

LAWS APPLYING TO FOREST ACTIVISTS IN VICTORIA

Fact Sheet

This fact sheet explains the most significant offences people can be charged with when protesting logging in Victoria's forests and the associated penalties.

Sustainable Forests (Timber) Act 2004

Most charges against individuals protesting logging in Victoria are under the **Sustainable Forests (Timber) Act 2004** (SFTA).

Timber Harvesting Safety Zones

Exclusion areas where protesting activities are prohibited are called 'Timber Harvesting Safety Zones' (THSZs).

A THSZ is defined as a coupe (that is, "a specific area of State forest identified for the purposes of timber harvesting and regeneration in a timber release plan..." – section 3), any road closed for logging within the coupe and any area of State forest that is within 150 metres from the boundary of that coupe (section 77B).

Before logging commences, a notice must be conspicuously displayed on or near the zone, including on any road that is an entry point to the zone. Notices will also be published on VicForests' website (section 77C). A notice must state the location of the zone, the commencement date and the offences and penalties that apply in that zone.

Department of Jobs, Precincts and Regions

It will generally be authorised officers (AOs) from the Department of Precincts and Regions that you will deal with during any protests in State forest. They are empowered to arrest, ask for names and addresses, formally interview people and issue directions to leave the THSZ. AOs have the power to either issue infringements or to arrest, charge and bail and or summon you to court. It is an offence not to give your correct name and address. Any other questions by any AO may be lawfully answered with "no comment". It is advisable that you rely on this privilege against self-incrimination when dealing with or being questioned by any AO either during arrest within or near the THSZ and during any subsequent interview process.

The Game Management Authority usually administers any infringements.

Bail issues:

In the event you are charged and bailed from a police station, the police may seek to bail you on conditions including a prohibition on reattending the area where the offence(s) were alleged to have been committed. These types of conditions have been successfully removed by the Court upon application for a bail variation by accused activists held in custody. The unreported Supreme Court decision in *Flynn and Patton v The Queen* is a precedent and a copy is available on Lawyers For Forest's website. In the event you are not prepared to sign any bail undertaking including this condition, you will remain in custody until your bail application is heard by a magistrate, which will usually take place within 48 hours of being charged.

Summary of offences

Offences include:

- entering or remaining in a THSZ;
- hindering, interfering with or obstructing logging ('timber harvesting') operations;

- possessing a prohibited thing in a THSZ, where a prohibited thing is defined as: a bolt cutter; cement or mortar mix; a constructed metal or timber frame; a linked or a heavy steel chain; and a shackle or joining clip (section 3);
- intentionally using a prohibited thing to hinder, obstruct or interfere with logging operations;
- removing or destroying a THSZ notice, or a barrier or fence that has been erected to prohibit or restrict access to a THSZ;
- failing to stop or move a vehicle in a THSZ when directed to do so by an AO;
- allowing a dog to enter a THSZ or failing to remove a dog when directed to by an AO.

Powers of Seizure

The power of AO to seize items is set out in section 88. AOs may seize any item if they believe, on reasonable grounds, that it has been, is being, **or is about to be** used in the commission of an offence. If an item is seized a receipt must be issued that includes the nature of the item seized, the date and time of seizure and the name of the AO and the location where the item will be held.

If an item is seized, the AO must inform the person as soon as practicable of their right to have it returned and must return the item within 90 days **unless the item is a prohibited thing** or charges have been laid relating to use of the item in the commission of an offence- (sections 89 and 89A). If proceedings are not brought against the person, or the accused is found not guilty, the person can recover the seized item or receive compensation if it has been lost or destroyed (see section 90).

Exclusion Orders

A Court may make an order excluding a person from a THSZ or an area of State forest for a period not longer than 12 months (section 94D). The Court can make these kinds of orders as part of the sentence imposed for many of the new offences. It is at the Court's discretion whether to make such an order or not, and the Court must take a number of matters into consideration when deciding whether to make one. Contravening an exclusion order is a further offence, carrying a financial penalty of up to 60 penalty units. (section 94F).

Infringement Notices

Under section 91 of the Conservation Forests and Lands Act 1987, AOs may serve an infringement notice instead of charging people, "if the AO has reason to believe that the person has committed a prescribed offence against a relevant law". Schedule 9 to the Conservation, Forests and Lands (Infringement Notice) Regulations 2013 sets out the 7 infringement offences and their penalties under the SFTA. Infringement offences are not appropriate if the offence is not "black and white" or has an element of intention (called mens rea in legal circles), so not all offences under the SFTA are suitable for infringements and so have been excluded from Schedule 9. We have included the SFTA infringement offences for you in the table below.

If a person is issued with an infringement notice and then chooses to pay the fine, the matter is finalised without Court proceedings and it is not considered an admission or finding of guilt for the relevant offence. However, the existence of the infringement can be alleged as a prior relevant matter in sentencing in the event that further, unrelated yet similar charges against a person are found proven. If a person declines to pay the fine and elects to have the matter dealt with at Court, they are then formally charged and Court proceedings commence in the usual way.

Table of offences

The table below contains the usual offences to assist people to understand the infringements or charges. The penalties listed are the maximum penalty that can be issued by a Court. Current sentencing practices for forest-related offences indicate that the Court is likely to offer an individual to enter into an adjourned undertaking of good behaviour (commonly referred to as a bond), or to impose a fine of a few hundred to a few thousands of dollars for similar offences, depending on any mitigating or aggravating circumstances surrounding the commission of the alleged offences (such as the individual has been before the Court previously for the same or similar offences, or unless there are unusual aggravating factors, in which case the penalty is usually a higher fine).

The infringement amounts are set amounts (not maxima) and are not able to be varied.

A penalty unit (P/U) as at 30 June 2021 is: \$181.74

Offence under <i>Sustainable Forests (Timber) Act 2004</i>	Maximum court penalty possible or infringement amount
<p>Section 77D – Direction to leave a timber harvesting safety zone (THSZ) (1) An authorised officer may direct a person to leave a timber harvesting safety zone (and not re-enter the zone) in a manner specified in the direction. (2) A person must not refuse or fail to comply with a direction under subsection (1).</p>	20 P/U (infringement – 4 P/U)
<p>Section 77E Direction to stop or move a vehicle in a THSZ (1) An authorised officer may direct a person operating a vehicle in a timber harvesting safety zone to stop or manoeuvre the vehicle in a manner specified in the direction. (2) A person must not refuse or fail to comply with direction under sub-section(1).</p>	20 P/U (infringement – 4 P/U)
<p>S77F Direction to remove a dog from a timber harvesting safety zone (1) An authorised officer may direct a person in apparent control of a dog in a timber harvesting safety zone notice of which has been given in accordance with section 77C to remove the dog from the zone. (2) Person must not refuse or fail to comply with direction under sub-section (1).</p>	20 P/U
<p>Section 77G - Offence to enter or remain in THSZ A person (other than authorised person) must not enter, or remain in, a THSZ notice of which has been given in accordance with s77C.</p>	20 P/U (infringement – 3 P/U)
<p>Section 77H- Offence to be in possession of prohibited thing in THSZ</p>	20 P/U (infringement – 4 P/U)

<p>A person (other than an authorised officer) must not be in possession of a prohibited thing in a THSZ, notice of which has been given in accordance with s77C.</p>	
<p>Section 77I Offence to allow dog to enter a THSZ A person must not allow a dog to enter a timber harvesting safety zone notice of which has been given in accordance with s77C.</p>	<p>20 P/U (infringement – 2 P/U)</p>
<p>Section 77J Offence to remove or destroy a barrier or fence A person must not unlawfully break down, damage or destroy a barrier or fence which has been erected to prohibit or restrict access to a THSZ.</p>	<p>60 P/U (infringement – 6 P/U)</p>
<p>Section 77K Offence to remove or destroy notice A person must not unlawfully alter, obliterate, deface, remove or destroy a notice displayed in accordance with s77C.</p>	<p>60 P/U (infringement – 6 P/U)</p>
<p>s84(3) Requirement to give name and address:</p> <p>(1) If an authorised officer believes on reasonable grounds that a person has committed or is committing an offence against this Act or the regulations, the officer may ask the person to state his or her name and ordinary place of residence or business.</p> <p>(2) In making a request under subsection (1), the authorised officer must inform the person of the grounds for the authorised officer's belief that the person has committed or is committing the offence.</p> <p>(3) A person must not, in response to a request under subsection (1)—</p> <ul style="list-style-type: none"> (a) refuse or fail to comply with the request without a reasonable excuse for doing so; or (b) state a name that is false in a material detail; or (c) state an address that is not the full and correct address of his or her ordinary place of residence or business. <p>Penalty: 5 penalty units.</p> <p>(4) If a person states a name and address in response to a request under subsection (1) and the authorised officer suspects on reasonable grounds that the stated name and address may be false, the officer may request the person to produce evidence of the correctness of the name and address.</p> <p>(5) A person to whom a request under subsection (4) is made must comply with the request, unless he or she has a reasonable excuse for not doing so.</p> <p>Penalty: 5 penalty units.</p>	<p>5 P/U</p>

<p>(6) It is not an offence for a person to fail to comply with a request under subsection (1) or (4)—</p> <p>(a) if the authorised officer did not inform the person, at the time the request was made, that it is an offence to fail to comply with the request; or</p> <p>(b) if the authorised officer did not identify himself or herself in accordance with section 85 before making the request.</p>	
<p>Section 86 – offence to hinder or obstruct authorised officer A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising that authorised officer's duties or powers under this Act or the regulations.</p>	60 P/U
<p>Section 87 – offence to threaten or abuse an authorised officer A person must not threaten or abuse an authorised officer who is exercising that authorised officer's duties or powers under this Act or the regulations.</p>	60 P/U
<p>Section 94A- Offence to hinder, obstruct or interfere with timber harvesting operations by using prohibited thing A person must not intentionally hinder, obstruct or interfere with timber harvesting operations by using a prohibited thing. <i>“Prohibited thing” is defined at section 3 (see above)</i></p>	6 months imprisonment or 60 P/U max.
<p>Section 94B- Offence to hinder, obstruct or interfere with timber harvesting operations A person must not hinder, obstruct or interfere with timber harvesting operations.</p>	20 P/U
<p>Section 94F- Offence to contravene exclusion order A person in respect of whom an exclusion order is made must not in contravention of the order: a) Enter or re-enter a THSZ or area of State forests; or b) Remain in the THSZ or area of state forest</p>	60 P/U
<p>Section 94H - Offence to refuse or fail to comply with direction to leave area to which exclusion order applies (1) A person to whom a direction under s94G (direction to person in respect of whom exclusion order has been made to leave timber harvesting safety zone or other area of State forest) is given must not refuse or fail to comply with that direction</p>	60 P/U

This document was prepared by Lawyers for Forests Inc in August 2021. It replaces the earlier 'Legal Guide for forest activists in Victoria' and the 2014 fact sheet 'New Declaration of Public Safety Zones'.

For more information, please check Lawyers for Forests' website at www.lawyersforforests.org.au or contact us by email to lawyersforforests@gmail.com or call 0415 764 015.