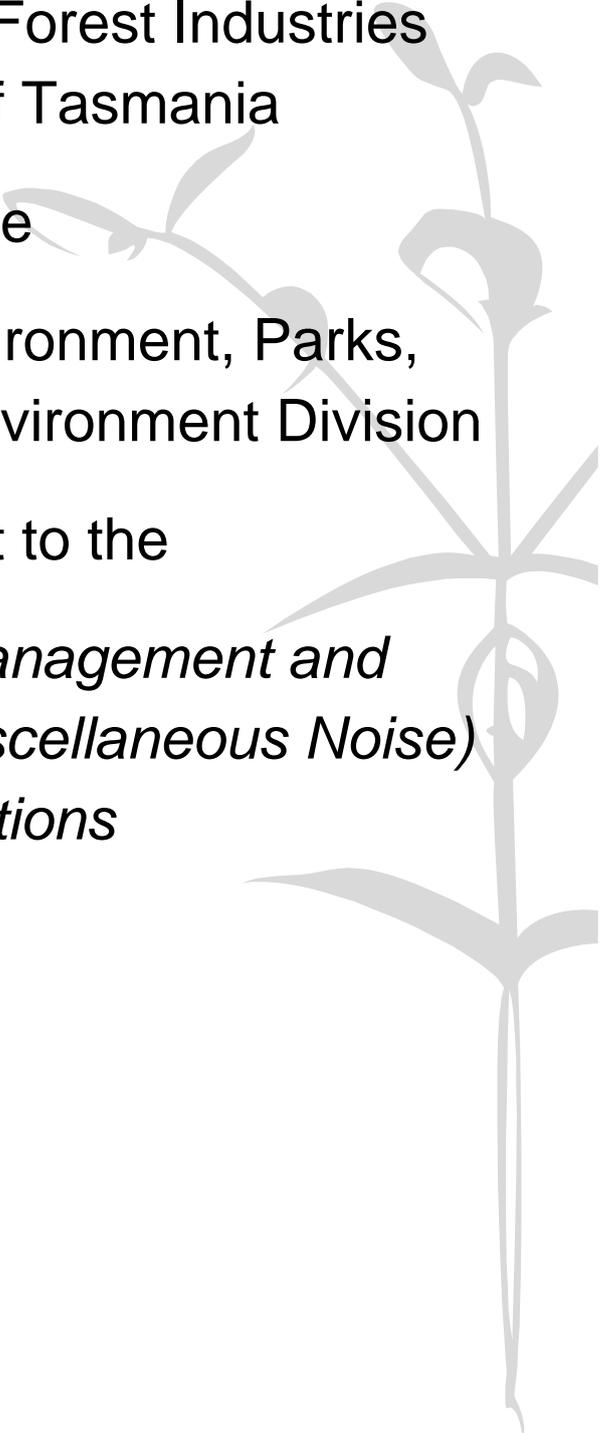


Submission by the Forest Industries
Association of Tasmania
to the
Department of Environment, Parks,
Heritage and Arts, Environment Division
in respect to the
*Environmental Management and
Pollution Control (Miscellaneous Noise)
Regulations*



5th May 2009

Preamble

The Forest Industries Association of Tasmania (FIAT) thanks the Department of Environment, Parks, Heritage and the Arts Environment Division (the Department) for the opportunity to comment on the *Environmental Management and Pollution Control (Miscellaneous Noise) Regulations 2004* (the Regulations), and the accompanying Regulatory Impact Statement (the Statement).

The Forest Industries Association of Tasmania (FIAT) is an industry association formed in 1983 to represent the interests of growers and 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:

- Plantation and native forest establishment and management.
- The production of veneers, hardwood and softwood timber, pulp and paper
- Woodchip production and export

FIAT members include the State's largest industrial forestry companies that account for the vast bulk of timber processing facilities in Tasmania.

Comments

Noise Measurement Procedures Manual

FIAT strongly supports the deletion of regulation 25 and the amendment of regulation 4. It is essential that any changes to the “Noise Measurement Procedures Manual” are made only after seeking stakeholder input. The benefits of a clearly defined consultation requirement when changes to the manual are being considered are expansive. A stable regulatory environment helps industry to plan and invest resulting in benefits to the State economy and jobs.

Operation of Chainsaws

The *Subordinate Legislation Act 1992* (SLA) requires all subordinate legislation be assessed before its introduction. This is to demonstrate that it is in the public interest and will yield a net benefit to the community. The Secretary of the Department of Treasury and Finance has given the preliminary advice that restrictions on the use of chainsaws on non-residential premises would impose a significant cost, burden or disadvantage on the community and therefore require public interest justification.

Saturday Hours of Operation

FIAT endorses the proposed amendment to the hours of chainsaw operation on a Saturday in the vicinity of residential premises from the previous provision restricting operation from 9 am to 6 pm to the proposed extension of those hours to 7 am to 6pm. Many businesses operate on a Saturday and in our view there are no compelling reasons to differentiate between a Saturday and the provisions relevant to Monday to Friday use.

Statutory Holiday usage

The extension of the list of public holidays upon which restricted hours of operation of a chainsaw by a business apply from only Good Friday and Christmas day to a considerably more expansive list is strongly opposed by FIAT. There are no compelling reasons advanced by the Regulatory Impact Statement for this considerable extension to these limitations other than “so there is no misunderstanding about the intent of “holiday” usage.” This amendment goes well beyond clarifying the meaning of holidays caught by the pre-existing provisions it increases the number of days affected 4 fold without any persuasive reason (from 2 to 10).

FIAT submits that the existing provision is far from unclear. In fact its application is crystal clear, in that it provides a limitation on only two days which are stipulated.

We note also that the RIS seeks to deal with the difficulties of having to refer to two separate provisions of the same regulations when endeavouring to obtain a proper and complete meaning of the hours of usage provisions which it then exacerbates by including a reference to an entirely different legislative enactment to clarify the intent of public holidays provision, which was previously self contained. This type of drafting will be confusing in the extreme and involves far greater complexity than the existing provision. As a general proposition we submit that any enactment should, wherever reasonably practicable, be self contained.

Work on many of the statutory holidays that are prescribed by the Statutory Holidays Act 2000 is rare but it can and does occur. There do not appear to be any reasons advanced by the Department for this significant change, which will impact adversely on business.

FIAT submits in particular that “Easter Tuesday” ought not be restricted for non-residential chainsaw use as it is not a holiday commonly observed by the general public in Tasmania; in fact in the vast majority of cases this is not an observed holiday.

Easter Tuesday is generally only observed by a very limited proportion of the population i.e. employees of banks, state servants and a few employees in the legal industry. We appreciate the desire to make interpretation of the regulations more consistent by linking them to the Statutory Holiday list, but note that the shorter operating hours will restrict milling operations resulting in lost income. The implementation of this part of regulations will not provide a net benefit to the community.

FIAT submits that as an absolute minimum only **generally observed** statutory holidays be subjected to the shorter operating hours and that those holidays upon which restrictions are to be observed should be spelt out in full within the Regulations.

Inclusion of a Requirement to have “approval” in new regulation 18(2)(a)

FIAT submits that the amendments tend to further confuse the chainsaw regulation regime now governed by regs 12, 14 and 18. This confusion would be avoided, and an appropriate outcome achieved, if existing regulation 18 was repealed and not replaced. The table extracted in the RIS is relevant only to reg.14.

Further, FIAT has substantial concerns with respect to this provision, which in its draft form may significantly restrict the use of a chainsaw on non domestic premises.

FIAT strongly submits that the requirement for approval be deleted. The new regulation as amended in that form then makes good sense, and clarifies the existing infelicitous drafting.

FIAT points out that in many cases:

1. There is no “approval” as defined for an existing use of land which is lawful despite the imposition of planning restrictions after it has commenced;
2. Even if a permit or EPN exists it would be very unusual for there to be any express reference in it to chainsaw usage; and

3 This makes the reference to “approved” in the proposed definition of that term, and the definition itself, fundamentally misconceived; Further and more importantly, FIAT submits strongly that it is not appropriate that the Environmental Protection Authority be empowered to dictate a more severe approach than that which applies already under regulation 14. There should be no discrimination between domestic and commercial premises, that is to say, the hour restrictions should be the same and as they presently exist under schedule 7. This should not be capable of alteration, adversely to industry, under an EPN. This is, or would be, over-regulation, by stealth. Issuing environment protection notices under section 44 of the EMPCA is meant as a means of enforcing the existing regulations, not to enforce new industry unfriendly standards.

FIAT thus submits that, if the reference to approval is to continue, the definition should be as follows:

18(1) In this regulation, “approved” means lawful within, as part of, or as an activity or use of land lawful under:

- (a) a permit issued under and in force under Part 4 of these regulations;
 - (b) a permit issued or deemed to be issued and in force under the Land Use Planning and Approvals Act 1993 for a level 1 or level 2 activity;
 - (c) subject to subregulation (1A), an environmental protection notice issued, or caused to be issued, by the Director under section 27 or 44 of the Act;
 - (d) subject to subregulation (1A), an environmental protection notice issued by a council officer under section 44 of the Act;
 - (e) an emergency authorisation; or
 - (f) an existing use right;
- (1A) if a chainsaw is used within, or as part of, or as an activity or land use, no environment protection notice relating to the activity or land use may restrict the hours of lawful operation of a chainsaw further than Schedule 7.

FIAT finally submits that any approval by permit under Part 4 should be granted in such a manner as to not impose any conditions more onerous than those prescribed by these regulations

CONCLUSION

FIAT strongly supports the deletion of regulation 25 and the amendment of regulation 4.

FIAT strongly opposes the proposed extension of chainsaw operating restrictions to public holidays other than those already clearly identified in the Regulations. Alternatively, FIAT requests that only commonly observed Statewide holidays be subject to the 10am to 6pm chainsaw operating hours restriction, and that this be achieved through a modification to the regulations or the *Statutory Holidays Act 2000*.

FIAT also strongly opposes the giving to the EPA of a power to “approve” chainsaw usage which is lawful in the general sense of being within the limits imposed under regulation 14 and schedule 7 and part of a commercial activity which is itself lawful. FIAT submits that chainsaw use on commercial premises should be subject to no limitation or alternatively to those same limits. The reference to “approval” in the draft should be replaced with a reference to use as part of an activity or land use which is lawful, in the sense defined above. There are a great many timber operations which are contiguous with or close to domestic premises.

For further information and FIAT liaison contact Petra Strich, Manager Technical Services, on 6224 1033.