

TASMANIA

FOREST PRACTICES AMENDMENT BILL 2018

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FOREST PRACTICES AMENDMENT BILL 2018

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*
2 May 2019

(Brought in by the Minister for Resources, the Honourable Sarah Courtney)

A BILL FOR

An Act to amend the *Forest Practices Act 1985*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Forest Practices Amendment Act 2018*.

2. Commencement

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

3. Principal Act

In this Act, the *Forest Practices Act 1985** is referred to as the Principal Act.

*No. 48 of 1985

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4. Long title amended

The long title of the Principal Act is amended by inserting “to provide for the issue of codes of conduct for forest practices officers,” after “reserves,”.

5. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *clearing of trees*:

code of conduct means a code of conduct issued under section 40A(3);

- (b) by inserting the following definitions after the definition of *registrar*:

rehabilitate, in relation to land to which a requirement, request or direction to rehabilitate the land relates, means to return the land, as far as reasonably practicable, to the condition that it was in before the occurrence of the damage, degradation, or alteration, to which the requirement, request or direction relates;

revegetate, in relation to land to which a requirement, request or

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direction to revegetate the land relates, means to sow seed, or plant seedlings, on the land so as to return the land to, as far as reasonably practicable, the state of vegetation on the land before the occurrence of the damage, degradation, or alteration, in relation to which the requirement, request or direction relates;

Secretary means the Secretary of the Department;

6. Section 4C amended (Functions of Authority)

Section 4C of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (d):
 - (da) to issue and maintain codes of conduct;
- (b) by omitting paragraph (fb) and substituting the following paragraph:
 - (fb) to implement the Policy for Maintaining a Permanent Native Forest Estate, being the policy set out in the Regional Forest Agreement made between the State and the Commonwealth on 8 November 1997, as that

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Agreement is amended from time
to time;

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”.

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

Section 18 of the Principal Act is amended as follows:

(a) by inserting the following paragraph after paragraph (c) in subsection (2):

(ca) specify the period for which the plan is to remain in force; and

(b) by omitting from subsection (4B) “at a time” and substituting “by a date”;

(c) by inserting the following subsection after subsection (4B):

(4C) If –

(a) an applicant; or

(b) where a person has been assigned in accordance with section 25D the applicant’s

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responsibilities under this
Division, that person –

fails to pay all of the application fee by the date, and in the manner, determined by the Authority for the purposes of subsection (4B), so much of the application fee as has not been paid by that date and in that manner is a debt due and payable to the Authority by the applicant, or the person, as the case may be, and may be recovered by the Authority in a court of competent jurisdiction.

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

Section 19 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (b) in subsection (1A):
 - (ba) amending the period for which the plan is to remain in force;
- (b) by omitting from subsection (3) “section 17” and substituting “section 18 or, if a person has been assigned in accordance with section 25D the applicant’s responsibilities under this Division, that person,”.

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

Section 21(1)(c) of the Principal Act is amended by omitting “owner of land” and substituting “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), and”.

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

Section 22 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “(or a person to whom the applicant’s responsibilities under this Division have been assigned in accordance with section 25D)” after “of the plan”;
- (b) by inserting in subsection (3) “(or a person to whom the applicant’s responsibilities under this Division have been assigned in accordance with section 25D)” after “of the plan”.

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

Section 23 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “(or who is a person to whom the applicant’s

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responsibilities under this Division have been assigned in accordance with section 25D)” after “practices plan”;

- (b) by inserting in subsection (2)(b) “under this section” after “applicant”;
- (c) by inserting in subsection (2)(c) “the person to whom the owner’s responsibilities under section 17 have been assigned under section 17(2) or” after “be,”.

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

Section 24A of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “, or a person to whom the applicant’s responsibilities under this Division have been assigned in accordance with section 25D,” after “plan”;
- (b) by inserting in subsection (2) “on whom notice is served under subsection (3)” after “that person”;
- (c) by inserting in subsection (3)(a) “, or a person to whom the applicant’s responsibilities under this Division have been assigned in accordance with section 25D,” after “plan”;

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- (d) by inserting in subsection (3)(a) “on whom notice is served” after “that person”;
- (e) by inserting in subsection (3)(b) “or the person to whom the applicant’s responsibilities under this Division have been assigned in accordance with section 25D” after “plan”.

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

Section 25(1) of the Principal Act is amended by inserting “(or who is a person to whom the applicant’s responsibilities under this Division have been assigned in accordance with section 25D)” after “practices plan”.

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

Section 25A(3) of the Principal Act is amended by inserting “or who is a person to whom the applicant’s responsibilities under this Division have been assigned in accordance with section 25D” after “section 18(1)(b)” in the definition of *responsible person*.

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

Section 25B(2) of the Principal Act is amended by inserting “, within the meaning of section 25A,” after “practices plan”.

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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 “, within the meaning of section 25A,” after “plan”.

18. Section 25D inserted

After section 25C of the Principal Act, the following section is inserted in Division 1:

25D. Assignment of responsibility for forest practices plan

- (1) An applicant under section 18 for certification of a forest practices plan may enter into an agreement in writing under seal with any person under which that person is assigned the applicant’s responsibilities under this Division, apart from section 17.
- (2) An applicant under section 18 for certification of a forest practices plan who enters into an agreement under subsection (1) must, as soon as practicable, provide a copy of the agreement to –
 - (a) the Authority; and
 - (b) the owner of the land referred to in the plan or, if the land is subject to a forestry right, the holder of the right.

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Penalty: Fine not exceeding 5 penalty units.

19. Section 34 amended (Forest Practices Tribunal)

Section 34 of the Principal Act is amended as follows:

(a) by omitting paragraphs (a) and (b) from subsection (2A) and substituting the following paragraphs:

(a) the Minister has, by notice circulating in 2 newspapers published in, and circulating generally in, the State, called for expressions of interest from persons who seek to be appointed as a member of the Tribunal; and

(b) the person is a person who has responded to the notice referred to in paragraph (a) and is nominated for membership by the Minister.

(b) by omitting subsections (2B) and (2C).

20. Section 37A amended (Forest Practices Advisory Council)

Section 37A(2) of the Principal Act is amended as follows:

(a) by omitting from paragraph (e) “jointly”;

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- (b) by inserting the following paragraphs after paragraph (f):
 - (fa) a person with knowledge and expertise in the administration of forest policy who is nominated by the Secretary of the Department; and
 - (fb) 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
 - (fc) a person, other than the chief forest practices officer, who is a forest practices officer; and
- (c) by omitting from paragraph (g) “jointly”.

21. Part VI, Division 1: Heading inserted

Part VI of the Principal Act is amended by inserting the following heading before section 38:

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Division 1 – Officers and forest practices officers

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

Section 38 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “and the Authority may appoint such a person under this subsection accordingly” after “Act”;
- (b) by inserting the following paragraphs after paragraph (b) in subsection (2B):
 - (ba) whether the nominee has contravened a code of conduct; or
 - (bb) whether the nominee has contravened a direction given under this Act to the nominee by the chief forest practices officer; or

23. Section 39 amended (Forest practices officers)

Section 39 of the Principal Act is amended as follows:

- (a) by inserting the following paragraphs after paragraph (a) in subsection (3):
 - (ab) has contravened a code of conduct; or

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- (ac) has contravened a direction given under this Act to the forest practices officer by the chief forest practices officer; or
- (b) by inserting the following subsections after subsection (3):
 - (3A) The chief forest practices officer may give to a forest practices officer a direction –
 - (a) that relates to a function, or power, delegated under this Act to the forest practices officer; and
 - (b) that specifies a period in which the direction is to be complied with, being a period that is reasonable in all the circumstances.
 - (3B) Without limiting the generality of subsection (3A), a direction under that subsection may require a forest practices officer to seek the approval of the chief forest practices officer before performing or exercising a function or power delegated to the forest practices officer under section 43.
 - (3C) If, in accordance with subsection (3B), a direction is given under subsection (3A)

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requiring a forest practices officer to seek the approval of the chief forest practices officer before performing or exercising a function or power delegated to the forest practices officer under section 43, the delegation under section 43 is to be taken to be subject to any directions of the chief forest practices officer and to be varied accordingly.

24. Part VI, Division 2 inserted

After section 40 of the Principal Act, the following Division is inserted in Part VI:

Division 2 – Code of conduct

40A. Code of conduct for forest practices officers

- (1) The Board may prepare a code of conduct.
- (2) The Board is, in preparing a code of conduct, to consult with the Forest Practices Advisory Council and forest practices officers.
- (3) The Board may issue a code of conduct prepared under subsection (1) if –
 - (a) the Minister has laid a copy of the code of conduct before each House of Parliament; and

- (b) the code of conduct has not been disallowed by a House of Parliament under subsection (4).
- (4) A House of Parliament may, within 5 sitting-days after a copy of the code of conduct has been laid before the House under subsection (3)(a), disallow the code of conduct.
- (5) The Board may revoke a code of conduct.
- (6) As soon as practicable after the Board issues or revokes a code of conduct, the Board must cause notice of the issue or revocation to be published in the *Gazette* or in another manner that the Board considers appropriate.

40B. Contents of code of conduct

- (1) A code of conduct is to specify the manner in which forest practices officers are to perform their functions, and exercise their powers, under this Act or any other Act.
- (2) A code of conduct is to specify the procedures for the investigation and determination of whether a forest practices officer has contravened the code of conduct.
- (3) The procedures referred to in subsection (2) –

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- (a) are to afford procedural fairness in the determination of whether a forest practices officer has contravened the code of conduct; and
 - (b) may vary according to the circumstances of the alleged contravention of the code of conduct.
- (4) A code of conduct may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the code.
 - (5) A code of conduct may authorise a matter to be from time to time determined, applied or regulated by the Board.
 - (6) A code of conduct is to be consistent with this Act.
 - (7) If there is an inconsistency between a code of conduct and this Act, the code is invalid to the extent of the inconsistency.

40C. Code of conduct to be made available

- (1) As soon as practicable after the Board issues or revokes a code of conduct, the Board is to serve on each forest practices officer a copy of the code of conduct or

the notice of revocation of the code of conduct.

- (2) The Authority must, at the request of a person, provide the person with an up-to-date copy of a code of conduct, or part of a code of conduct.
- (3) The Authority must allow a person to peruse a code of conduct, free of charge, at the office of the Authority, at any time within the hours during which that office is normally open.
- (4) The Authority must make available, in the manner that the Board considers appropriate, copies of a code of conduct.

25. Part VI, Division 3: Heading inserted

Part VI of the Principal Act is amended by inserting the following heading after section 40:

Division 3 – Compliance with forest practices plans

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

Section 41 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “land to comply with the provisions of the certified forest practices plan or the provisions of this Act, as the case may

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be.” and substituting “land to do any one or more of the following:”;

(b) by inserting the following paragraphs after subsection (1):

(a) comply with the provisions of the certified forest practices plan or the provisions of this Act, as the case may be;

(b) take action, in accordance with the Forest Practices Code or as directed by the chief forest practices officer, so as to –

(i) repair or make good any damage to land, vegetation, or objects, that, in the reasonable opinion of the officer, has been caused by the forest practices specified in the request; or

(ii) rehabilitate or revegetate any land that, in the reasonable opinion of the officer, has been, or on which, in the reasonable opinion of the officer, the vegetation has been, damaged, degraded, or altered, by the forest practices specified in the request.

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- (c) by inserting in subsection (2) “, another forest practices officer, or the chief forest practices officer,” after “makes the request”;
- (d) by omitting from subsection (2) “in writing personally”;
- (e) by omitting paragraph (b) from subsection (2) and substituting the following paragraphs:
 - (b) where there is a certified forest practices plan in relation to the forest practices on the land and in the reasonable opinion of the officer it is practicable and economically feasible to do so –
 - (i) repair or make good, in the manner and within the period specified in the notice, any damage to land, vegetation, or objects, that, in the reasonable opinion of the officer, has been caused by the forest practices specified in the notice; or
 - (ii) rehabilitate or revegetate, in the manner and within the period specified in the notice, any land that has been, in the reasonable opinion of the officer, or

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on which the vegetation has been, in the reasonable opinion of the officer, damaged, degraded, or altered, by the forest practices specified in the notice;

(ba) if there is no certified forest practices plan in relation to the forest practices on the land and, in the reasonable opinion of the officer it is practicable and economically feasible to do so –

(i) within the period specified in the notice, repair or make good, in accordance with the Forest Practices Code or as directed by the chief forest practices officer, any damage to land, vegetation, or objects, caused, in the reasonable opinion of the officer, in contravention of this Act, by the forest practices specified in the notice; or

(ii) within the period specified in the notice, rehabilitate or revegetate, in accordance with the Forest Practices Code or as directed by the chief

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forest practices officer,
any land that has been, in
the reasonable opinion of
the officer, or on which
the vegetation has been,
in the reasonable opinion
of the officer, damaged,
degraded, or altered, by
the forest practices
specified in the notice;

- (f) by inserting in subsection (6)(a) “or make good” after “repair”;
- (g) by inserting in subsection (6)(a) “or rehabilitate or revegetate the land to which the notice relates” after “(b)”;
- (h) by omitting from subsection (8) “repairing any damage” and substituting “repairing or making good any damage, revegetating or rehabilitating any land,”;
- (i) by inserting in subsection (8) “, or the Authority,” after “due to that person”.

27. Part VI, Division 4: Heading inserted

Part VI of the Principal Act is amended by inserting the following heading after section 42:

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Division 4 – Other matters

28. Section 43 amended (Delegation by Authority)

Section 43 of the Principal Act is amended as follows:

- (a) by omitting from subsection (3) “under subsection (2)” and substituting “under subsection (1) or (2)”;
- (b) by omitting from subsection (4) “under subsection (2)” and substituting “under subsection (1) or (2)”.

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”.

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

Section 47A of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (ab) costs incurred, by the person specified by the court, in repairing or making good any damage done, or in rehabilitating or revegetating any land that has been, or on which the vegetation has been, damaged, degraded, or altered, by reason of the convicted person’s act; and

31. Section 47B amended (Alternative to prosecution)

Section 47B of the Principal Act is amended by inserting after subsection (3) the following subsection:

- (3A) In addition to the purposes set out in section 44(1) for which, in accordance with section 44(2) as applied by subsection (3) of this section, prescribed fines may be disposed of by the Authority, the Authority may provide all or part of a prescribed fine to a person to recompense the person for any costs incurred in repairing or making good any damage done, or in rehabilitating or revegetating any land that has been, or on which the vegetation has been, damaged, degraded, or altered, by reason of the action, or failure to take an action, constituting all or part of the offence to which the fine relates.

32. Repeal of Act

This Act is repealed on the three hundred and sixty fifth day from the day on which all of the provisions of this Act commence.