



# Forest Industries Association of Tasmania

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## **Forest Industries Association of Tasmania Submission to “Review of the Code of Practice for Aerial Spraying - Discussion Paper”**

The Forest Industries Association of Tasmania (FIAT) is an industry association formed in 1983 to represent the interests of processors of Tasmanian forest products. Our members’ activities are diverse and include the production of veneers, hardwood and softwood timber, pulp and paper, woodchip production and plantation forestry.

FIAT’s 18 member businesses include all of the State’s larger processors of forest products, including a significant proportion of the crown sawlog output, as well as all of the veneer produced in the State. FIAT Members’ activities account for more than 75% of the gross value of production in the forest and wood products industry in Tasmania.

FIAT appreciates the opportunity to comment on issues identified in the discussion paper presented by DPIWE on the Review of the Code of Practice for Aerial Spraying – April 2005. In considering this submission FIAT have provided general comment and have then addressed each of the issues for comment that were provided in the discussion document.

### **General Comments**

FIAT is supportive of the review of the Code of Practice for Aerial Spraying on the basis that the Code is well over 10 years old and needs to reflect current standards. FIAT believe that the Code in its current form works well but acknowledge that there is room for improvements including strengthening the enforcement aspects of the Code. FIAT

believe that while there is a need to review and upgrade the Code, that any changes must result in a simple and user friendly formatted document.

FIAT believes that the Code is being reviewed in response to the unsubstantiated and often deceitful claims made against aerial spraying. These claims have been made in an attempt to reduce community confidence in the plantation forestry sector and have unnecessarily instilled fear in the community through a false perception of the potential for waterway contamination and consequent adverse environmental and public health affects. FIAT agrees that changes to the Code of Practice for Aerial Spraying may help to alleviate these perceptions. However, changing perceptions will not occur solely with changes to the Code of Practice. The only way to change perceptions is to publicise that there is no evidence to demonstrate contamination of Tasmania's waterways with pesticides when the revised Code is released after this review.

In our view the responsibility to undertake this publicity falls squarely on the Department and especially on the responsible Minister.

Aerial spraying is a critical tool for the forest industry, it is used not only for herbicide application during establishment and maintenance of plantations, but also for the control of insects during the rotation life of the trees (if required). Any action taken to limit the capacity of the industry to utilize aerial application of sprays could have serious economic and/or environmental impacts. Contractors that are used by forest industry companies are also used extensively by other agricultural enterprises therefore any favorable reaction by Government to recent call to ban aerial spraying in forestry activities will have adverse impacts right across the spectrum of users.

Tasmania's plantation estate of 225,000 hectares has an establishment value of approximately \$675 million and it is FIAT's view that we should be entitled to use appropriate techniques to protect that estate.

## **Issues for Comment**

- *The role of the Spray Information & Referral Unit in administering the Code of Practice for Aerial Spraying. In particular, whether the role of administering the Code should include negotiation and mediation, or should be restricted to provision of information and strict enforcement of the provisions of the Code. If the latter is considered preferable, further comment is sought on an alternative model for negotiating and mediating disputes between neighbours over pesticide spraying.*

FIAT believe that the Spray Information and Referral Unit (the Unit) have a very strong role to play in negotiation and mediation. We agree that the Unit have been quite successful in resolving many of the concerns reported to it through negotiation and mediation in the past.

In many instances mediation involves little more than an independent provision of information and this would clearly be an extension of the unchallenged role of the Unit.

With respect to strict enforcement of the provisions of the Code, FIAT are supportive of a strengthening of the enforcement procedures in the Code and believe that the Unit has a role to play in issuing infringement notices in instances where the Code is breached. In these instances the infringement notices could be similar to traffic infringement notices where the notice can either be accepted and actioned by the recipient or an option to prosecute would follow.

- *The function of the Code of Practice and whether in its present form it successfully merges regulatory and education / awareness functions, or fails to do either. Further comment is sought on what form the Code should take.*

FIAT reiterate that the Code has worked very well to date but believe that there is opportunity for improvement to some aspects although we believe these are at the periphery. FIAT are concerned that the review has been triggered by reaction to inaccurate scientific reports into water quality issues in Tasmania and hope that that

outcomes of this review provide practical improvements to the Code rather than resulting changes that are not necessary and are merely an attempt at addressing ill founded community perceptions borne of misinformation or even deliberate mischief making.

- ***Whether the Code should be a regulatory document or an advisory document that provides guidance on best practice. If the former, should the Code be incorporated in regulations, or re-drafted to provide clear offence provisions? If the latter, should the Code be expanded to include more guidance on spray application technology, safe practices, communication, establishment of buffer zones etc.?***

FIAT's strong preference is to have the Code retained in its current form with stronger enforcement provisions rather than have the Code incorporated in Regulations. Experience to date including the hitherto successful operation of the Code would not support a contention for an elevated level of regulation above that already existing.

With respect to the Code being expanded to include procedural information, FIAT suggest that a Best Practice Manual be developed to provide this information rather than incorporating it into the Code. We repeat in this context our general view that the Code must be kept simple if we are to maximize its effectiveness in the field. Cluttering up the minimum regulatory controls with procedural matters will unduly "pad out" the Code making its understandability less. With the rapid change to information as technology improves, regular short term revisions of the Code will be required to keep it up to date. In our view this is not desirable. The role of the Code is not to advise on procedural issues but instead prescribes responsibilities and minimum standards for aerial spraying operations.

- ***Whether or not there is a place for infringement notices in enforcing the provisions of the Code. If so, comment is sought on the offences, or types of offences that should be subject to such measure and the checks and balances that should apply to their use***

As mentioned earlier, FIAT is supportive of the introduction of infringement notices in enforcing the provisions of the Code. It is important that the Code include strict enforcement provisions not only for aerial spraying operators but also for the landowners themselves. Our earlier comments extrapolate on how we would prefer such a system to operate.

We firmly believe provision must also be made within the Code for vexatious claims from the public. An example of where this may be incorporated in relation to water sampling where currently the Department pays for any water sampling that is requested by the public. In this instance, if the request for water sampling can be proved to be vexatious, the cost of the sampling must be paid by the complainant. This procedure could be prefaced with a requirement that a complainant make out a prima facie case for the sampling and in the event that case is not made out it could be open for the complaint to be deemed vexatious.

- ***Whether the exclusion zones in the Code should be prescribed in terms of prohibiting discharge of chemical product or prohibiting spray drift into the zones.***

We believe that a Duty of Care approach should be taken to the definition of exclusion zones. This is included in Section 20 of the Code with respect to operators responsibilities and should be extended into Section 5 where exclusion zones are defined. This would then reflect a risk management approach associated with a broad range of conditions that can be experienced on a variety of sites and indicates the need for landowners and operators to adopt a risk management approach to the defining of exclusion zones on a case by case basis and avoiding overspray into those zones.

The forest industry currently prepare spray plans for each of their operations and believe that this practice should be extended to all aerial spray operations. This practice encourages landowners to consider specific site conditions and assess the risk associated with discharge of product around exclusion zones whether it be directly or through spray drift.

- ***The appropriateness of the current performance-based approach to regulating offtarget spray drift.***

The current performance based approach works reasonably well in regulating off target spray drift. In the isolated cases where spray drift does occur the incidents are dealt with in-house between affected parties and if the outcome is acceptable to both parties and there were no residue or regulatory exceedances (ie above drinking water guidelines for water quality issues etc) then there should be no need for third party involvement (ie DPIWE).

We refer again in this context to our comments in respect to the shared duty of care between pilot and grower.

- ***Whether the exclusion zones prescribed in the Forest Practices Code should be incorporated in the Code of Practice for Aerial Spraying and if so, whether they should apply to aerial spraying in agriculture as well as forestry. If the zones detailed in the Forest Practices Code are not considered appropriate, comment is sought on the criteria that should be applied to establishing exclusion zones, or whether some other approach should be considered.***

The exclusion zones prescribed in the Forest Practices Code are based on streamside reserves and are primarily specified for the restriction of soil movement into water courses as a result of operations that cause soil disturbance and for the protection of riparian zones. It would therefore be inappropriate to use these exclusion zones in the Aerial Spraying Code of Practice as these operations do not cause soil disturbance. FIAT believe that any prescription of exclusion zones for aerial spraying should be contained in the Code of Practice for Aerial Spraying and should apply equally to forestry and agriculture operations.

Adoption of a risk management strategy such as we advanced earlier in this response would apply an all encompassing duty of care, thus avoiding any need to stipulate specific exclusion zones.

- *Whether the notification requirements of the Code are appropriate, including the extent of the notification zone, whether notification is required for each and every spraying event and what information should be provided to neighbours and in what form.*

FIAT is supportive of the current notification requirements of the Code which we believe are adequate. We believe that notification should be provided for spray programs rather than for specific spray events because it is difficult to determine exactly when the operations will take place and how long it will take to perform the program. Due to this variability we recommend that spray program advice should include the period over which spray operations are likely to extend. FIAT recommends that spray notifications include a contact name and number so that people with concerns about the operation have the opportunity to ask questions without recourse to notification to the Unit or any other body.

- *The costs and benefits of implementing a system of pre-notification of aerial spraying to government. Should such a system also include post-spray notification of changes to planned operations? Are there any benefits in implementing such a system if it does not also include ground-based applications?*

The forest industry currently notify government prior to all aerial spraying operations. The development of a standard form for notification (such as the one used for 1080) would make the task of notification easier for growers and could be used for the notification of property owners within 100 metres of the operation as well as Government.

We would not be supportive of the introduction of post spray notification of changes to planned operations and believe that the costs of administering such a system would outweigh the benefits. It is currently a requirement of the Code that all growers and operators keep records of their operations, we believe that these records are sufficient should any post spray follow up be required.

- ***Whether the requirements of the paddock numbering system are appropriate and whether the system should apply beyond vegetable cropping.***

The forest industries do not currently use a paddock numbering system nor would it be appropriate or effective. The forest industry currently uses a system which provides spray plans, maps and GPS coordinates, all of which ensure correct identification of spray areas.

We do not have a view on paddock numbering for vegetable crops or any other.

- ***If the record keeping requirements of the Code are appropriate and if records should be made available as a matter of course, rather than on request.***

FIAT believe that the current reporting requirements of the Code are appropriate. A suggestion for improvement would be to make the recording of weather conditions a must statement rather than a should statement. This will avoid extensive argument in the event of a subsequent dispute.

- ***The criteria that should be used to set pesticide residue levels that represent an adverse effect in relation to drinking water, groundwater, soil and premises. If not appropriate to set such levels, what alternative approach might be considered***

FIAT believe that the current NH&MRC drinking water guidelines provide an appropriate datum point against which to measure residues as it would be an exceedence against these guidelines that would properly constitute the grounds for any public concern. Additionally we believe that the appropriate measure would be the health value that would provide a relevant benchmark for assessment.