

ADVISORY NOTE No. 1

- HARVESTING AND TRANSPORT -

FORESTRY (FAIR CONTRACTS CODE) ACT 2001

AND

FORESTRY FAIR CONTRACT CODE

**ISSUED BY
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MINISTER FOR ECONOMIC DEVELOPMENT & RESOURCES
2 July 2006**

Introduction

The future competitive success of Tasmania's forest and wood processing industries relies on all sectors along the supply chain remaining economically viable while continuing to adopt and invest in new technologies necessary to maintain a safe working and sustainable managed natural environment.

The Tasmanian Government encourages all individuals, companies, and contractors who are undertaking, or engaged in, forestry operations to develop fair and reasonable contracts which reflect the dynamic economic environment in which they operate.

Advisory Note No.1 offers equitable negotiating principles which provide non binding guidance on specific issues relating to forest harvesting and transport contracts developed under the *Forestry (Fair Contracts Code) Act 2001* (the Act).

All interested parties to a forestry operations contract should make themselves familiar with the Act and the Forestry Fair Contract Code (the Code)¹. Parties entering into contracts should not rely on this Advisory Note without first reading the Act and the Code and seeking independent legal advice. Industry associations may also be able to provide additional information regarding variables likely to impact on the costs of carrying out a forestry operation.

The issuing of Advisory Note No.1 provides an opportunity for parties entering into new, or reviewing existing, contracts to consider the variables outlined. However, the examples used within this Advisory Note are for guidance only. They do not replace provisions under the Act, or other legislative requirements (such as the *Workers Rehabilitation and Compensation Act 1988*) and all contracts must be developed in accordance with such Acts.

Annex A and Annex B provide an overview of the Act and Code respectively. Annex C provides an outline of a number of variables associated with, or likely to impact on, forestry harvesting and transport operations. Attached to Annex C is a table, *Impact Assessment Guide: Forest Harvesting and Transport*, which could be used in discussions associated with contracts relevant to the Act.

A review of the Advisory Note will be undertaken after six months from its release with a view to assess their effectiveness and contribution to the development of more robust and responsive forest harvesting and transport contracts.

¹ A full copy of the Act is available electronically at www.thelaw.tas.gov.au and the Code at www.dier.tas.gov.au/forests/forestry_contract_code.html.

Annex A

Quick reference guide to the Forestry Fair Contracts Act

The Act applies to the following forestry operations:

- Planting trees for commercial timber production;
- Managing trees that have been planted for commercial timber production, but limited to the following silviculture activities (thinning, pruning, fertilising, pest and weed control and fire and weed management);
- Harvesting trees for commercial timber production;
- Transporting timber that has been harvested for commercial purposes;
- Land clearing associated with a forestry operation specified above; and
- Road construction and quarrying associated with a forestry operation specified above.

The Act provides mandatory legislative provisions for all contracts covering all forestry operations noted above. All forestry contracts must be in writing and, even if the parties enter into a simple contractual agreement then all of the sections of the Act and Code are taken to apply to that contract.

The Act provides that parties freely entering into a contract will incorporate provisions as specified under the Code which include the basis for payment (Section 7 of the Code), periodic rate review(s) (Section 10 of the Code) and periodic performance review(s) (Section 11 of the Code).

The Act and Code are not prescriptive in detailing how parties negotiating a contract should determine the basis under which Sections 7, 10 and 11 of the Code are agreed.

Section 13(1)(b) of the Act also provides that if a clause in any contract is inconsistent with a clause in the Act, the clause in the contract is, to the extent of the inconsistency, void and unenforceable.

Annex B

Quick reference guide to the Forestry Fair Contracts Code

SECTIONS 1 TO 3

Deal with standard matters in any contract relating to the identity of the parties, engagement, the term, renewal and extension.

SECTIONS 4

Details the relationship of parties covered by the Act and specifies where no relationship exists.

SECTION 5 & 6

Details the responsibilities of the contractor and the principal company (whether or not it is an individual, company or contractor). Important issues such as an appropriate cover for employees under the *Workers Rehabilitation and Compensation Act 1988* and the provision by the principal companies of a certified Forest Practices Plan (FPP) should be addressed before the commencement of work.

Note: All forestry work can only commence after a FPP is issued by a certified Forest Practices Officer. Information on FFP's is available at www.fpa.tas.gov.au.

SECTION 7

This section of the Code deals with payment for contract services.

SECTION 8

Sets down the industry agreed process for the resolution of disputes and promotes the use of mediation after a period of discussion rather than resorting to the courts as a first option.

Industry associations may be able to provide guidance, assistance or contact details for the suitably qualified organisations and/or individuals who are able to provide this service.

SECTION 9

Deal with assigning the contract to another person or company.

SECTION 10 & 11

Deal with rate and performance reviews.

SECTION 12

Addresses the unusual situation where one of the parties to a contract is unable to meet its obligations under the contract. E.g. where external events prevent one of the parties to the contract performing its duties as required by the contract.

SECTION 13

Sets out circumstances under which a contract may be terminated.

Note: The termination of any contract should not be taken lightly as the effect might be far more reaching and impact on more than the parties within a contract.

SECTION 14

Details where the provision of a guarantor, and associated issues, may be required to provide security in the event of non-performance of the contract.

SECTION 15

Stipulates that all contracts must be in writing and in English.

Annex C

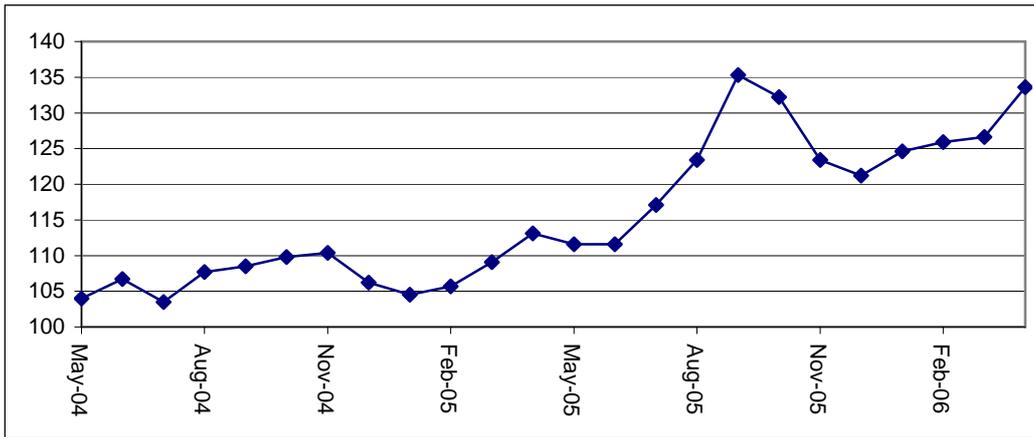
Impact assessment guide - forest harvesting and transport -

To assist parties in developing a fair, reasonable and equitable contract, the Tasmanian Government has developed a simple, non-binding impact assessment guide for forest harvesting and log cartage contracts (Attachment A). This Guide has been developed through consultation and reflects current industry and forest specific variables.

It is also important that Parties entering into a contract make themselves aware that some variables are volatile and may fluctuate markedly, such as the cost of fuel, changes in demand for products, and market access. Such variables may significantly change over short time periods. This volatility reflect market forces outside the control of the Tasmanian Government and parties entering into contracts under the Act. It is therefore difficult to reflect the impact of such volatility within the Guide. However, as the level of volatility can significantly impact on an operation's financial success, consideration should be given to provide for the inclusion of rate review mechanisms within a contract (consistent with Section 10 of the Code) that allow for timely adjustment (both positive and negative) resulting from such volatility.

As examples, the Tasmanian Government has included the following graphs to illustrate the volatility of three external variables - supply (fuel), production (woodchips) and demand (Japanese market)- which impact on the cost of forest operations. Graph 1 (fuel) was developed using information available from Caltex Australia's web site and shows the average price of fuel in Tasmania from May 2004 to April 2006. Graph 2 (production) indicates Tasmania's production of woodchips from 1970/01 to 1999/00 while Graph 3 (market) shows the market share (percentage) of Australian woodchips imported into Japan from 1990 to 2005.

Graph 1: Retail Petrol Prices (A\$)²



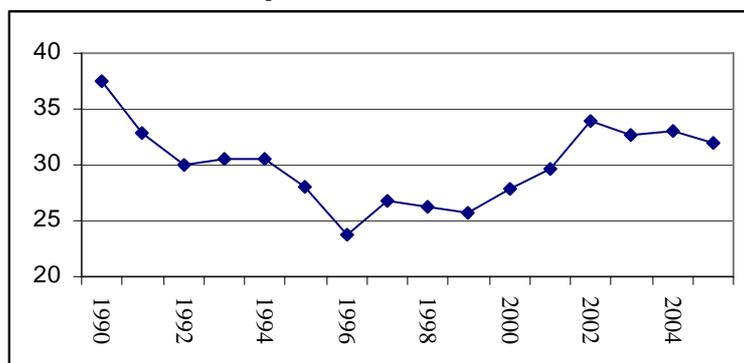
Graph 2: Tasmania's woodchip production 1970/71 to 1999/2000³



(a) With recent acquisitions, resulting in increased concentration of ownership in the woodchip industry in 2000-01, production data collected by the ABS are no longer released.

Source: ABS data available on request, Forest Products Survey.

Graph 3: Percentage of Australian hardwood woodchips share of the Japanese market⁴



² Reference derived from: www.caltex.com.au/pricing_his.asp

³

www.abs.gov.au/AUSSTATS/abs@.nsf/2f762f95845417aeca25706c00834efa/07F2F5E2E45EDCACCA25710E007561F1?opendocument

⁴ Derived from Forest and Wood Strategic Review 2005. IndustryEdge Pty Ltd. www.industryedge.com.au

Attachment A
Impact assessment guide
- Forest harvesting and transport -

This is a guide outlining a number of general variables which apply to forest operations and may be used when considering the cost of forest operations. This guide notes a number of general aspects within which some, but not all, variables have been identified which impact on the cost of carrying out a forest harvesting and transport operation and could be considered by parties when determining an agreed operational rate as part of a contract under the *Forestry (Fair Contracts Code) Act 2001*.

NOTE: The base rate for the variables identified can change over time. Some variables may have fixed costs associated with the contract (for example, interest rates provided by financial institutions), some may vary annually (for example, insurance), others may fluctuate over short periods (such as fuel ([Graph 1](#)) and other consumables) with some remaining generally fixed (such as site characteristics). The Parties should consider the reality of this situation and develop mechanisms which allow for variation within the contract reflecting the dynamic nature of some variables, when entering into a forestry contract as reflected in Section 7, 10 and 11 of the Forestry Fair Contracts Code.

This guide contains three external (Financial, Labour and Operational) and five forest specific (Forest Practices Plan, Timber, Site characteristics, Operational requirements and Access) aspects which can be used to identify variables at a regional and coup level. There are likely to be additional impacts which are site specific and apply to individual operations. It is recommended that parties consider the general biogeographical characteristics within which forest operations under a contract are to be undertaken.

When entering into a forestry contract, the Parties should not rely only on the information provided within Advisory Note No.1. Further advice on developing an agreed operational rate within a forestry contract should be sought from qualified professional financial, accounting and legal practitioners.

Assistance may also be available from relevant associations, such as:

**Tasmanian Forest Contractors
Association**

Shop 17, Kings Crt
2 Innocent St
KINGS MEADOWS TAS 7249
Ph: (03) 6343 3398
Fax: (03) 6343 1775
Email: admin@tfca.com.au

**Forest Industries Association of
Tasmania**

GPO Box 1682
HOBART TAS 7001
Ph: (03) 6224-1033
Fax: (03) 6224 1030
Email: fiat@fiatas.com.au

**Tasmanian Country Sawmillers
Federation**

45 Best Street
DEVONPORT TAS 7310
Ph: (03) 6423 4760

Guide to variables within forest operations - harvesting

Aspect	Variables	Guiding comment
<i>Labour costs</i>	Direct wages	Award rates, incentive payments, overtime, sick and recreation leave provisions, etc
	Legislative requirements	Superannuation, workers compensation, public liability insurance, first aid requirements, OH&S, etc
	Training and safety	In-field and formal required to meet operational and legislative requirements, associated down time, registration costs, periodical review and updating monitoring, etc
<i>Financial Costs</i>	Capital costs	Level of borrowing, servicing of loans, changes to interest rates and terms, depreciation rates, provisions for replacement, etc
	Taxation	State and Commonwealth. NOTE: Due to the complex nature of this area of law, please discuss specific requirements with financial advisor and accountant.
	Insurance	Replacement of machinery, income protection, third party property, death and disability, etc
	Administrative	Clerical, administrative, professional (legal, financial, accounting, etc), etc
<i>Operational costs</i>	Consumables	Fuel, oils, tyres, filters, chains, saws, etc
	Repairs and maintenance	In-field and workshop requirements, access to skills, access to spare parts, associated down time, etc

Aspect	Variables	Guiding comment
<i>Forest Practices Plan</i>	All aspects of the Forest Practices Plan and Forest Practices Code	All forest operations require a certified Forest Practices Plan (FPP) which is consistent with the Forest Practices Code (FPC). The FPP will indicate standard operational responsibility, requirements and special conditions associated with the operations. Forest contractors and managers must adhere to all elements stated on the FPP and contained within the FPC. Where possible, FPP should be prepared jointly by both Parties with a view to develop practical outcomes. Familiarisation with the FPP and FPC is essential as these will influence how and when operations can be carried out. Copies of the FPP should be provided to all contractors before commencing an operation. A copy of the FPC is available at www.fpa.tas.gov.au .
<i>Site characteristics (variation between and/or across site)</i>	Slope	Ease of movement, restrictions due to steepness, etc
	Soil	Type, number of boulders/tors/outcrops, erodability, requirement for matting, etc
	Weather	Is the site an all weather operation, or dry weather only. What could be the down time required.
<i>Access</i>	Roads	Type of road (sealed/unsealed, single/duel), allowable speeds, number of bridges and weight restrictions), allowable vehicles (mass restrictions, suitability for use), time and distance for round trips, etc
	Restrictions	Type and frequency (for example to take into account school bus timetables)
	Reliability	Is access available at all times and in all weather.
	Ease of access	Number of gates, delivery times

Aspect	Variables	Guiding comment
	Distance	To mills, to home base, service centre, fuel depot, etc
<i>Operational requirements</i>	Machinery requirements	What is required/suitable to do the job, are there special requirements (such as fire fighting equipment) or restrictions (such as specified tyres or tracks)
	Machinery movement within the coup	Safe operational specifications, suitability of machinery, frequency requires and the number, type and location of snig tracks.
	Security of site	Special conditions, risk of damage/vandalism
	Exclusion zones	Streamside reserves, swampy ground, water courses, flora and fauna reserves. Cultural heritage sites, etc
	Landings	Maximum distance to landings, size and type of landing, loading requirements, time for loading, etc
	Pre harvest work	Recovery along roads, establishment of on-site access, maintenance areas, fuel storage establishment, marking boundaries, etc
	Post harvest work	Restoration (landings, snig tracks, firebreaks, etc), recovery (trees from reserves, commercial timber, etc), spread of slash, etc
	Type of operation	Clearfall, thinning, Aggregated Retention, Selective harvesting, etc
	Pests and disease	Condition of vehicles travelling to site, operating on site and leaving site, inclusion of wash down provisions and facilities, etc.
<i>Timber</i>	Species	What species are present/required to be recovered

Aspect	Variables	Guiding comment
	Quality of wood	What are the physical characteristics of the trees (i.e. amount of non-commercial wood, handling requirements, frequency of 'hand' felling required, etc)
	Log characteristics	Length, diameter, knot size, sweep, rot, stain, branch size, trimming requirements, etc.
	Piece size and segregation	How are logs and/or species to be segregated (number, lengths, location, etc)
	Bark	Amount of bark to be retained/removed. Ease of removal/retention. Management of waste.
	Splitting	Disposition to splitting. Allowable splitting. Penalties for downgrade due to splitting.
	Volume to be removed	By log category. Adjustments for variation.