principal Act is amended by inserting the heading “Division 3 – Compliance with forest practices plans” after section 40.

Clause 26 - Section 41 amended (Failure to comply with provisions of certified forest practices plan or Act)

Section 41 of the Principal Act is amended to provide forest practices officers and the chief forest practices officer with the authority to direct persons responsible for activities that are in contravention of the Act or of a certified forest practices plan, to repair or make good the land damaged as a result of the contravention. Further authority has been provided to allow for directions for the land damaged to be revegetated and/or rehabilitated. This clause will clarify the ability of the officers to direct persons in breach of the provisions of the Act to undertake specific reparative actions as required, to the benefit of the land and surrounding environment.

Further provisions have been included in order to authorise the first responding forest practices officer, another forest practices officer or the chief forest practices officer to make specific and reasonable remedial requests in relation to the damaged land, in a notice served on the responsible person.

The chief forest practices officer has the existing authority to engage a person to undertake the required works on their behalf. The amendments to section 41 will also allow the costs and expenses of works, recovered in a relevant court, to be repaid to the person who incurred those costs, or to the Authority, if they had cause to have the works undertaken on their behalf. This will remove the need for a contractor engaged by the Authority to have to seek redress for unpaid costs to have to pursue the reimbursement of those costs through the courts.

The requirement of personal service of a notice on a person responsible has been removed and is now consistent with the serving of notices under other relevant sections.

Clause 27 - Part VI, Division 4: Heading inserted

Part VI of the Principal Act is amended by inserting the new heading “Division 4 – Other matters” after section 42.

Clause 28 - Section 43 amended (Delegation by Authority)

Section 43 of the Principal Act is amended by clarifying that those delegations made by the Authority to any persons, can be unconditional or conditional delegations of powers and functions, and that those conditional delegations can be subject to the direction of the chief forest practices officer.

Clause 29 - Section 44 amended (Costs and expenses of Act)

Section 44(2) of the Principal Act is amended by inserting “or as permitted under section 47B(3A)” after “that subsection” in order to incorporate and apply a new subsection inserted by this Amendment Act that will allow for the Authority to disburse monies received under the Act directly to persons aggrieved by an action.

Clause 30 - Section 47A amended (Recovery of costs for loss or damage)

Section 47A of the Principal Act is amended to ensure consistency by providing the explicit power for the courts to direct a person, who is convicted of contravening the Act, to pay a specified person the costs incurred by that person in the undertaking of repair or making good or revegetating or rehabilitating the land.

Clause 31 - Section 47B amended (Alternative to prosecution)

Section 47B of the Principal Act is amended by inserting a new subsection (3A) that adds an additional mechanism to provide redress to an aggrieved person who has incurred costs and expenses due to, all or part of, an offence committed under the Act by another person.

This change allows the Authority to apply discretion and allocate funds collected from prescribed fines under the Act (and associated regulations) to an aggrieved person who has incurred costs or expenses associated with repairing or making good any damage, or in revegetating or rehabilitating of any land or related vegetation damaged, degraded or altered due to the offence committed under the Act. The proposed amendment will provide an additional pathway for redress to an aggrieved party.

PART 2 – CONCLUDING PROVISION

Clause 32 - Repeal of Act

This clause provides that the Bill is repealed on the 365th day from the day on which it commences.