

tasmanian  
forest  
contractors  
association



24<sup>th</sup> of January 2006

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## TFCA brief regarding Draft Determination

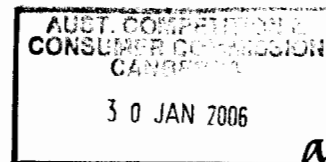
To whom it may concern,

The TFCA are disappointed and subsequently do not support the Draft Determination handed down by the ACCC, which does not grant authorisation, particularly as no consideration has been given to authorising the submission in part or subject to conditions.

To assert that the present scenario maintains and enhances competition, and secures outcomes in the public interest, is not only difficult to accept, it is a conclusion which is contrary to the findings of a detailed inquiry undertaken in respect of a similar industry interstate (Victoria) and which is inconsistent with the conclusions reached by the Dawson Committee in respect of markets generally. It is a commercial reality that in contract negotiations the more powerful party will secure outcomes more suited to it. The suggestion that the maintenance of this approach will create a healthy environment for those negotiations and produce better results is a conclusion, which may be theoretically defensible, but is indefensible as a proposition in fact. Dawson found this and the Victorian Inquiry found this.

The inequalities of bargaining positions in Victoria are no less significant in Tasmania. Testimonies to this fact can be obtained from the Australian Forest Contractors Association (AFCA) who have members both in Tasmania and Victoria.

At this point it is relevant to summarise the findings of the Victorian inquiry (in *italics* below), which appear at page two of the explanatory papers headed "Why make legislation in this industry?" The Victorian inquiry was a carefully conducted and thorough process.



...We're assuring  
*a sustainable future*



## ***Why make legislation for this industry? (Victorian Forest Industry)***

### ***Information imbalance and poor business skills:***

*Often forestry contractors have a lack of adequate and accurate information about the reality of the commercial relationship. There is limited understanding of the true costs of running a business. Some forestry contractors have poor business skills. The result of this information imbalance is ill-informed and poor business decision-making, and being pressured into unsustainably low rates, leading to low and unsustainable levels of income.*

### ***High fuel prices:***

*The high and fluctuating cost of fuel are often not allowed for in the rates paid to forestry contractors. These types of contracts are a result of either poor information or business skills, or unfair commercial pressure from hirers. Forestry contractors on such locked in contracts are assuming too much of the commercial risk of the venture, and a rise in fuel costs can make their businesses unprofitable.*

### ***Lack of a fast and low-cost dispute resolution process:***

*There is a need for a fast and effective means of resolving disputes, including a low cost and non-adversarial mediation procedure.*

*Currently, forestry contractors face lengthy and costly legal proceedings in the common law courts to resolve disputes, meaning that they are generally not exercising these rights due to:*

- Lack of information about rights, and the high costs and delays of litigation.*
- Their need to maintain a working relationship with their hirer to ensure income to support their high finance payments.*

### ***Very low earnings:***

*There is significant evidence to show very low earnings for forestry contractors and working conditions and hours of work that do not meet a fair community standard. Low earnings can potentially act as an impediment to investment in new more productive and safer vehicles and equipment.*

### ***Victimisation for pursuing rights or making complaints:***

*Forestry contractors may not have their contracts renewed or for trying to collectively negotiate or for making complaints about conditions or safety. There is currently no means of redress, and huge financial risks for forestry contractors.*

### ***Collective arrangements:***

*Common law contracts applying to a number of parties are administratively difficult to negotiate and can be difficult to enforce. The Trade Practices Act 1974 stands as a barrier to collective dealings between these small businesses and their hirer.*

Whilst there is a willingness within the Victorian Government to act to give effect to laws, which would remedy these problems, no such effective willingness exists in Tasmania, the Forestry Fair Contracts Code 2003 does not address any of the important issues identified in the Victorian inquiry. The legislative cure for the

problem is available in Victoria. Without an authorisation, the inequality of the bargaining position will be maintained in the Tasmanian forest industry.

Concerns from the TFCA with regard to the ACCC Draft Determination:

1. The TFCA intend to initiate bargaining when there is an apparent need, as directed by members. There appears to be a misunderstanding as to this intention.
2. It also must be clarified that it is not the intention of the process that all contractors would negotiate together. A more likely scenario is that authorisation would be used for small regional groups of say between 5 and 10 contractors.
3. Draft determination section 6.7 and 6.8 refer to barriers to enter and exit. This section refers to examples where barriers to exit are not high. This fact is disputed as it does not consider;
  - a. Most harvesting equipment is either highly modified to work in the timber environment, or (as is increasingly the case), it is a purpose built feller-buncher or processor that cannot be used in any other industry. Another example of this is the pulling machines i.e. skidder or forwarders that are dedicated forestry units. The transport sector of the industry is also not as transferable as one would understand. The trailers are not of any benefit to other industries and on a typical truck the trailer makes 40% of the total capital costs.
  - b. Lack of ability to assign contracts in difficult markets is another important reason forest contractors are unable to exit the industry. Currently Forestry Tasmania have rejected some contractors requests to sell their contracts as (Forestry Tasmania state) there is not enough market confidence to do so and Gunns Limited are in general terms not extending any contracts past June 2007 leaving the forest contractor in the position where there is nothing commercially viable to sell to a new industry entrant.
4. Draft determination section 7.14 refers to rates tables and quotes that they, “dampen the incentives for forest contractors” and “reduce a forest contractors incentive to differentiate”. This statement is strongly denied by the TFCA. Other statements made during the pre-decision conference in Hobart (December 2005) by Gunns representative Mr Bryan Hayes are deliberately misleading by making reference to industry pricing regimes from some 15 plus years ago (prior to the introduction of competitive tendering) where the majority of prices were the same for all contractors. The proposed TFCA rates tables are not in any way similar to the old industry tables, there are no

formulas or no one price fits all methodology, just an empty matrix where contractors, under normal competitive market influences submit prices that reflect multiple job site conditions. Comments from Page Seager Lawer Mr. John Harry below (in *italics*) also support the TFCA position:

*...None of the (TFCA) proposals are unique in principal. They closely parallel contractual practices found in other industries. Taking harvesting rates table, its objective is a price adjustment based on degrees of difficulty. Building construction contracts commonly have provisions which are aimed at taking into account site conditions, no one will argue that the cost of excavations which require the removal of bluestone if it is found to occur is significantly more than the removal of some other materials. Similarly the object of [the harvesting rates table] is to take into account and make adjustment for the different site and timber impacts which may be encountered but which cannot be predicted in advance with any accuracy.*

*In like vein, the adjustments set out in [the fuel surcharge and indexing tables] have one object and that is to retain the status quo, structured as those adjustments are to take into account movement in commodity prices, be it negative or positive. The adjustments merely monitor the rise and fall provisions that are a common feature of commercial contracts.*

*At the end of the day the [TFCA proposed adjustments] apply to prices tendered in a competitive environment. They cut in after the concluded contract threshold has been passed, and they apply equally to everyone.*

*In my opinion the absence of their application to prices tendered and accepted is fatal to any argument that their presence substantially lessens competition.*

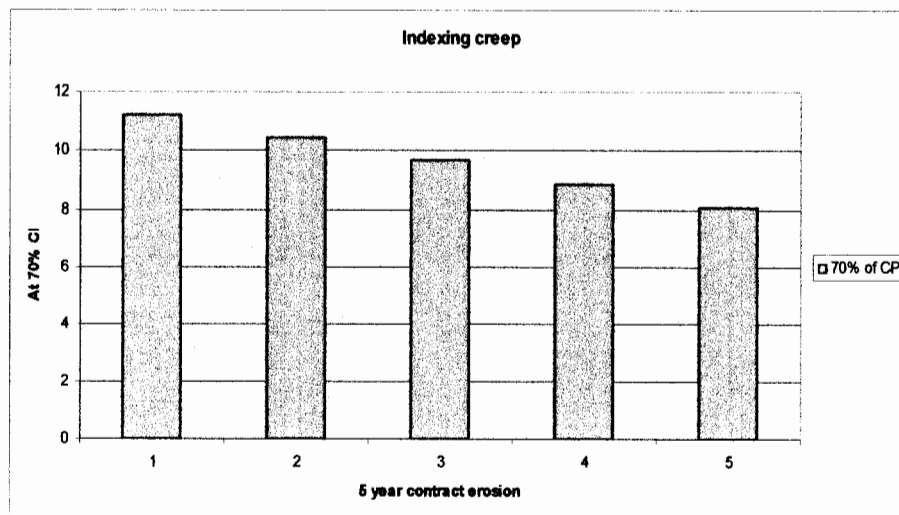
*To put the position in its legislative context, consider a contract containing the [TFCA proposals] in the light of section 45 (2) [of the Trade Practises Act]. As can be seen from the provisions of this section as appears above, to fall foul of the applicable subsection, 2(a)(ii), the proposals would need to be found to have the purpose, or would need to be found to have or be likely to have the effect, of substantially lessening competition. The "purpose" alternative can be disposed of quite simply. It is inarguable that the purpose of the amendments is to achieve some sort of fairness having regard to the fact that there are circumstances that either cannot be predicted or cannot be calculated initially. There is absolutely no anticompetitive purpose present.*

5. Draft determination section 7.15 refers to indexing tables and the fact that this initiative may "dampen competition". The TFCA strongly disagree with this statement. See below comments from Page Seager Lawer Mr. Greg Geason:

*... It is worth adding that the notion that any adjustments, up or down, made pursuant to such a proposal, will be variations which occur after the competitive process [tendering] are complete. The capacity to introduce those variations does not in any way effect the operation of the tendering process, nor the competitive nature of it.*

*Insofar as it has been suggested that section 45 (Trade Practices Act) may have application that is incorrect: The proposal plainly has no effect [or likely effect] of lessening competition. Nor does it involve the “making of a contract or arrangement” or the “reaching of an understanding”. It does not affect a market or market size, or effect a reduction in the quantity of a resource available in the market place. It does not constitute a non-complete arrangement between participants.*

6. Draft determination section 7.7 refers to lost efficiencies that are likely to occur from collective bargaining (CB) as opposed to current situation where contractors individually negotiate the terms and conditions of their contracts with the wood companies. As tabled in the pre-decision conference in Hobart, the TFCA disagree that there will be any likely impact or change from the existing scenario, where the majority of forest contracts (harvesting, haulage or silviculture), have generic terms and conditions. The wood companies present at the pre-decision conference in Hobart again supported this fact. Some of the wood companies suggested however that the difference is in the actual schedules within the generic contracts. The TFCA are familiar with these schedules and the only significant difference within the clear majority of contractor contracts is the price, of which the TFCA **are not** proposing to influence market competition forces and individually tendered pricing. Confidentially attached to this document is an example of the typical forestry contractor contract for harvesting services, please note: the similar schedules that have been highlighted.
  
7. Draft determination section 8.15, refers to a number of wood companies that have price adjustment mechanisms in place. The TFCA agree that in some cases this statement is correct, however the methodologies adopted by most wood companies fall well short of capturing the real price movement. Below we have provided for your consideration the Forestry Tasmania fuel mechanism and the Gunns Ltd proportion of CPI model as examples of how they fall short of actually capturing the price increments.



*Gunns 70% of CPI annual indexing model and the erosion of contractor's rates over 5 years by 3% if all other things remained static.*

Table 1 (Wrong fuel Indexing)		
Company Indexing methodology	Start Period	End Period
Bowser Price	\$ 0.90	\$ 1.30
<b>Percentage Increase</b>	<b>45%</b>	

Table 2 (Correct fuel Indexing)		
Actual Increase	Start Period	End Period
Bowser Price	\$ 0.90	\$ 1.30
Less Gst	\$ 0.07	\$ 0.12
Federal Excise	\$ 0.39	\$ 0.39
Total	\$ 0.44	\$ 0.80
<b>Percentage Increase</b>	<b>80%</b>	

*Forestry Tasmania quarterly fuel adjustment of 45% (last 18months) where the actual difference is a huge 80% once the real price is taken into consideration post federal excise and GST credits.*

8. Draft determination section 8.19 refers to flawed negotiation process where TFCA do not have to report back to members. Note, this is an oversight and can be overcome by imposing a condition on authorisation.
  
9. Draft determination section 8.27 refers to the TFCA statement where contractors are increasingly forced to choose between compliance and costs in a difficult and unbalanced economical environment. Information supporting this claim are:
  - A) The DIER transport inspection report post the death of a log truck driver in November 2005, clearly highlighting that there is a high level of non compliance (particularly in the North West region) with 42 minor defect found and 13 major defects with trucks in this region. Multiple truck owners and fleet operators involved and suggest that contractors may be unable to comply as they are struggling for cash flow. (Confidential report was tabled by TFCA at the pre-decision conference in Hobart on the 19<sup>th</sup> of December 2005.
  - B) Article from the Mercury on Tuesday the 10<sup>th</sup> of January 2006 (copy attached) highlighting that three men have now died since September 2005 from falling trees.
  - C) Interview with Lester Jackson, log truck owner-driver (copy attached) from the Mercury dated the 7<sup>th</sup> of January 2006, making reference (amongst other things) "... the constant cutting of log haulage rates is resulting in more accidents involving the public and log truckers".

10. Draft determination section 8.28 refers that many wood companies reporting reduced number and severity of workplace accidents. Fails to quantify the changes in forest contracting particularly mechanisation that has attributed greatly to improving forest contracting safety records due to the removal of personnel from the forest floor by putting them into machines with protective structures. However, notwithstanding this important fact, Workplace Standards Tasmania has confirmed that the number of fatalities within the harvesting and haulage sector is alarmingly becoming worse. Below, Tania Kiernan, Safety/Research Officer from Workplace Standards Tasmania, provides an email containing relevant information to the Executive Officer of the TFCA Mr. David Hazell dated the 24<sup>th</sup> of January 2006.

Hi David,

As per our discussion I note that I have forwarded you the spreadsheet which shows the number of Fatalities by Calendar Year for the Forestry Harvesting & Transport Industry.

Please note that this information was drawn from our Workers Compensation Claims Database and also from our Investigated Accident's Register.

Please let me know should you require any further information.

Regards,

Tania Kiernan  
 Safety/Research Officer  
 Workplace Standards Tasmania  
 PO Box 56  
 ROSNY PARK 7018  
 PH: (03) 6233 7983

<b>Contracting Fatalities Forest Industry Tasmania</b>			
	<b>Harvesting</b>	<b>Transport</b>	<b>Total</b>
<b>2001</b>	<b>1</b>	<b>1</b>	<b>2</b>
<b>2002</b>	<b>3</b>	<b>0</b>	<b>3</b>
<b>2003</b>	<b>2</b>	<b>0</b>	<b>2</b>
<b>2004</b>	<b>2</b>	<b>1</b>	<b>3</b>
<b>2005</b>	<b>3</b>	<b>1</b>	<b>4</b>
<b>2006 (to-date)</b>	<b>1</b>	<b>0</b>	<b>1</b>

11. Draft determination section 9.4 refers to Collective Boycott provision.

The TFCA formally withdraw the application for the collective boycotts provision in an attempt to arrive at an outcome of collective bargaining.

Silviculture (specifically):

12. Draft determination section 8.23 refers to wood company comments that silviculture work is seasonal and requires different skill mixes. The TFCA do not disagree; however fail to see how these factors stop the concept of a more secure and productive silviculture work force.

13. Currently the majority of silviculture contractors have multi skilled work forces and continually tender for back-to-back and alternative seasonal work. The absence of contract security results in these businesses recruiting 6 employees for every one retained. Example of 400 group certificates issued in year for retained staff of 60 is common.

14. Draft determination section 8.24 refers to MIS schemes and the possibility that funding will change between year to year is not any different to existing harvesting and transport contracts where contracts are issued conditionally regarding market volumes and security.



Conclusion:

The TFCA believe it is imperative the ACCC grant authorisation for collective bargaining, if not in whole, then in part or subject to conditions.

It is no accident that two substantive inquiries have produced findings which are favourable to the TFCA position and which recognise the fact that there are substantial inequalities of bargaining power across industries.

It is unfair and not in the public interest, to allow an unhealthy bargaining environment in which strong and powerful companies can negotiate one on one with individuals who will generally be in a financial position where they have commitments, mortgages, hire-purchase agreements and other substantial capital costs making them vulnerable, and who will therefore have no option but to accept the terms and conditions offered by the larger entity. Ultimately it will produce a serious detriment for the industry as a whole because a critical component of the logistical processes necessary for an economically sustainable forest industry will cease to exist.

Faced with higher costs and with lower earnings, the reality is that contractors are forced to take whatever is on offer. There is evidence that the public and indeed the forest workers employed by contractors themselves are exposed to more risks whilst contractors are forced to balance survival with regulations and legislation. That is not competition. Arguably it constitutes a misuse of market power by the powerful party to the negotiation.

Yours sincerely,



David Hazell  
Executive Officer  
Tasmanian Forest Contractors Association Ltd

Mobile: 0417520591

Appendix:

1. Copy newspaper article 10<sup>th</sup> of January, publisher Mercury  
“Logger Dies In Felling Tragedy”
2. Copy newspaper article 7<sup>th</sup> Of January “Hard Haul for the  
Loggie”
3. Confidential Copies of forestry contractor contracts

## APPENDIX 1

### Logger dies in felling tragedy

A **LOGGER** was killed yesterday when a tree he was felling fell on him.

The 31-year-old was working at a forestry coupe at Paynes Rd at South Forest, near Smithton, in the state's North-West.

Police said the man died at

the scene. The accident happened just after 9am.

Workplace Standards is investigating the incident and the Coroner's office was notified.

The man is the third since September to have died while felling trees.

A 26-year-old man was killed near Exeter when he was struck by part of a tree he was helping a friend cut down and, just before Christmas, a 34-year-old forestry worker died when he was hit by a tree branch while felling near Bridport.

Tuesday, January 10, 2006

THE MERCURY — 5

## INSIDESTORIES



## Hard haul

LOG TRUCK DRIVERS ARE AMONG THE MOST MALIGNED ROAD USERS, BLAMED FOR ACCIDENTS, RISKY DRIVING AND WRECKING ROADS. WHAT'S IT ACTUALLY LIKE, THOUGH, TO BE ONE? SUE NEALES FINDS OUT

**I**t sounds like the rendezvous from hell. "Meet you opposite McDonald's in Sorell at 4.30am on Monday," says a gruff voice down the mobile phone. Monday morning dawns cold and dark as a big maroon timber truck, its back trailer hydraulically jacked up and stacked on top of its middle axle, comes thundering down the hill into the southern coastal town.

As I haul myself two metres up into Lester Jackson's cabin, the thought flashes through my head: "What on earth am I doing spending a day in a truck with a logging contractor I've never met?"

All the same, the reason is clear. With five fatal truck accidents in the state in the five weeks before Christmas, the public is keen to know what lies behind this spate of road disasters.

Are log trucks and their laden trailers inherently dangerous? Is overloading a persistent problem, as the Tasmanian Greens contend?

Or are local log truck drivers just growing more careless and less safety-conscious? How much are the summer months a special problem, with more interstate and overseas tourists on our roads and unused to being confronted with the swaying bulk of a timber truck hurtling towards them?

Lester Jackson, the third generation of his family to have worked in the logging industry, straight away sets my mind at rest on the first point — about truck safety.

Pointing out the many dials and features of his shiny new \$250,000 Kenworth truck and locally-made trailer, he reckons that driving his single-jointer rig up a mountain dirt track is as easy and safe as being in a Toyota LandCruiser.

It's a timely reassurance because less than two hours later that's exactly what we're doing: climbing a steep, rough road over the hills south of Broadmarsh and the Derwent Valley to reach our first logging pick-up of the day just after 6am.

In the cold, grey light of early morning, the sight that greets us is predictably stark. No logged "coupe" has ever looked pretty and this bit of private forest land, with its stacks of felled stringybarks, mutilated stumps, skinned bark and branch scraps strewn around, is no exception.

For Jackson, 50, however, it's all just another day at work — days that are often 14 hours long,



**SECOND TRIP:** Lester Jackson selects then loads his truck with logs at a coupe in the Huon for another run to Triabunna.

involving hundreds of kilometres behind the wheel and three trips from forests as far flung as Maydena and Strathgordon in the state's southwest to Lake Leake in the east and the Huon Valley in the south to deliver logs to Gunns' woodchip plant at Triabunna.

The pragmatic, quietly-spoken Jackson, from Connelly's Marsh near Primrose Sands, has been a log truck driver for 30 years.

With an impeccable reputation for reliability and safety, he's one of the few self-employed owner-drivers left in the logging industry.

He works in the south of the state for log carting contractors who need to supplement their own fleet of trucks and employed drivers with his services to meet their quota commitments to deliver timber. His days are not spent entirely in the truck cabin. As well as being timber carriers, all drivers have to load their own jinkers with logs, a task requiring skill and practice.

On top of the hills above Broadmarsh, Jackson quickly folds out his hi-tech trailer with the press of a button and hops into the waiting yellow excavator, ready for work.

He is a stickler for making his load neat and secure, even if it takes a little longer.

Thirty years in the business, with good training at the start, have taught him there is a real skill in stacking his \$80,000 trailer so it is safely positioned and packed as low and solidly as possible.

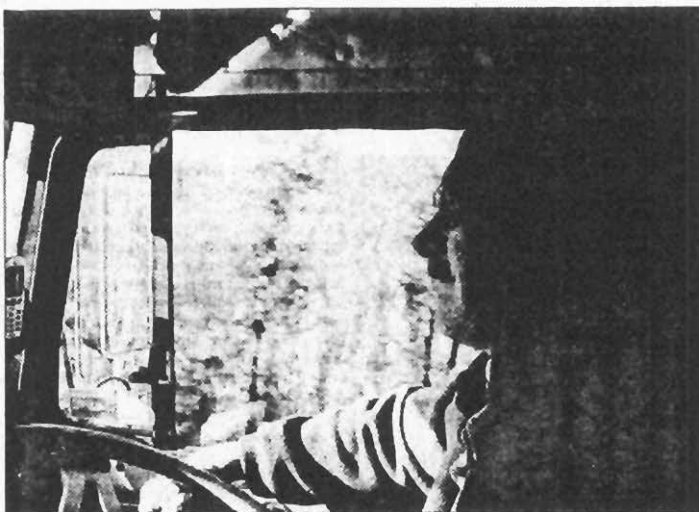
"It's one of the things I really like about being a log driver in Tasmania — as well as being my own boss," he says after loading his massive rig with carefully selected logs as delicately as a bird builds a nest.

"It's not monotonous at all... like it would be if I was a truck driver on the mainland, going up the Hume Highway [between Melbourne and Sydney] every day.

Saturday, January 7, 2006

THE MERCURY MAGAZINE — 3

## INSIDESTORIES



**READY TO HAUL:** Jackson says he only cleared \$29,000 for the year.

# for the loggie

"Here I have to do a bit of everything, from driving to loading up, then unloading again at the mill, which helps keep the long days interesting. I like the trucks. I love doing this."

It takes him about 30 minutes to load his rig with the 45.5 tonnes of logs his single triple-axle junker, with its locally-built Elphinstone trailer, is licensed to carry.

There's no point in overloading, as Gunns pays for only the legitimate load. However, with the price paid for logs now 20 per cent less than it was in 1995 and high fuel prices devouring 43 per cent of his gross income, Jackson also ensures his trailer is stacked to its allowable maximum.

It means taking into account the volume of fuel he'll use driving back to Triabunna, so that by the time he hits the Gunns weighbridge two hours later as much of his truck weight as possible is payable timber.

Like all logging owner-drivers, he is forced to be extremely cost-conscious.

He will be paid just \$350 for carting his 45-tonne load to Triabunna from the Derwent and \$700 for his second load of the day out of state forest in the Huon Valley near the Tahune Air Walk.

**Y**ET his mortgage on the new \$310,000 truck and rig amounts to more than \$5000 a month, with \$10,000 a year more for insurance and \$5000 for registration.

"I have to earn \$1000 a day just to make ends meet now with fuel prices so high," he says over a coffee break. "It's not like you're making massive profits here. Last year, I cleared just \$29,000 for the year, even after 14-hour days."

In comparison, an employee working the same hours for a timber haulage company would make about \$60,000 to \$65,000 a year gross, without the burden of owning a truck and having a \$300,000 investment hanging

over his head. It hasn't always been so difficult to turn a profit from being a log truck driver but since Gunns changed its cartage payment system from a set price per tonne and distance carted to an open tender system, Jackson believes standards in the industry have begun to slip.

"There's always someone who's prepared to undercut and cart it cheaper than you," he says without rancour.

"But they're the firms that are going to be employing 20-year-old blokes, who have only just got their licences, to drive their trucks."

Perhaps surprisingly, he has little time and respect for the giant Gunns group — like, he says, many of the other 350 log truck drivers in the state.

He believes the giant company is out to "scam" drivers, the people who work carting the logs from which Gunns makes its money, pointing to the variable haulage rates now on offer as evidence. Little things rankle, too, such

as the way Gunns has removed its truck washing facility at Triabunna and made it clear it does not want drivers to congregate and chat or take a break at the mill while they are unloading their trucks.

"I might be a third-generation logger but I don't think they should be logging at Recherche Bay — you have to keep some things for the future," he says.

"Also, I don't agree with what Gunns did trying to stop the Greens talking with writs, because I believe in free speech."

While the constant log truck accidents in the five weeks before Christmas, several involving the deaths of car drivers and passengers, Jackson admits it's not been a good time for either the trucks' safety record or the reputation of log truck drivers like himself.

Still, he is used to having people in the streets of Hobart scowl, shake their fists or shout obscenities at him as he pilots his laden truck down Macquarie Street, just because he's a logger.

He's been involved in a fatal car accident himself in the Huon — when an elderly man, from a family he knew, backed out of his drive, while looking into the sun and failed to see Jackson's truck coming down the straight stretch of road. Jackson, trapped in his cab and unable to help, could hear the old man screaming as he died.

Not much later, he sold his truck and left the industry he loved for a couple of years to run his own horse trail-riding business.

"That was a hard time," he says quietly and goes silent for a while.

He is openly critical of many parts and aspects of the industry he loves so much and is not afraid to say what he thinks.

What worries him most is that the constant cutting of log haulage rates is resulting in more accidents involving the public and log truckers. He fears safety standards are slipping,

with many young drivers employed by contractors being too aggressive in their driving; nor, he says, are they getting enough driver education before they're let out on the open road in fully laden B-double trucks, known in the industry as "wobble-dogs".

"Sometimes these accidents are because drivers are in the wrong place at the wrong time or when they can't do anything to stop an accident... when the car driver is at fault," says Jackson, "but we do need better attitudes from some of our drivers, too."

Also, better rates of pay by the contracting firms, because some of them are pushing the limits with inexperienced drivers and old, often uninsured trucks with bald tyres — and they're the ones having the accidents.

**EXCLUDED FROM  
PUBLIC REGISTER**

**APPENDIX 3**

**EXCLUDED FROM  
PUBLIC REGISTER**