



Investigation and enforcement protocols

These protocols are used by the Forest Practices Authority
to guide investigations and enforcement

Endorsed by the Board of the FPA on 17 April 2020 and
subject to ongoing review and revision

Introduction

The Forest Practices Authority (the FPA) is responsible for independently administering, monitoring and enforcing the Tasmanian *Forest Practices Act 1985* (the Act) and the Forest Practices Regulations 2017 (the Regulations).

The Act requires the FPA to issue the *Forest Practices Code* (the Code) which ‘prescribes the manner in which forest practices shall be conducted so as to provide reasonable protection to the environment.’ To achieve this objective, the FPA develops tools and procedures which provide guidance to planners preparing forest practices plans (FPPs).

A certified FPP authorises an applicant to undertake specific forest practices on land, with the consent of the land owner, and must be adhered to.

The FPA recognises a broad culture of compliance, and the best environmental, social and economic outcomes under a co-regulatory system, is achieved through a strong partnership between the FPA, industry and the broader community.

The FPA applies ‘Seven investigation and enforcement principles’ (as attached) when enforcing the Act and exercises its powers, applying sanctions, or developing standards and encouraging compliance.

Information gained from the compliance and research programmes and consultation with stakeholders informs the continual improvement of the forest practices system.

The ‘Investigation and enforcement framework’ (Figure 1) represents the level of effort placed on the different approaches adopted by the FPA to promote a culture of compliance and address non-compliance.

Compliance Program activities

The FPA’s Compliance Program undertakes rigorous and independent monitoring and assessments of compliance under a risk-based/continuous improvement framework. Program activities include:

1. **Field observations and monitoring assessments** to determine the effectiveness of standards and prescriptions applied in forest operations. Forest Practices Officers are trained in this area.
2. **Monitoring for compliance** to assess the level of compliance against specified standards; often called a Compliance Audit. It is primarily designed to assess the level of compliance achieved against regulatory and Code standards under a certified forest practices plan. Minor issues of non-compliance are usually addressed as soon as they are observed through corrective actions. Serious non-compliance may result in a referral for investigation.
3. **Complaints** are received by the FPA from a number of sources including Forest Practices Officers, the public, other government regulatory agencies and self-reporting by people undertaking forest practices.
4. **Investigations** to assess reported potential breaches of the Act. These systematically gather admissible evidence for any subsequent action that can include criminal, administrative or disciplinary sanctions. Investigations can also prevent or deter breaches by increasing community awareness that there is active regulatory oversight and a capacity to report. The term investigation can also include intelligence processes, such as aerial photography and satellite imagery, which directly support the gathering of admissible evidence.

5. **Enforcement** requires actions to prevent, repair or penalise environmental harm and may include applying a prescribed fine (section 47B of the Act) or a referral to the Courts for prosecution (section 47 of the Act).

Enforcement outcomes

The FPA recognises that enforcement does not always require the prosecution of a breach of law. The FPA encourages improved performance and achieving beneficial environmental outcomes by using proportional enforcement tools that are applied to maximize positive results. Actions include:

- Issuing a request under section 41(1) of the Act to comply with the provisions of a FPP and/or to take action, in accordance with the Code (issued by a Forest Practices Officer)
- If a s.41(1) request has not been complied with, a binding s.41(2) directive can be issued.
 - Directives can include actions to repair or make good any damage to land, vegetation or objects that has been caused by the forest practices, or to rehabilitate or revegetate any land where the vegetation has been damaged, degraded or altered by the forest practices.
 - Where a cooperative approach succeeds and the remedial actions are completed, the FPA may conclude that there is no need for further action.
- Offering a prescribed fine as an alternative to prosecution (section 47B of the Act). This can be:
 - such amount as the FPA determines is equal, or approximately equal, to twice the amount required to make good the damage done or any loss incurred by the commission of the alleged offence; or
 - in cases where the offence is of a particularly serious nature or it is not possible or practical to repair or make good any damage or loss, the FPA may impose an amount it determines will constitute an appropriate sanction and deterrent.

The level of fines varies, with up to 1000 penalty units for serious breaches¹.

- Laying a Complaint. Where a prescribed fine is not accepted or where an individual responsible for the identified breach is a previous offender or where the FPA considers a breach is particularly serious or wilful, a person may be referred to the Courts for prosecution as provided for under s.47 of the Act.

In determining what constitutes an appropriate sanction and deterrent, the FPA will seek to ensure that a prescribed fine counters any perception that it may be more efficient or cost-effective to disregard the state's forest practices system.

How we operate

All investigations are carried out with integrity, honesty, and equity (being fair and impartial). The FPA will make every effort to apply the principles of procedural fairness and natural justice (the right

¹ The value of a penalty unit is regulated under the *Penalty Units and Other Penalties Act 1987*, and is published at:

https://www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation

to be heard and an absence of bias); and will respect the rights of all people in the community, by enforcing the Act justly and without fear, favour, malice or ill-will.

Release of information about an investigation

All information collected during an investigation will be treated as confidential, unless revelation is necessary for the administration of justice.

This ensures justice to alleged offenders and to protect the integrity of evidence for Court proceedings.

The findings and outcome of an investigation may be released at the completion of an investigation and in accordance with legislative requirements that include, but are not necessarily limited to, the *Archives Act 1983*, *Criminal Code Act 1924*, *Evidence Act 2001*, *State Service Act 2000*, *Personal Information Protection Act 2004*, and *Right to Information Act 2009*.

The FPA's annual report includes a summary of compliance activities and the outcomes of investigations that have resulted in fines or prosecution, or improvements in forest practices.

Reporting non-compliance

Any person is able to report to the FPA a potential non-compliance with the Act.

Technical knowledge is not required to report a concern, and forest practices may be described in general terms.

A report can be made in any way that provides information allowing for the identification of a specific area of land.

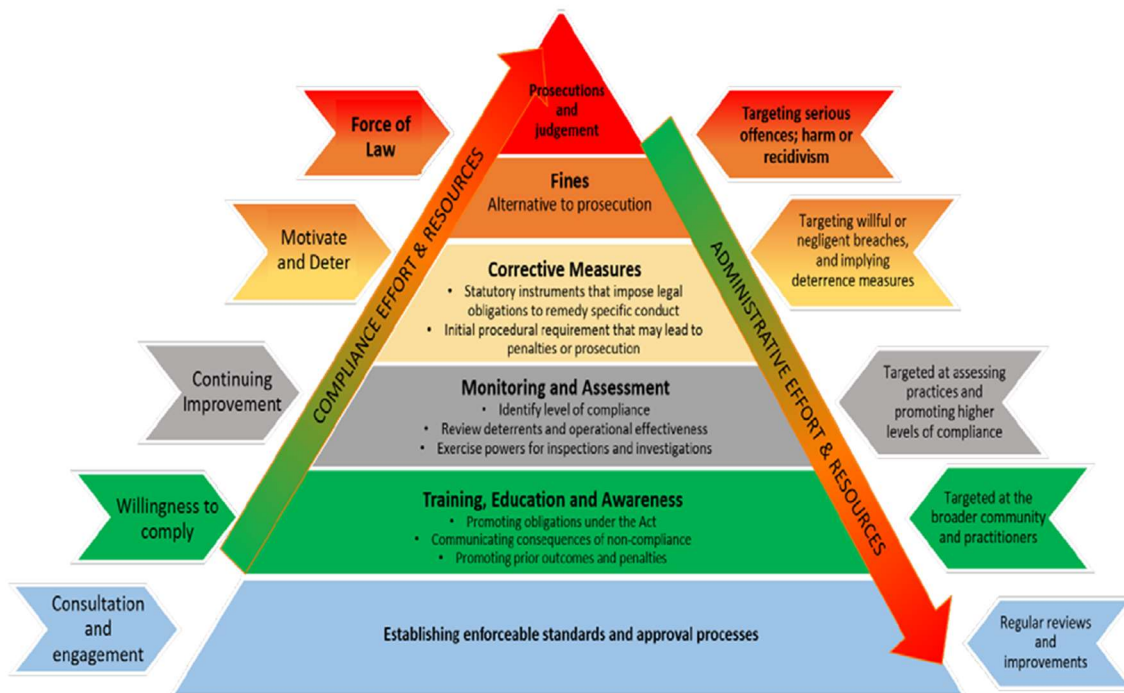
You can use any of the following to make a complaint:

Phone: 03 61654090

Email: info@fpa.tas.gov.au

Mail: 30 Patrick St, HOBART. 7000

FPA Investigation and Enforcement Framework



Regulatory actions and sanctions available under the Tasmanian Forest Practices system

Seven investigation and enforcement principles

Purpose of the principles

This document sets out the principles which apply to all investigations and enforcement actions under provisions of the Act and recognise the need to consider the circumstances of each case individually and upon merit.

1. Outcome focused approach

The objective of all enforcement action will be to further the legislative requirements and objectives of the Act.

In practical terms this may include ensuring that corrective actions are taken to rectify any actual or potential environmental harm, including measures to improve forest management systems and standards, and the knowledge and competence of persons operating within the forest practices system.

2. Proportionality

Enforcement action will be taken in proportion to the magnitude of the alleged offence taking into account implications for the administration of the Act more generally. The more serious the outcome is likely to be, the more resources will be required to support an inquiry/investigation. Sanctions will be applied that are proportionate and fit within provisions of the Act.

3. Responsiveness and flexibility

Decisions on the timing and extent of enforcement actions will be responsive to additional information or changing circumstances.

4. Transparency and clarity

All non-trivial breaches will be subject to enforcement consideration and communication with affected parties will be timely and clear.

A transparent process will determine the type of enforcement measure to be taken and any decisions will be based upon evidence. The rationale for enforcement actions and sanctions will be clearly stated.

5. Equity, fairness and consistency

The FPA will conduct its enforcement operations in a way that is fair, consistent and equitable. Persons apparently responsible for an alleged offence will be given an opportunity to respond to the allegation prior to the determination of enforcement action in accordance with the principles of procedural fairness and natural justice.

6. Due process

Enforcement action will be carried out within the limitations of the powers conferred, and the processes provided, under the Act and any regulations or statutory instruments or requirements enabled by the provisions of the Act.

7. Cost effectiveness

The FPA will use compliance resources and public funds in a financially responsible and sustainable manner to best further the objectives of the Act, by promoting enhanced environmental outcomes, improved performance of operators, and a responsive deterrence against wilful breaches and repeat offending.