



Submission  
by the  
Forest Industries Association of Tasmania

on the

Establishment of an  
Environment Protection  
Authority for Tasmania

December 2006



Forest Industries Association  
of Tasmania



## **Introduction**

The Forest Industries Association of Tasmania (FIAT) welcomes the opportunity to make comment on the Tasmanian Governments position paper on the establishment of an Environment Protection Agency (EPA) for Tasmania.

This is an issue of great importance to the Tasmanian forest industry and whilst it is acknowledged in the Governments discussion paper on the creation of the EPA that separate planning schemes apply to the forest industry, it needs to be kept in mind that many aspects of the forest industry's operations in this State to some extent or another will be impacted by the creation of an EPA.

FIAT have for some time brought to the attention of Government and senior bureaucrats our frustration in the complexity of the planning and approvals processes in this State in respect to any development or process that involves the use of natural resources. We acknowledge that it is vitally important to have in place a reasonable level of checks and balances to ensure the protection of the environment however the current process is clumsy, cumbersome and complex and as a result it is extremely difficult to get to the approval stage with any degree of speed.

The proposal floated in the Government discussion paper does nothing to reduce the regulatory burden nor the frustrations of those required to utilise it, which we regard as an opportunity lost.





## About FIAT

The Forest Industries Association of Tasmania is an industry association formed in 1983 to represent the interests of processors of Tasmanian forest products. FIAT was formed out of a predecessor Association, the Tasmanian Timber Association. FIAT and TTA collectively have provided representational services to the Tasmanian timber industry for in excess of 60 years. Our members' activities are diverse and include:

- the production of veneers, hardwood and softwood timber, pulp and paper
- woodchip production and export
- plantation and native forest management.

FIAT's 18 member businesses include all of the State's larger processors of forest products. They utilise 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.

Included within the FIAT membership are the State's largest industrial forestry Companies that account for the vast bulk of plantation development and management enterprises on private land in Tasmania and as a consequence we have a significant interest in the development of an EPA within this State.

FIAT's role is described in our Annual Report as follows: -

### ***“Role***

*In addressing its first objective, FIAT's role is characterised by helping to create the right external environment within which industry has to operate. This has two main dimensions - the policy environment and the public image of the industry in the eyes of the community.*

*The policy environment centres on government legislation and regulations which determine the limits to what industry can do. The policy environment must be tackled at both the Federal and State Level.*





*Industry's public image rests on public opinion and the various factors which influence that opinion. This is important because public opinion has a strong bearing on the development of Government policy.*

*In addressing its second objective, FIAT's role is to facilitate discussion and joint action among its membership, and to project membership position in wider forums as appropriate.*





## **The Concept of an EPA**

FIAT does not have any fundamental objection to the creation of an EPA to replace the Board of Environmental Management and Pollution Control (the Board). In many respects the proposal within the discussion paper appears to be a change in name with little change of substance over the current regulatory regime and it is in this respect that we have some differences with the outlined approach of the Government.

FIAT regard the primary purpose of moving to an EPA structure is to increase the independence, both real and perceived, of the Board from Executive Government. We are generally supportive of this overall policy position. We would not support such a move if it did not involve an increase in the real independence of the Board and only sought to provide a veneer of increased independence to aid the perception of the community.

It is of fundamental importance to the community accepting the role of an independent authority with the range of powers of the proposed EPA that there are no lingering doubts about the genuine independence of such a body from both Executive Government and the regulator in the form of the Department. We are not convinced that the outlined format achieves this objective.

Whilst we can accept that in most respects the Board of EMPCA and even more so that proposed for an EPA do act independently of Executive Government we are of the view that allowing statutory officers to be directly involved on the decision making functions will mean that the community will not see the Board and its corporate governance as truly removed from the influence of Executive Government.





## **Structure of the Board**

One weakness of the current regulation of environmental protection in Tasmania is the intermingling of the employed specialist staff of the Department with the independent regulatory authority in the Board. This issue is one that leads to the perception that the Board is not truly at arms length from the Government and is a flaw that is repeated in the proposed model for the EPA.

We recognise that some steps have been made that increase the perception of independence of the corporate governance of the EPA through the Secretary of Department no longer mandatorily being the Chair of the Board and that the Board will elect its own Deputy Chair from amongst its membership rather than the Director automatically undertaking that function. We remain of the view that the mandatory inclusion of these two statutory office holders as voting members of the Board will mean that there will remain the perception that the Board is not truly independent from Government influence and the problems of the past will be visited upon the future structure.

Our preferred model would see the appointment by the Governor on advice from the Minister of five members of an EPA Board one of whom would be appointed Chair and one of whom would be elected Deputy Chair from within the remaining 4 members of that Board. It is anticipated that the proposed Board would include persons with specific experience, skills and knowledge within the purview of the role of the EPA's functions. It is important that the Board of the EPA have a weighting in favour of persons with actual practical experience of the relevant areas and not merely a theoretical or academic experience.

The Board need to retain the confidence of industry and other key stakeholders and this can only be achieved through ensuring that the majority of the Board have practical experience in industry to ensure the true impact of decisions on the capacity of industry are understood and considered in the decision making of the Board.





We do not have any issue in the proposal that Departmental staff provide a secretariat to the Board of the EPA nor that the Secretary and/or the Director attend meetings of the Board in an advisory capacity as this fits comfortably with a private sector model whereby the CEO and Senior Managers provide advice to the Board to assist it in its decision making role. In this respect we agree that the cost of creating an independent statutory authority that in many respects would duplicate at least the administrative functions of Department is not warranted. It is however important that the EPA in its decision making capacity is, and is perceived to be completely unencumbered from influence by the Executive Government and the Department.





## **Independence of the EPA Board**

As noted above we do not agree with the proposed corporate governance structure of the proposed EPA Board and we have proposed an alternate model that we say provides a more independent decision making model.

We do not believe the proposal to have a 6 member Board of the EPA with a second or casting vote available to the Chair is a good structure for decision making in the very sensitive and important area of environmental control. A Board with an odd number of representatives would be a far preferable model that could be free from the encumbrances that may arise from an even numbered Board. We accept that the vast bulk of decisions are likely to be taken by consensus, however in the planning stages of a new Board it would be unwise to ignore the potential for voting outcomes that are not always by consensus or clear majority.

The adoption of our alternate structure will avoid the types of issues identified within the discussion paper on how to resolve tied votes.

We also do not accept that the Board can be or can be seen to be, free from Government influence with the retention of statutory office holders on the Board.

The observation in the discussion paper that the independent Chair of the EPA needs to be a person with “expertise in public administration” does cause some concern and we do not understand why these criteria should be mandated in this way. It is entirely conceivable that an independent Chair may have little or no public administration expertise or experience but may have very extensive expertise and experience in the private sector which in our view would still provide an entirely sensible and appropriate background to undertake this role.





FIAT recommend that this criteria be amended to allow for the consideration of a broader pool of potential candidates and to remove the bias towards public administration experience as this is not an essential prerequisite for this role.





## **Functions of the EPA Board**

We note the intention to in effect replicate the existing role and functions of the EMPCA Board in the powers and functions of the new EPA Board. In broad terms we support this approach.

We support the extension of the Boards advisory role to the Minister to allow the Board to initiate policy advice rather than awaiting a request from the Minister. This type of proactive approach is synonymous with the increased independence of the EPA Board but may be problematic with statutory office holders being members of the Board.

The broad nature of the role and functions of the Board could indeed be problematic as set out in the discussion paper and FIAT would support the refinement of these functions but indicate strongly that that refinement must be undertaken in consultation with industry. It is vital that key stakeholders be consulted at an early stage and throughout the process as their confidence in the system is paramount in its effective operation.

We also believe that there needs to be a considerable increase in the requirement for the Board in undertaking its functions to operate in tandem with industry through mandated consultative practices that we believe form the basis for a best practice approach to the regulatory regime in a sensitive area with such a significant potential to impact on industry. We believe this should be an overarching obligation imposed on the Board who should be required, in consultation with key stakeholder groups, to prepare a Charter of Operations that will clearly define the consultative arrangements that must be undertaken in respect to the Board carrying out its role.

With this overarching addition we believe that the current breadth of functions of the Board of EMPCA is appropriate and should form the foundation for the Board of a newly created EPA.





The objectives of the EMPCA 1994 (the Act) are very broadly stated and do not appear to provide sufficient emphasis on the need to facilitate development in the State. Some focus on this aspect of the role of the Board to balance the needs of the environment with the social and economic advantages of development would ensure the more contemporary approach of triple bottom line assessment is practised by the Board.

We are particularly concerned with the objective that requires the use of the precautionary approach when assessing environmental risk without any balancing requirement to consider the social and economic benefits that may flow from any development under consideration. This has the potential to eliminate any development that has any impact on the environment regardless of its potential to contribute significantly to the social and economic wellbeing of the State or a region within the State. This example is put forward merely as an illustration of the point we make that there needs to be a more fulsome process of balancing the benefits and impacts of a proposal, rather than simply to consider one element of it.

The increased emphasis on communicating with the community on the role, functions and priorities of the EPA is welcomed as it is important that the community be well informed on the extensive range of environmental protections that are operating within the State as we perceive a general lack of understanding on this issue. The creation of an Independent Chair position will facilitate this task and that role must embrace a full spectrum of public awareness functions to ensure the public is well informed.

Thank you again for the opportunity to provide comment on the establishment of an EPA for Tasmania. We look forward to further opportunities for input as the proposal progresses. Should you wish to discuss any aspect of these comments or require any clarification please contact Terry Edwards on 6224 1033 or [terry.edwards@fiatas.com.au](mailto:terry.edwards@fiatas.com.au).

