

TASMANIA

FOREST PRACTICES AMENDMENT (THREATENED NATIVE VEGETATION COMMUNITIES) BILL 2005

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**FOREST PRACTICES AMENDMENT
(THREATENED NATIVE VEGETATION
COMMUNITIES) BILL 2005**

*(Brought in by the Minister for Infrastructure, Energy and
Resources, the Honourable Bryan Alexander Green)*

A BILL FOR

An Act to amend the *Forest Practices Act 1985*

Be it enacted by His 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 (Threatened Native Vegetation
Communities) Act 2005*.*

2. Commencement

This Act commences on a day 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

THIS BILL IS COGNATE WITH THE NATURE CONSERVATION AMENDMENT
(THREATENED NATIVE VEGETATION COMMUNITIES) BILL 2005

4. 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 “division”:

“exceptional circumstances”, that may justify the clearance and conversion of a threatened native vegetation community, include the need to do one or more of the following:

- (a) ensure the physical safety of an owner of land or the owner’s relatives or employees;
 - (b) remove or reduce a bushfire risk;
 - (c) respond to a threat to the State’s biosecurity;
 - (d) protect a rare, vulnerable or endangered species of flora or fauna;
 - (e) discharge a statutory obligation or comply with an order of a court;
- (b) by omitting the definition of “forest practices” and substituting the following definition:

“forest practices” means –

- (a) the processes involved in establishing forests, growing or harvesting timber, clearing trees or clearing and converting threatened native vegetation communities; and
- (b) works (including the construction of roads and the development and operation of quarries) connected with establishing forests, growing or harvesting timber or clearing trees;
- (c) by inserting the following definition after the definition of “harvest”:

“native vegetation” means vegetation of a species that existed in Tasmania, on land, before European settlement;
- (d) by inserting the following definition after the definition of “the regulations”:

“threatened native vegetation community” has the same meaning as in the *Nature Conservation Act 2002*;

5. Section 3A inserted

After section 3 of the Principal Act, the following section is inserted in Part I:

3A. Meaning of “clearance and conversion”

(1) In this Act –

“clearance and conversion”, of a threatened native vegetation community, means the deliberate process of removing all or most of the threatened native vegetation community from an area of land and –

- (a) leaving the area of land in an unvegetated state; or
 - (b) replacing the threatened native vegetation so removed, on a permanent or extended basis, with any, or any combination of, the following:
 - (i) another community of native vegetation;
 - (ii) non-native vegetation;
 - (iii) agricultural works;
 - (iv) residential, commercial or other non-agricultural development; or
 - (c) doing a combination of any of the things referred to in paragraphs (a) and (b).
- (2) For the avoidance of doubt, a management practice carried out on any land is not taken to constitute the clearance and conversion of a threatened

native vegetation community on that land if the range, and species composition, of the threatened native vegetation community is reasonably unlikely to be permanently altered by the management practice.

(3) In this section –

“agricultural works” includes, but is not limited to, the following:

- (a) farm sheds and workshops;
- (b) farm dams and irrigation facilities;
- (c) farm storage and processing facilities;
- (d) farm access roads and easements;
- (e) farm fencing;

“management practice” means any of the following:

- (a) applying fertilizer or changing the nature or scale of a fertilizer regime;
- (b) burning off to reduce wildfire fuel;
- (c) constructing fire-breaks;

- (d) mowing, slashing or scything grasses or undergrowth;
- (e) pruning, trimming or lopping vegetation for work safety purposes or to ensure the health of specific specimens of vegetation or vegetation communities;
- (f) removing or controlling noxious weeds;
- (g) switching from one kind of livestock to another or adjusting livestock numbers;

“remove” means remove by any direct or indirect means or combination of means, including but not limited to the following:

- (a) burning;
- (b) clearfelling;
- (c) cutting down;
- (d) lopping;
- (e) ploughing;
- (f) poisoning;
- (g) ringbarking;
- (h) thinning;

- (i) uprooting.

6. Section 17 amended (Restrictions on harvesting timber, &c.)

Section 17 of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (ba) in subsection (4):

- (bb) the clearance and conversion of a threatened native vegetation community;

- (b) by inserting the following subsection after subsection (5A):

- (5B) A person must not purchase or acquire native vegetation that has been obtained through the clearance and conversion of a threatened native vegetation community on land in respect of which there is not in existence, at the beginning of that clearance and conversion process, a certified forest practices plan.

Penalty: Fine not exceeding 1 000 penalty units.

- (c) by omitting from subsection (6) “Subsections (4), (5) and (5A)” and substituting “Subsections (4), (5), (5A) and (5B)”.

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

Section 18(2) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (a) “or the clearance and conversion of a threatened native vegetation community” after “trees”;
- (b) by inserting the following paragraph after paragraph (ba):
 - (bb) contain, if the plan involves the clearance and conversion of a threatened native vegetation community, the following specifications:
 - (i) the identity of the threatened native vegetation community and its range;
 - (ii) how much of the threatened native vegetation community would be cleared and converted under the plan;
 - (iii) the kind of vegetation, works or development that would replace the threatened native vegetation cleared and converted under the plan;

- (iv) the intended method of removal;
- (c) by inserting in paragraph (d) “, if applicable,” after “specify”.

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

Section 19 of the Principal Act is amended by inserting after subsection (1) the following subsection:

- (1AA) However, the Authority is not to certify a forest practices plan involving the clearance and conversion of a threatened native vegetation community unless the Authority is satisfied of one or more of the following:
- (a) the clearance and conversion is justified by exceptional circumstances;
 - (b) the clearance and conversion is likely to have an overall environmental benefit;
 - (c) the clearance and conversion is unlikely to detract substantially from the conservation of the threatened native vegetation community;
 - (d) the clearance and conversion is unlikely to detract substantially from the conservation values in

the vicinity of the threatened native vegetation community.

9. Section 47B amended (Alternative to prosecution)

Section 47B(1) of the Principal Act is amended as follows:

- (a) by omitting “section 17(4), 17(5)” and substituting “section 17(4), (5) or (5B)”;
- (b) by inserting in paragraph (b) “or the unlawful clearance and conversion of a threatened native vegetation community” after “of timber”;
- (c) by inserting in paragraph (b) “or, as the case may be, the whole or any part of the threatened native vegetation from that community” after “that timber”.

10. Section 47C amended (Vicarious liability)

Section 47C(1) of the Principal Act is amended by omitting “section 17(4), 17(5)” and substituting “section 17(4), (5) or (5B)”.

11. Section 47D amended (Salvage of illegally harvested timber or native vegetation)

Section 47D of the Principal Act is amended as follows:

- (a) by omitting subsection (1) and substituting the following subsection:

- (1) If a person is found guilty or convicted of an offence under section 17(4), (5) or (5B), section 18B, section 21(1) or section 41(5) in relation to any timber or threatened native vegetation, the Authority, notwithstanding that the timber or threatened native vegetation may have been harvested or cleared contrary to, or not in compliance with, the provisions of this Act or the Forest Practices Code, may allow another person to purchase or acquire that timber or threatened native vegetation.
- (b) by inserting in subsection (2)(a) “or threatened native vegetation” after “timber”;
- (c) by inserting in subsection (2)(c) “or threatened native vegetation” after “the timber”;
- (d) by inserting in subsection (2)(d) “or threatened native vegetation” after “timber”;
- (e) by inserting in subsection (2)(e) “or threatened native vegetation” after “timber”;
- (f) by omitting from subsection (2)(f) “on which the timber was harvested” and substituting “on or from which the timber or threatened native vegetation was harvested or cleared”;

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(g) by inserting in subsection (3) “or threatened native vegetation” after “any timber”;

(h) by inserting the following subsection after subsection (4):

(5) In this section –

“threatened vegetation”	native
vegetation	means
threatened	from a
vegetation community.	native

12. Schedule 7 amended (Objective of the Forest Practices System of Tasmania)

Schedule 7 to the Principal Act is amended by inserting after paragraph (ea) the following paragraph:

(eb) the conservation of threatened native vegetation communities; and