

NEW LAWS APPLYING TO FOREST ACTIVISTS IN VICTORIA 2014¹

Fact Sheet

For more information please contact Lawyers for Forests Inc www.lawyersforforests.asn.au or 0449 900 751

On 28 May 2014 new laws came into force that change the offences people can be charged with in Victoria's forests, and the penalties associated with these.

Changes to the Sustainable Forests (Timber) Act 2004

Previously most charges against individuals protesting logging in Victoria were for offences under the *Safety on Public Land Act 2004*. These offences have been replaced with new offences and penalties introduced into the *Sustainable Forests (Timber) Act 2004* (SFTA).

'Timber Harvesting Safety Zones' (THSZs) replace 'Public Safety Zones'

Whereas the old laws used the term 'Public Safety Zones' to describe logging exclusion areas, the new laws under SFTA describe prohibited areas as 'Timber Harvesting Safety Zones' (THSZs).

A THSZ includes a coupe, 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 (s77B). This is similar to the way prohibited areas were defined in recent public safety zone declarations.

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 (s77C). A notice must state the location of the zone, the commencement date and the offences and penalties that apply in that zone.

Department of Environment and Primary Industries (DEPI) authorised officers

It will generally be authorised officers from the Department of Environment and Primary Industry (DEPI) who 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.

Summary of new 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;
- 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 authorised officer;
- allowing a dog to enter a THSZ or failing to remove a dog when directed to by an authorised officer.

Powers of Seizure

The power of authorised officers to seize items (s 88 (1)) have also been expanded. Authorised officers may now seize any item where they believe, on reasonable grounds, that it has been, is being, **or is about to be** used in the commission of an offence. Where an item is seized a receipt must be issued that includes the name of the authorised officer and the location where the item will be held.

Where an item is seized, the Authorised Officer must inform the person as soon as possible 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.

¹ Please note that this fact sheet replaces the earlier '*Legal Guide for forest activists in Victoria*' and the 2012 fact sheet '*New Declaration of Public Safety Zones*'. A 2014 legal guide is forthcoming.

Exclusion Orders

Changes to the SFTA now empower a Court to make an order excluding a person from a THSZ or an area of state forest for a period not longer than 12 months (s94D). 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 (s94F).

Infringement Notices

Authorised officers can issue infringement notices, instead of charging people, for many of the new offences. The table below indicates which of the new offences may be dealt with as infringements, rather than charges that go through Court. Where a person is issued with an infringement notice, if they choose 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. 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: Old and New

The table below compares old and new offences to assist people to understand the changes. Please note that the penalties listed in the table are the *maximum* penalty that can be issued by a Court. As these laws have just come into force they are yet to be tested in Court. However current sentencing practices for forest-related offences indicate that the Court is likely to offer an individual to enter into an undertaking of good behaviour (commonly referred to as a bond), or to impose a fine of a few hundred dollars for similar offences (unless 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 and applied consistently, these are not maximums. Penalty unit values for the 2014/2015 financial year are \$147.61.

Old offence under <i>Safety on Public Land Act 2004</i> or other act	Max Court Penalty possible or infringement amount	New offence under <i>Sustainable Forests (Timber) Act 2004</i>	Max Court Penalty possible or infringement amount
s13 (2) A person who is not authorised to do so must not contravene any restriction or condition applying to a public safety zone which is specified in the public safety zone declaration.	20 units or \$442.83 infringement	S77G Offence to enter or remain in timber harvesting safety zone Person (other than authorised person) must not enter, or remain in, a timber harvesting safety zone notice of which has been given in accordance with s77C.	20 units or \$442.83 infringement
s14(3) Direction to leave public safety zone A person who is not authorised under this Act to be in a public safety zone must comply with a direction under s14(1) (direction to leave public safety zone).	20 units or \$442.83 infringement	s77D Direction to leave a timber harvesting safety zone Under sub-section (2) a person must not refuse or fail to comply with a direction from an authorised officer to leave and not re-enter a timber harvesting safety zone under sub-section (1).	20 units or \$590.44 infringement
S95A Conservation, Forests and Land Act - Hindering or obstructing forest operations A person must not hinder or obstruct the lawful carrying out of forest operations.	20 units	S94B Offence to hinder, obstruct or interfere with timber harvesting operations A person must not hinder, obstruct or interfere with timber harvesting operations.	20 units
		S94A Offence to hinder, obstruct or interfere with timber harvesting operations 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 s4 and is set out above on page 1.</i>	60 units or 6 months imprisonment

		<p>S77H Offence to be in possession of prohibited thing in timber harvesting safety zone A person (other than an authorised person) must not be in possession of a prohibited thing in a timber harvesting safety zone notice of which has been given in accordance with section 77C.</p>	20 units or \$590.44 infringement
<p>s20 Offence to hinder or obstruct an authorised officer A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising the authorised officer's duties or powers under the Act.</p>	60 units	<p>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 (existing offence under the SFTA prior to the new laws)</p>	60 units
<p>s17 Requirement to give name and address (1) If an authorised officer believes on reasonable grounds that a person has committed or is committing an offence against this Act, the officer may ask the person to state his or her name and ordinary place of residence or business. (3) Offence to fail to comply with sub-section (1) or state name that is false or state address that is not full and correct address of ordinary place of residence.</p>	5 units	<p>s84 (3) A person must not refuse to give name and address without reasonable excuse. A person must not give false name or address or give incorrect information as to their ordinary place of residence or business.</p>	5 units
<p>s17 Requirement to give name and address (5) Offence, if asked to produce evidence of the correctness of name and address under sub-section (4), to fail to do so unless reasonable excuse for not doing so.</p>	5 units	<p>s84(5) Unless reasonable excuse for doing so, offence to refuse request of evidence of name and place of residence where authorised officer suspects on reasonable grounds name and information given is false.</p>	5 units
<p>s12 Offence to remove or destroy notice or barrier (1) A person must not unlawfully alter, obliterate, deface, remove or destroy a notice displayed in accordance with s11.</p>	50 units or \$590.44 infringement	<p>s77K 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>	60 units or \$885.66 infringement
<p>s12 Offence to remove or destroy notice or barrier (2) A person must not unlawfully break down, damage or destroy a barrier or fence which has been erected to prohibit or restrict access to public safety zone.</p>	50 units or \$590.44 infringement	<p>S77J 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 timber harvesting safety zone.</p>	60 units or \$885.66 infringement
		<p>S77E Direction to stop or move a vehicle in a timber harvesting safety zone (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 units or \$590.44 infringement
		<p>S77I Offence to allow a dog to enter a timber harvesting safety zone 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>	20 units or \$295.22 infringement
		<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 units

	<p>S94F Offence to contravene exclusion order</p> <p>(1) A person in respect of whom an exclusion order is made must not in contravention of the order:</p> <ul style="list-style-type: none"> (a) Enter or re-enter the timber harvesting safety zone or area of State forest; or (b) Remain in the timber harvesting safety zone or area of State forest 	60 units
	<p>S94H Offence to refuse or fail to comply with direction to leave area to which exclusion order applies</p> <p>(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 units