

# Legal Guide

for forest activists in victoria

revised  
2010  
edition

Direct action, including forest protest has played a significant and important role in the campaign to protect Victoria's old growth forests, water catchments and threatened species habitat from logging and export woodchipping.

The forest movement in Victoria has a long history of forest-based protest and other direct action, which is invariably linked with interactions with police and Department of Sustainability and Environment (DSE) staff, and raises a series of issues and questions regarding legal rights and process.

This guide, prepared by Lawyers for Forests Inc. (LFF), is intended as a response to some of the most common legal questions and issues that arise in forest actions. LFF has received many requests for legal advice and representation from people charged with criminal offences flowing out of forest protest, and has subsequently developed an understanding of the most common scenarios, charges and penalties surrounding forest protest actions in Victoria. LFF continues to refer requests to lawyers in Victoria who are experienced in the laws relating to forest protest.

Lawyers for Forests believes that nonviolent protest is a legitimate expression of civil rights and environmental concern, and an important part of the campaign to protect Victoria's remaining forests.

### Lawyers for Forests provide:

- **information to conservationists/forest activists on rights and responsibilities when taking part in a protest; and**
- **Referrals to free legal advice and representation when needed after the charges have been laid.**

The guide is set out in sections:

#### **Section 1: Dealing with DSE**

Authorised officers – powers  
The Safety on Public Land Act  
What can I be charged with in a Safety Zone? (Charges and penalties)  
Other relevant offences under separate acts

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References to sections of legislation are highlighted in bold for ease of reference. To download the relevant legislation in full visit: [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

Please note all information in this guide is based on the most common scenarios and refers to the most frequently used charges. Situations vary, and the police and the DSE can charge people with offences that are not referred to in this guide. This guide is not intended as personal legal advice.

**For further information or to request free legal advice or representation, please contact LFF by email: [lff@lawyersforforests.asn.au](mailto:lff@lawyersforforests.asn.au) Phone: 0423 254 514 Or visit LFF's website [www.lawyersforforests.asn.au](http://www.lawyersforforests.asn.au).**



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While logging in native forests is an area of Vicforests' operations, DSE are the agency responsible for making decisions about protest actions in forest coupes. DSE officers will be called to attend on site if activists are to be asked to leave the area or any arrests made. Therefore in a protest action in state forest, it is primarily DSE officers that activists will be dealing with.

Although both police officers and authorised DSE officers have the power to charge people with offences under the *Safety on Public Land Act* (the Act), it is usually the authorised officers that exercise these powers while the police officers look on (the section on dealing with police occurs later in the guide). This is the result of a memorandum of understanding between the DSE and Victorian police, where police agree to assist the DSE with forest protests. This is also due to the powers that the Act grants to DSE authorised officers, enabling them to charge people with specified criminal offences. The legislation also requires police officers to assist authorised officers if an authorised officer requests assistance.

#### Which DSE staff are 'authorised' officers?

All DSE officers are now considered to be 'authorised officers'. This means DSE staff in attendance at forest actions can essentially exercise the powers of police under the Act. (Please note: An authorised officer must produce proof of his or her identity and official status before exercising their powers.)

#### The power to request your name and address:

Under the Act 'authorised officers' have the power to request your name and address if they "believe on reasonable grounds" that you have committed, or are committing an offence under the Act.

In making a request for your details, the officer **MUST** inform you of the grounds on which they believe you are committing, or have committed an offence.

Failing to give your name and address, or giving a false name or address, is an offence under the Act.

If the 'authorised officer' suspects on reasonable grounds that you have given false details, they may request evidence of your name and address – generally photo identification. Failing to comply with this without reasonable excuse is also an offence under the Act.

#### 'Authorised officers' have the power to arrest

Under the Act, DSE officers have arrest powers for alleged offences that take place in 'public safety zones' – this effectively applies to all areas of State forest where logging is taking place.

There is also other legislation empowering authorised officers to charge people with offences under a number of different Acts.

#### Do I have to answer questions from DSE officers?

NO

As with the police, you have **the right to silence**. You are entitled to answer "no comment" or remain silent when asked any questions other than your name and address by DSE.

If you are charged with an offence at a forest action, all of your answers and comments are likely to be included in the prosecution brief against you and some of your answers and comments may be included in the summary that the prosecutor reads to the Court on a plea of guilty. As with police, there is no such thing as an 'off the record' conversation. Anything you say within hearing of a DSE officer can potentially end up as evidence in Court.

At forest actions, DSE officers generally ask a range of questions about the action and your presence at the action. This can include questions about any structures, whether you are able to remove yourself, or whether you are aware that you are in a safety zone etc. You are entitled to answer "no comment" to ALL of these questions.



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## What Laws are DSE officers working under at actions?

### The Safety on Public Land Act 2004 (Vic)

The *Safety on Public Land Act* 2004 (Vic) (the Act) came into effect in 2004. It is a significant piece of legislation because for the first time it has expressly given the government legislative power to exclude people from defined areas of State forest.

The Act allows the Secretary of the DSE to declare an area of State forest a "public safety zone" (**Section 4**). The declaration can be made for a number of "purposes" including for the conservation of flora or fauna and the protection of natural, cultural or historical values (**Section 4(2)(a) and (c)**). However, to date **the only purpose for which a declaration has ever been made is for the purpose of "timber harvesting operations" or (logging) (Section 4(2)(g))**.

The declarations are published in the Victorian government gazette, which can be accessed at [www.gazette.vic.gov.au](http://www.gazette.vic.gov.au). Safety zone declarations, GPS boundaries and maps are also online at [www.dse.vic.gov.au](http://www.dse.vic.gov.au), although these maps are lacking in detail, and do not assist in clearly indicating the edge of the safety zone for those without a GPS. Since the Act's inception, hundreds of public safety zones have been declared, having the effect of excluding the public from vast areas of State forest subject to logging.

#### How do I know if I'm in a safety zone?

The Secretary of the DSE is required to ensure that a notice specifying that an area is a public safety zone and the restrictions applying to that

area is conspicuously displayed on or near the area to which a public safety zone declaration applies (**Section 11(1)**). These safety zone signs are generally attached to trees at the entrance of the logging coupe (area being or about to be logged), and may not correspond with the GPS coordinates of the safety zone boundary. If there is a discrepancy between the two, the GPS coordinates provide the correct boundary.

However, section 11(12) of the Act means that even if a notice is not displayed, this **does not** affect your ability to be charged under safety zone laws.

## Being charged by DSE at a forest action

### What happens when I am charged?

The authorised officers will ask you for your name and address. You are required to answer this question, provided that the authorised officer believes on reasonable grounds that you have committed or are committing an offence under the Act. The authorised officer must inform you of the grounds for believing that you have committed or are committing an offence. Importantly, authorised officers must identify themselves if asked to do so, and cannot exercise any powers until they have answered such a request.<sup>1</sup> This means that you do NOT have to answer this question until they have identified themselves.

## How will I be charged?

### Charge and summons

Typically, a court summons will be sent to the residential address of the arrestee. If you are told this, you will usually receive the charge and summons in one of following ways:

- (a) An individual called a process server will attend the residential address that you gave to the authorised officer in an effort to hand the charge and summons to you;
- (b) If you are not at the residence, usually after the second time that the process server attends the address, the charge and summons may be left with a person at the address; or
- (c) (a) A solicitor that LFF refers these matters to might be contacted by the DSE and the solicitor will be asked whether he or she has instructions to accept service on your behalf. The solicitor will then attempt to contact you and, if successful, ask you whether you wish them to accept service of the charges on your behalf.<sup>2</sup>

If you are charged on summons, when the charge and summons is served it will specify a date on which your matter is listed for hearing in Court.



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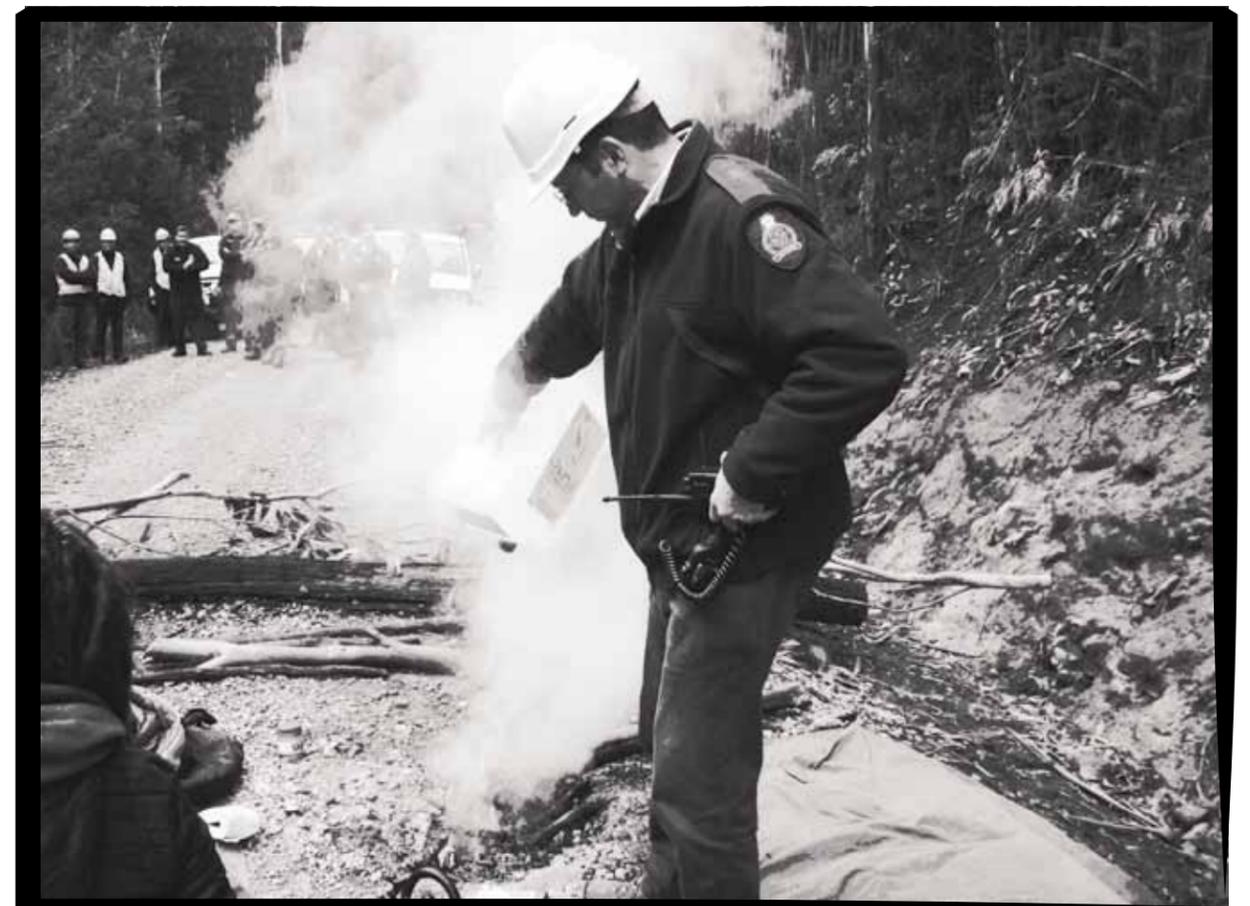
## What is charge and bail?

The alternative to being charged by summons is to be charged (either processed on site at the action or taken into custody) and bailed. In recent years, people were only bailed if their residential address was interstate, seemingly due to a reason for bail being to ensure a person attends Court to answer the charge/s. However, most recently, the authorised officers have been charging and bailing people as a matter of course and attaching conditions.<sup>3</sup> If you are charged and bailed, the charge and bail will specify the date on which your matter is listed for hearing in Court.

If you are charged and bailed, you will be handed the charge and bail sheets either at the location where the incident occurred or at a police station. Sometimes, the authorised officers and the police will arrest you and take you to the police station closest to where the incident occurred. Generally this occurs when the authorised officers are concerned about verifying your identity, for example if you do not have any photo ID on you to verify your name and address.<sup>4</sup>

## What can I be charged with in a safety zone?

The Act sets out a number of criminal offences associated with being in a public safety zone. To date, only those offences related to forest protest have been enforced. Only fines apply and custodial penalties (gaol time) are not available for offences under the Act.



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<sup>1</sup> See legal tips.

<sup>2</sup> See FAQ re should I instruct my solicitor to accept service on my behalf? See also FAQ re the timing of filing and service.

<sup>3</sup> See FAQ re bail conditions.

<sup>4</sup> See FAQ re your rights at the police station.

## The most commonly applied charges in forest actions are:

**Under Section 12 of the Act** it is an offence to remove, damage or destroy a safety zone notice, fence or barrier.

**Section 13:** It is an offence for anyone who is not authorised to “carry out any activity” in a public safety zone. The definition of “an activity” has been legally contested (details from Court case)

**Section 14:** An authorised officer can direct you to leave a safety zone after they have informed you that you are in one, and have requested that you leave. It is an offence if you fail to leave, and you may also be charged with ‘hindering an authorised officer’ in the execution of their duty.

However, it is not an offence if the authorised officer failed to prove her/his identity and status, and if they fail to inform you that you are in a safety zone.

**Section 15:** It is an offence to re-enter or attempt to re-enter a safety zone.

HOWEVER, if you are attached to machinery, in a tree-sit etc, you won’t be separately charged for entering or re-entering the safety zone for each day that you remain attached – it is all part of the same offence.



The full list of offences, including the maximum penalty prescribed in the Safety on Public Land Act,<sup>5</sup> is set out in the table below:

### Table of offences in the Safety on Public Land Act

Section	Description	Maximum penalty
12(1)	A person must not unlawfully alter, obliterate, deface, remove or destroy a notice displayed in accordance with section 11.	50 penalty units <sup>6</sup>
12(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 a public safety zone.	50 penalty units
13(1)	A person who is not authorised to do so must not carry out any activity in a public safety zone in contravention of a public safety zone declaration.	20 penalty units
13(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 penalty units
14(3)	A person who is not authorised under this Act to be in a public safety zone must comply with a direction under this section.*	20 penalty units
15	A person who is not authorised under this Act to be in a public safety zone must not, contrary to a direction of an authorised officer under section 14— (a) re-enter a public safety zone; or (b) attempt to re-enter a public safety zone.	20 penalty units
17(3)	A person must not, in response to a request under subsection (1)— (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.**	5 penalty units
17(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. **	5 penalty units
20	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. <sup>7</sup>	60 penalty units

**Please note:**

<sup>5</sup> The penalties prescribed are the maximum penalties available to the court, and are reserved for the very worst-case scenario. Note that a person has not been fined the maximum penalty – see section that deals with Court and current sentencing practices.

<sup>6</sup> Penalty units are used to define the amount payable for fines for many offences. One penalty unit is \$119.45 in the 2010–11 financial year (1 July 2010 to 30 June 2011). The penalty unit amount refers to the maximum amount you may be fined.

<sup>7</sup> See FAQ regarding what constitutes a reasonable excuse.

### What is a 'direction' by an authorised/DSE officer?

\* A "direction under this section" is set out in **Section 14(1)** which allows an authorised officer to direct a person to leave a public safety zone, but only after the authorised officer has informed the person that he or she is in a public safety zone and has requested that person leave the public safety zone and that person has refused to leave.

### Authorised Officers & Proof of Identity:

It is important to note (as stated in **Section 14(2)**) that the authorised officer must have produced proof of his or her identity and official status before exercising a power under subsection (1). They must also inform the person that they are empowered to direct the person to leave the public safety zone and that failing to comply with the direction is an offence. **It is not an offence to fail to comply with a direction to leave, if the authorised officer has not complied with Section 14(2).**

\*\* A "request under subsection (1)" is a request for a person's name and ordinary place of residence or business. To be required to answer the request (and so for the authorised officer to be able to ask for it), the authorised officer must believe on reasonable grounds that the person has committed or is committing an offence under the Act. In this respect, 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. In addition, 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 (**Section 17(4)**).

### When is it not an offence to 'fail to comply'?

It is important to note that it is not an offence for a person to fail to comply with a request under subsection (1) or (4) *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

If the authorised officer did not identify himself or herself in accordance with section 18 before making the request (**Section 17(6)**). **Section 18** provides that an authorised officer must produce proof of his or her identity and official status before exercising a power under section 17 and at any time during the exercise of a power under section 17, *if asked to do so*.<sup>8</sup>

### What kind of penalty can I expect?

*NB: These charges are all criminal charges, and will generally result in either a fine being imposed, or a 'release on undertaking' (also known as a 'good behaviour bond').*

The 'maximum penalty' that appears in the table of charges is the ABSOLUTE maximum a Court can fine you. (The actual amount of a fine, if a bond is not imposed, will frequently be much lower, and it is up to the Court's discretion based on factors such as your income, prior criminal record, and any relevant or mitigating circumstance/considerations - academic or work related concerns, history of environmental work etc).

### Can I be charged with Safety on Public Land Act offences if the logging is illegal or unlawful?

The Act makes certain conduct unlawful irrespective of the legality of the logging. This is in contrast to many of the offences under other pieces of legislation that requires the logging to be lawful. This may be one reason why the authorised officers tend to only charge people with the Safety on Public Land Act offences, doing this avoids the requirement for logging to be lawful, and for the authorised officers to prove this.

### Are the Safety on Public Land Act charges the same charges DSE have always used? What other laws are there?

Before the Safety on Public Land Act came into effect, people were charged with offences under the **Forests Act 1958 (Vic)**, **Land Act 1958 (Vic)**, **Sustainable Forests (Timber) Act 2004 (Vic)**, **Conservation Forests & Lands Act 1987 (Vic)** and the **Summary Offences Act 1977 (Vic)**.

Offences under those pieces of legislation generally relate to refusing to comply with a request from an authorised officer, hindering or obstructing an authorised officer in the execution of his or her duty and hindering or obstructing a forest operation.

Authorised officers of the DSE can still charge individuals in a forest protest with offences under these other Acts. However, the offences are effectively the same, and in most cases now the DSE use the Safety on Public Land Act charges. For example, under the **Forests Act**, **Section 96A** makes it an offence to hinder or obstruct an authorised officer, which equates with **Section 20** of the **Safety on Public Land Act**. You should not plead guilty to, and would not be found guilty of two offences that are effectively the same. This is known as doubling up and is not permitted by the courts.

<sup>8</sup> Refer to legal tips section.



Pic: Luke Chamberlain

## Other Relevant offences under different Acts

Act	Section and description	Maximum penalty
<i>Conservation, Forests and Lands Act 1987 (Vic)</i>	Section 95(A) Obstruction: Under the Conservation, Forests and Lands Act 1987 (Vic) it is an offence to hinder or obstruct another person in the lawful carrying out of forest operations. What constitutes a lawful forestry operation can be the subject of some argument. Forest activists in Victoria have sometimes successfully appealed against an obstruction charge because the Code of Forests Practices had not been complied with.	20 penalty units
<i>Summary Offences Act 1966</i>	Section 4(E): <b>Obstruction.</b> Applies to (e)any person who obstructs a footpath or road whether by allowing a vehicle to remain across such footpath or road or by placing goods thereon or otherwise  Section 9(1)D <b>Trespass</b> It is a State offence to wilfully trespass in any place and neglect or refuse to leave that place after being warned to do so by the owner, occupier or a person authorised by the owner or occupier  Section 52(1): <b>Resisting or hindering arrest</b> This includes opposing arrest by use of force, and making the arrest or other police action more difficult to carry out. It does not matter whether the resistance or hindrance actually prevents the arrest or other action.	Penalty: 5 penalty units.  25 penalty units or six months jail.  The maximum penalty is six months jail or a fine of \$2500.
<i>FORESTS ACT 1958</i>	96A. <b>Offence to hinder or obstruct an authorised officer</b>  96B. <b>Offence to threaten or abuse an authorised officer</b>	60 penalty units.  60 penalty units.
<i>Land Act 1958</i>	SECT 31 (3) It is an offence for any person person to obstruct or assault or incite or encourage any person to obstruct resist or assault an authorised officer in the execution of his duty, or to threaten or abuse any such authorised officer.	Penalty not exceeding 2x5 penalty units or imprisonment not exceeding 3 months.

### Other charges:

The Safety on Public Land Act charges and those listed above refer to the most common forest action scenarios (see 'Common Scenarios'). For varied situations (including actions at different premises) and different structural set-ups, charges may vary. It is advisable to seek specific legal advice on these matters.

**NB: For questions regarding 'hindering police' or 'resisting arrest', please see 'Frequently Asked Questions'.**

### What if the logging is unlawful?

**If you believe a forest operation is unlawful**, it is important and helpful to gather as much evidence as possible, including photos, statutory declarations, and GPS placement of breaches of the Code of Forest Practices etc. However, as stated above, you may still be convicted of offences under the *Safety on Public Land Act* even where the logging is unlawful.





You will be dealing with police if you are arrested in a forest action in a public safety zone, and if you are taken into police custody. If you are at a forest action outside of a public safety zone, normal police powers apply.

**Do I have to show photo ID?** No.

People are not required to carry photo identification or show photo ID when requested. However, people driving vehicles on public roads must carry their driver's licence. Remember that when a police officer is considering whether to issue an infringement notice or court summons as opposed to arresting you, your co-operation may influence his or her decision.

**Do I have to give my name and address to police?**

Police have the power to require the name and address of a person they reasonably believe has committed or is about to commit any offence; or may be able to assist the investigation of a serious offence. Police can arrest and detain you to verify your name and address, if they suspect that you are not telling the truth. (Your name, address and driver's licence must be produced for traffic offences when driving a motor vehicle.)

If you are arrested you can ask the Police Officer for their name, rank and station for use in Court later. They are legally obliged to tell you. It is a good idea to record the police officer's name and rank from the name badge they are required to wear.

**What are the penalties for failing to provide my name and address to police or giving false details?**

It is a criminal offence to give police a false name when they request it in the circumstances described above.

If you are photographed, fingerprinted or otherwise identified by police, your identity can be verified against other police records, although this is more likely to happen within Victoria (ie than with other State records). If you give false details, any of this information (such as fingerprints etc) will remain on file with the police and may also be cross-referenced for any future alleged offences.

**Do I have to answer questions asked by police?**

Beyond providing your name and address in the circumstances described earlier, you are not required to answer any other questions from police. Refusing to answer police questions cannot be used against you in Court (including to infer guilt). However, being selective about the questions you answer may affect your credibility in Court. Quite often the basis of the prosecution case against an accused person will be the admissions that person made whilst speaking with police. Denials of certain actions or of guilt can also be used by police to successfully prosecute an accused person. If you intend to plead not guilty, it can be **that the best chance for a successful defence in Court is to rely on your right to silence** (at least until you have received independent legal advice). In short, you do not have anything to gain by speaking to the police, but you have everything to lose. Accordingly it is strongly advised that when approached by police at an action, people exercise their right to silence and say nothing.<sup>9</sup>

You can say 'no comment' or 'on legal advice I have no comment to make'. Practise, and be prepared to be repetitive in exercising this right to silence. – Many people have provided information and answers to police questions because it felt awkward or uncomfortable not to do so. This may particularly be the case in a direct action context where you may have spent many hours in police company while a blockade is dismantled. This is why it is essential to remember your rights, and the role of the police.

There are **no** off the record conversations with police and many people are convicted on statements that they made to the police or information given by other people in conversation. **You have the right to answer "no comment" to ALL questions other than your**

**name and address**, including when you are interviewed by police, if you have been arrested and charged.

Do not be intimidated by the police questioner. The police may tell you that by saying "no comment" you are risking being charged with a more serious offence, or that you will not be released on bail. Do not believe these threats, and do not tell the police anything until you have spoken to a lawyer.

**Arrest Procedure**

**Will I get a warning before I'm arrested or have the chance to leave?**

Police are not required to give you a warning prior to arresting you, but sometimes they will. Police must formally tell you they are arresting you, and what for. Usually, the police will also touch you on the arm or shoulder to arrest you. However, should you (the arrestee) submit to the authority of the arrestor (the police), words alone can be sufficient for an arrest.

You should always ask the police officer; 'Am I under arrest?' and, 'What for?' Remember what they say. The police officer must tell you that you are under arrest unless it is too hard for them to tell you, for example, if you are running away from them. Then they must tell you as soon as it is practicable to do so.

**Contacting legal advice and support**

You have the right to make a private telephone call to a friend or relative, and to a lawyer or legal support person before the police question you. Ask for this if police do not offer. The police must give you a private space to use the phone. A private space is where the police officer cannot hear you speak on the phone.

**Do police have power to take my photograph?**

Police have no right to demand that you are photographed but will do it as routine. **You have the right to refuse to have your photo taken by police.** You can refuse to have a photo taken of your face and you can refuse to let the police officer take photos of any part of you that might end up being used as evidence. For example, you can refuse to let the police officer take photos of

<sup>9</sup> There is no power for police, or anyone else, to detain a person for the sole purpose of questioning (except for the power contained in the Australian Security Intelligence Organisation Act 1979 (Cth) as amended by the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003 (Cth)).



any injuries or identifying features (like tattoos). If you choose you can cover your face with your hands, turn around or move your head. The police officer does not have the right to use any force to make you have your photo taken. If your photo is taken against your wishes you can lodge a complaint in writing for example with the senior officer present.

**When do I have to go with police and how long can they hold me for?** It depends.

Without being formally arrested, you do not have to accompany police to a police station for any reason. If you do not want to accompany police, make it very clear that you do not consent to questioning or going to the police station. If arrested, the police must either charge you, and inform you of the charges, or release you. The police can only keep you in custody for a reasonable time before they charge you. If charged, the police must bring you before a bail justice or the Magistrates' Court within a reasonable time. The law does not say what a reasonable time is. The length of time changes with the seriousness of the offence and how long it takes the police to question you. Unless there is a difficulty with identification, the time usually doesn't extend beyond a few hours in a forest case.

When you think the police are keeping you in custody for too long:

- Ask when they are going to charge you with an offence or release you;
- Ask to phone a lawyer;
- Make a complaint later.

## The Interview

### Interviews

As with other police questions, in the interview you must give your name and address but you do not need to answer any other questions. The police officer may ask you about what you said earlier, before the recording starts. You do not have to agree with or repeat anything you said earlier. These comments could be used against you in court.

You can remain silent or say 'no comment' on the recording even if you spoke to the police officer before. It will not help your case when you answer some questions but not others. When you choose to stay silent or say 'no comment', stick with doing that for every question.

### Will the interview be recorded?

Please note: for a summary offence, the police officer does not have to record what you say for it to be used as evidence. Summary offences include many offences relating to forest protest. The police officer can write down questions they ask you, and your answers. This information can be used as evidence in court.

Where the interview is recorded, police generally record the caution and the interview with a tape-recorder, but the police also sometimes use video-recorders. You can ask for a tape-recorded interview if you do not want to be video-recorded.

### Do I get a copy of the interview?

Yes. The police officer must give you a copy of the interview. This copy is important for your lawyer. Do not lose it.

**Do I have to give fingerprints?** Sometimes. If you are aged 15 years and over, and

have been charged with, or are reasonably suspected, to have committed an indictable (serious) or specified summary (minor) offence, police may fingerprint you. In this situation police can use "reasonable force" to obtain fingerprints. Prescribed information must be provided to you before fingerprints are taken. The procedure must be tape-recorded and a copy of the tape given to you, or it must be recorded in writing and signed by you.

If you are under 18 and they want to ask you for or get your fingerprints, the following rule apply:

- 15 to 17 – a parent, guardian or an Independent Person must be with you when the police officer asks to get your fingerprints. This person must also be there if your fingerprints are taken
- 10 to 14 – a parent or guardian must be with you when the police officer asks to get your fingerprints and must also be there if your fingerprints are taken. You and a parent or guardian must agree before you can have your fingerprints taken. You do not have to agree to this. The police officer has to get permission from the Children's Court if you or a parent or guardian refuse fingerprinting
- Under 10 – the police officer is not allowed to ask to get your fingerprints and is not allowed to get your fingerprints.

A tape-recording or video-recording must be made of the fingerprinting if you are 17 or younger.

## Bail

Bail is an undertaking or promise that you will appear in Court on the day your charge is listed. The undertaking is recorded in a form that you will have to sign before they'll let you go.

### What bail conditions can I expect?

The bail form has standard conditions on it that you will go to Court.

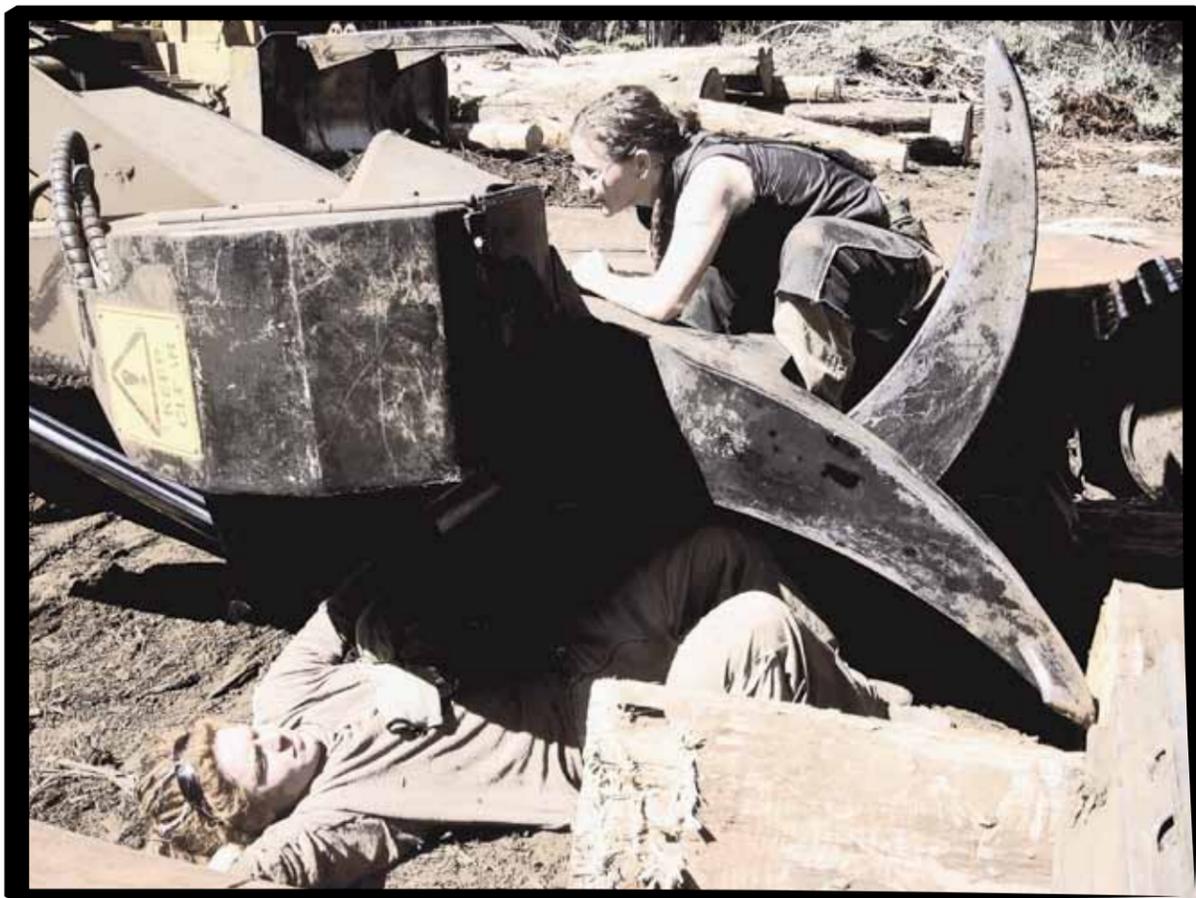
The bail form has standard conditions on it that you will go to Court. The police can add special conditions such as an undertaking not to return to

If the bail undertaking does not have any special conditions you can sign it and leave.

If the bail does include special conditions and you do not agree with them, you can:

> Ask the police to contact your lawyer or legal support and put you on the phone to speak to them.

> Refuse to sign the bail form. This means that you may be kept in custody until the police change the conditions or take you before a Magistrate. You or



the place of arrest or the entire forest area where the action took place. They may also try to add conditions such as 'not to return to any forest block/public safety zone'.

### Do I have to sign them?

**You do not have to agree to these special conditions.** The police often use these special conditions as a way of preventing further protest and restricting your movements after you are released.

your legal representative can ask for the conditions to be removed. You can sign the bail form at any time.

> Sign the bail form with the special conditions and leave. An application to vary the bail conditions can be made to the Court at a later time.

### What happens if I breach bail or my bail conditions?

It is an offence to breach bail or the conditions.

NB: If you breach the conditions, such as returning to the protest site, before these special conditions are varied, it may be grounds for the police to charge you with breaching bail. The penalty for this is that bail can be revoked, and you will need to re-apply for bail.

### Will there be surety (money required for bail)?

There should NOT be a requirement for surety (that you or someone else agree to forfeit a sum of money if you fail to appear in Court as required) for forest matters. On one occasion in 2007 a surety was imposed. An application was successfully made to remove the surety and neither the DSE nor the police have required a surety since.

## Getting out of custody

Police have two choices if they have arrested you. They can:

- \* Release you without charging you. You may get a summons later.
- \* Charge you and release you on bail.

Before you leave the police station you will be asked whether your treatment was reasonable and may be asked to sign a document verifying this. You do not have to sign this. Before you leave the police station you should get your property back (unless it is property alleged to have been used in the commission of the alleged offence) and be given a charge sheet (if you are charged and released on bail).

Police can only hold you for a 'reasonable' time (although this definition is open to interpretation), so in the event that you are held for what you consider to be an unreasonable amount of time you can keep asking to be released. If the police don't release you on bail, then you can demand that you are brought before a Court, where you can apply for bail.

### Following arrest or when you leave custody:

**YOU SHOULD FAX YOUR CHARGE SHEET THROUGH TO YOUR LAWYER SO THAT YOU HAVE LEGAL REPRESENTATION AND THE MATTER CAN BE FOLLOWED UP WITH DSE.**

The Lawyers for Forests fax number is c/o: (03) 9600 4225

More information on the process after arrest can be found in 'After being charged – Court and Legal Support' section.

If you have concerns about your treatment, arrest process, charges or any special bail conditions, you should let a lawyer know as soon as possible. Please also see the 'Complaints' section in, 'Other Legal Tips'.



Pic:

### Charge sheets

A charge sheet is issued directly after your arrest or by mail (summons). The charge sheet names the offences you allegedly committed and states in what section of which Act the charges are specified. Also included is the name and station of the informant (officer in charge), usually the arresting officer.

Charges for summary offences cannot be laid more than 12 months after the event (section Charges for summary offences cannot be laid more than 12 months after the event (**section 26(4) Magistrates' Court Act 1989 (Vic).**) This means that the charges have to be issued by the police or DSE authorised officers within 12 months of the alleged act.

Information sheets are usually attached to the charge sheet, for example saying that under the Magistrates Court Act 1989 (Vic), you can ask for a copy of any material the police or DSE intend to use to prosecute you with. By writing and asking, you may receive copies of any video footage or still photos, or arrange access to view them.

#### Contacting a lawyer:

After you are arrested you are entitled to call a lawyer for advice and representation. Following your release it's important that you fax through your charge sheets to your lawyer, and ensure that you have legal representation.

#### Arranging legal support

If you would like LFF to provide legal advice and representation for you, you should contact LFF by emailing [lff@lawyersforforests.asn.au](mailto:lff@lawyersforforests.asn.au) or calling **mobile: 0423 254 514** as soon as possible after either being served with the charge and summons or receiving your charge and bail sheets. LFF will then refer your matter to a solicitor willing to act on your behalf and you will be

asked to immediately send your legal papers to that solicitor along with your contact details. That solicitor will not proceed to act for you until you provide this material and information.

In order to enable your lawyer to properly represent you, you must discuss your matter with your lawyer prior to court, either in person or by telephone. Depending on what you are charged with, and how long it takes to negotiate the matter with DSE and police, you may be required to attend Court a number of times.

#### Where will my matter be heard?

Unless you are charged with a serious or indictable offence, your matter will generally be scheduled for hearing at the Magistrate's Court closest to where the alleged offence occurred (for example, Orbost for cases in East Gippsland).

Your lawyer can arrange to have the case heard at the Court closest to where you reside if your matter resolves to a plea of guilty.

#### The prosecution brief

The Court date listed on your charge sheets is called a mention. It is the first listing of your matter in Court. You should ensure that you have contacted LFF, received a referral to a solicitor and provided your solicitor with the material and information referred to above before the mention date. Once you have provided the above material and information to your solicitor, your solicitor will obtain a copy of the complete prosecution brief. The prosecution brief is all of the material on which the prosecution relies to prove the charges against you. Once the prosecution brief is received, your solicitor will provide a copy to you and provide you with advice as to the merits of the prosecution brief. They will also seek your instructions regarding the future conduct of your case. If your case is not finalised at the first mention, the solicitor will seek instructions to adjourn your case for a further mention. This is usually 4 weeks after the first mention. For various reasons your matter may need to be adjourned several times.

#### Pleading guilty

If you instruct your solicitor that you want to plead guilty to some or all of the charges and your other charges are withdrawn, your matter may

be finalised at first mention. If your matter is adjourned because you are pleading not guilty (see below) you can still elect to change your plea at any time. The plea of guilty can be heard at the Court where the charges are filed (which is always the Court closest to where the alleged offences occurred), or at any other court that you elect to finalise your matter in.

#### Pleading not guilty

If you instruct your solicitor to plead not guilty, the matter is listed for a contest mention before it is ultimately listed for a contested hearing. A contest mention is a hearing where your solicitor indicates to the Court why the matter has not resolved (for example, whether it is a factual dispute or a legal dispute), how many witnesses you intend to call and an estimation of how long the hearing will take (for example, half a day or one or two days). The matter will then be listed for contested hearing. The contested hearing usually takes place at the Court where the charges were filed, as that is where the witnesses will be located. Usually, the contested hearing involves the DSE calling their witnesses in an effort to prove the charge/s and both parties legal representative making submissions to the Court. It may also involve calling defence witnesses and may include you giving evidence. How the contested hearing is run varies and is determined on a case-by-case basis – however no decisions are made without your instructions.

Generally, if you are successful, the Court will order that the charges be dismissed and the prosecution (DSE or police as the case may be) to pay your legal costs if any. If you are not successful, the Court will find you guilty to some or all of the charges and you will be convicted. You may be ordered to pay the costs of the prosecution if the prosecution is the DSE.

#### Showing up to Court

If you are on bail, and unless you are expressly excused from attending, you must attend Court on each day that your matter is listed, even if it is only for a mention. Otherwise, a warrant may be issued for your arrest.

If you are unable to attend Court to extend your bail for any reason, you must contact your solicitor and let them know so any necessary arrangements can be made. For example, you

may be required to attend a Court closest to where you are to extend your bail. If you are on summons, you do not necessarily

your location and contact details. It is also your responsibility to know when your next Court date is.

Your solicitor will not adjourn your case if you have not communicated with them and given any instructions. Without contact, your solicitor may have to withdraw from your matter and you will no longer be represented.

#### To assist in preparing your case:

- Take notes of what happened at the alleged incident as soon as possible after it occurs – this may be very useful later in your matter.
- Email your solicitor a copy of your resume or a brief history of your personal circumstances, including your financial circumstances, and also set out your reasons for being involved in the incident and your concerns, if any, regarding the area of forest that was subject to logging (for example, did you believe it was old growth, contained threatened species, or was a water catchment, were there breaches of the Code of Forest Practices?). This is in anticipation of a plea of guilty or a finding of guilty, where the Court will want to know about your personal circumstances in determining what penalty to impose on you.

#### Character References:

It is important that you obtain references from people who can say something about your good character, charitable work, employment prospects and so on. Two references are generally appropriate, and these should be given to your solicitor. Character references should be addressed to 'The Presiding Magistrate' and be dated and signed. The author of the reference must also acknowledge that they are aware of your charges. Your solicitor does not need an original signed copy; a signed letter scanned and emailed or faxed to them is sufficient. Character references can come from, for example, your employer, one of your lecturers at TAFE or university, the person that managed you whilst you performed voluntary work for any organisation or a long-term family friend. It is helpful in character references for the writer

to firstly introduce themselves, explain how they know you and what a legend you are. Your solicitor should be available to be contacted by your referees if they have any questions about the reference. The references are in anticipation of a plea of guilty or a finding of guilty.

If you are pleading not guilty, your solicitor will speak to you about further ways in which you can assist in preparing your case.

#### What sort of penalty am I likely to receive?

On sentencing, a Magistrate will take a number of factors into consideration, including your personal circumstances, the circumstances and seriousness of the offence, any prior convictions, and the impact on any victim, as well as references, age, good character, employment and previous good record. The Magistrate will also take into account a plea of guilty as evidence of remorse and this will attract a discount on sentencing. Generally speaking, the earlier you plead guilty the greater the discount you will receive on sentence. The maximum discount available for a plea of guilty at the earliest opportunity is 25% - this means for example, that instead of being fined \$100, the court would only fine you \$75. Maximum penalties are almost never imposed. You have the right to appeal against any decision that you believe is excessive.

#### Current sentencing practices

##### Some possible penalties include:

**Diversion (no criminal conviction is recorded)** Diversion is a program for people charged with minor offences who have no prior criminal record. Conditions of the program include that you acknowledge responsibility for the offence. You must first be recommended by the police officer or DSE authorised officer that charged you, and then accepted for the program by a Magistrate on the day your matter is listed for diversion at Court. You will then be given a number of conditions (which may include a letter to the police officer who charged you and/or a letter to the relevant DSE officer, and a contribution to the Court fund or a charity). If you comply with these conditions then you will have no criminal record or conviction.

Please note: Determining whether you are happy

to comply with the conditions, including letters of apology, is a personal and/or political decision for you. Remember, lawyers provide advice to you, and you provide instructions to your lawyer. Your lawyer is then bound by those instructions.

#### Dismissal of the charge

You receive no penalty for the offence, and the charge will be listed as dismissed on a criminal record. This is the lowest penalty on the sentencing ladder and so the best legal result. It has only been imposed once in a forest protest matter, which was in December 2008.

#### Adjourned undertaking, with or without conviction.

An adjourned undertaking means entering into an undertaking to be of good behaviour for a period of time. The period is usually between 6 to 12 months. An undertaking is a promise to the Court. If you commit another fresh offence during the period of the undertaking, and you are convicted of the fresh offence, you will be sentenced on that matter, and may also be re-sentenced on the original matter for which you made the undertaking.

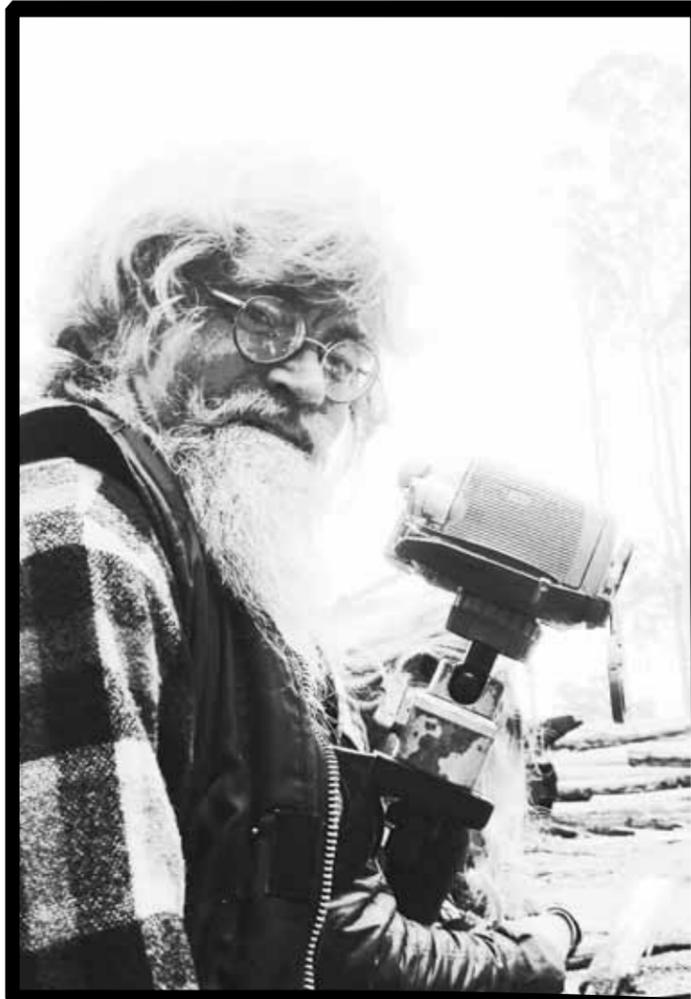
#### Fine with or without a conviction (you are required to pay money to the Court);

If you plead guilty and do not have a relevant prior criminal history, current sentencing practices suggest that the Court will offer to deal with your matter without recording a conviction, on the proviso that enter into an undertaking to be of good behaviour for a period of time.

At times, some people do not want to enter into an undertaking for various reasons, predominantly if there is a concern they might re-offend. In this case, current sentencing practices reveal that the Court is likely to impose a fine from between about \$200 to \$400. It is important to remember that the maximum penalty the court can impose upon you for offences under the Safety on Public Land Act is a fine. A custodial penalty is not a sentencing option available to the court for offences under this Act.

#### Fines imposed in the Magistrates' Court

A fine imposed in the Magistrates' Court may be with or without a conviction and may be imposed



Pic:

have to go to Court if your matter is just going to be adjourned (put off to another date), or transferred. You should check with your lawyer about this, however it is important to make sure arrangements are put in place.

If you don't make any arrangements for your first mention and you fail to appear, the matter may be dealt with in your absence. This means you may receive a penalty without the Magistrate taking into account why you have been charged, and any information regarding your good character or environmental concern. If you are on bail a warrant may be issued for your arrest instead.

#### Preparing for your case

In order for your solicitor to be able to run your case properly, you must keep them informed of

by itself or in addition to another penalty. In addition to a fine, a Magistrate may make several other monetary orders.<sup>10</sup>

### What happens if the fine is not paid by the due date?

If a fine remains unpaid by the due date, a warning notice will be sent to you, at the address that the Court has listed as your address, stating that the fine must be paid within 28 days. If the fine is not paid after that date, a warrant will be issued for your arrest which will be forwarded to the Sheriff's Office (under Section 62 of the Sentencing Act 1991). This warrant authorises the Sheriff to arrest the person named in the warrant and to bring him/her before the Court. What happens when a person is arrested for not paying the fine and is brought before the Court?

A Magistrate has several options available to deal with an unpaid fine. The Magistrate may decide to:

- \* Convert the fine to community work (Only for sums below \$10,000)
- \* Order that the person be imprisoned for a fixed term (1 day of imprisonment equates to approximately \$100.00 of the fine)
- \* Vary the order that the fine be paid by instalments
- \* Adjourn the hearing for up to 6 months on any terms the Court deems fit
- \* Order that the unpaid portion of the fine be levied under a warrant to seize property.

If you move interstate the fine may be registered in the State where you live and enforced according to the rules of that State.

### How do I convert my fine to Community Work?

If you wish to convert a fine to community work, you must attend a Magistrates' Court and submit an application with the Registrar. There is no fee payable to submit this application. The Registrar will usually only grant an application if you are unemployed or if there is some exceptional

reason why the fine cannot be paid off by instalments. Generally, if you are working the Registrar will allow you to pay off the fine by instalments but this will be assessed on a case by case basis.

The Registrar is allowed to ask you questions about your financial situation and request to see your financial records or documentation to support your application. In some cases, you may be required to swear an affidavit as to your financial situation.

If your application to convert a fine to community work is granted, you will be asked to sign a form and be required to report to community corrections by 4pm, usually on that day or the next day. It will be up to community corrections as to when and where you work and the type of work you perform. You will be required to do a minimum 8 hrs of work a day and the conversion is one hour for approximately every \$20 owing.

If your fine has resulted originally from an infringement and has come to Court via the Infringements Court (for example, a parking fine), application for conversion of your fine can only be made to a Magistrate and not to a Registrar.

### Will I have to pay compensation?

#### 1.1 Compensation applications

If the search and rescue unit of the Victoria police attended the incident, the Secretary of the DSE, through the prosecutor who is usually a solicitor employed by the DSE, may apply to the Court for an order that you pay the costs of search and rescue. If such an application is made, it is usually made immediately following the plea of guilty or a finding of guilt. Your solicitor will discuss this matter with you and ask you for instructions as to whether you consent to paying the compensation sought, or whether you want to oppose the compensation application. Since 2000, when LFF commenced receiving requests for legal advice and representation, the vast majority of compensation applications have been successfully opposed.

<sup>10</sup> For example, orders that one party pay the costs of the other or the cost of witnesses attending Court, restitution or compensation orders to a victim of a crime, or an order that an offender pay money into the Court Fund.



Pic: Luke Chamberlain



Pic: Luke Chamberlain

### Hindering or resisting arrest

It is an offence to actively resist or hinder a lawful arrest (yours or another's). It is not necessarily an offence to merely fail to co-operate, for instance by lying down, going limp or refusing to move. The courts have generally found that something more than mere obstruction is necessary. Resistance implies the use of force to oppose the lawful actions of the police – noting that the actions pursued by police must be lawful. Hinder means obstruction or interference that makes a police officer's duty substantially more difficult to perform. If you do not co-operate while being arrested, police may then use 'reasonable force' to take you into custody.

If an arrest proves to be unlawful, or if unreasonable or excessive force was used, civil actions against the police for assault or false imprisonment may be possible.

Unless you are under lawful arrest, you are not obliged to go anywhere with the police unless the police successfully apply to the Court for an order requiring you to be interviewed by the police.

### What constitutes resisting arrest?

Under s52(1) of the **Summary Offences Act**, resisting or hindering police is an offence. This includes opposing arrest by use of force, and making the arrest or other police action more difficult to carry out. It does not matter whether the resistance or hindrance actually prevents the arrest or other action. The maximum penalty is six months gaol or a fine of \$2500.

A person is arrested when police or an authorised officer deprive him or her of their liberty, regardless of the words used. A person is arrested when police make it plain to him or her that they are not free to leave if they choose. Accordingly, an arrest can be effected by words alone, however usually the words are accompanied by some touching of the person's body with a view to his or her restraint.

### What is considered a 'weapon'?

An offensive weapon is anything that can be used, and is intended to be used as, a weapon (e.g. a broken bottle). Thus a stick, a rock and many common objects may in certain contexts be considered weapons.

The carrying of knives is severely restricted. It is not lawful to carry a knife for the purpose of self-defence. A knife may legally be carried in a safe and secure manner for certain lawful purposes (e.g. employment, sport, recreation or entertainment, or as part of a legitimate collection or display). However, carrying a knife **can result in a weapon charge**, and this has previously been applied to knives carried for camping purposes at forest actions (including a leatherman and anything with a retractable blade). This can be argued in Court, but if it is likely that you will be searched or taken into custody, it is better to make sure you don't have one on you.

Weapons including flick knives, daggers, butterfly-knives and knuckle dusters are prohibited weapons, which must not be made, sold, purchased, possessed or carried or used in Victoria.

### Things not to carry on you!

Everything in your possession can be seized as evidence by police if you are placed under arrest.

**So don't carry anything that you do not want in the hands of police. Illegal substances can obviously result in extra charges.**

### Can police or DSE seize goods at an action?

Under **section 95(f)** of the **Forests Act 1958**, DSE authorised officers have the power to seize items.

By law, if an authorised officer believes on reasonable grounds that a person has committed or is committing an offence against the Forests Act or the regulations, that officer may seize any item used or being used by that person in the commission of the offence.

However, it is important to note that DSE have repeatedly seized goods such as cameras and video cameras in the course of forest actions, even if the person in possession of the items agrees to depart when directed by the authorised officer. This is important to know when deciding whether to keep such equipment visibly on you when DSE officers arrive. If this occurs, contact a lawyer so that they can immediately follow up with getting the goods returned and/or making a complaint.

### Receipts for any items seized

If an authorised officer seizes an item under the Forests Act, the authorised officer must immediately give the person a written receipt for the item seized indicating-

- (a) The nature of the item seized; and
- (b) The date and time that the authorised officer took possession of the item; and
- (c) The name of the authorised officer who seized the item and the address where the item will be held.

### Return of any seized goods

Insist on a detailed receipt for anything that is taken – this can be cross-referenced with the report to the Magistrate. Do not countersign this receipt if it is not accurate or not fully detailed.

If property is taken from you during an arrest or at a demonstration, have your lawyer write

to police immediately, demanding the return of the property. If you are charged, raise the matter before the Magistrate. Make a record as soon as possible what was taken, where it was taken and by whom. This helps any legal follow-up that may be necessary.

### **How will a criminal record affect me? Police record checks in Victoria**

In Victoria, the release of your police record is governed by Victoria Police policy. You can find this on the Victoria Police website at <http://www.police.vic.gov.au>.

Victoria Police does not release information about a person's police record to any organisation outside the sphere of law enforcement and the administration of justice without the subject's consent.

Victoria Police releases criminal history information on the basis of findings of guilt regardless of whether or not a conviction is recorded. Victoria Police releases police records in accordance with any or all of the following guidelines:

- If the individual was an adult (seventeen years or over) when last found guilty of an offence and ten years have elapsed, no details of previous offences will be released;
- If the individual was a child (under seventeen years) when last found guilty of an offence and five years have elapsed, no details of previous offences will be released; (Exception: Court orders on care/protection applications will not be released regardless of the age of the order);
- If the last finding of guilt resulted in a non-custodial sentence or a custodial sentence of 30 months or less, the ten or five year period commences from the day the individual was found guilty;
- If the last finding of guilt is an appeal or re-hearing the ten or five year period will be calculated from the original Court date;
- If the last offence is allowed to be released, then all findings of guilt will be released, including juvenile offences;
- If the record contains an offence that resulted in a custodial sentence of longer than 30 months the offence will always be released.

If 10 years have elapsed since the last finding of guilt, then only the offence(s) that resulted in a custodial sentence of longer than 30 months will be released (Information Release Policy, Victoria Police, 2004).

### **Findings of guilt without conviction, good behaviour bonds, outstanding charges and traffic matters**

Findings of guilt without conviction and findings resulting in a good behaviour bond are considered to be findings of guilt and will be released under Victoria Police policy on any criminal record check. If the check shows that the individual has been charged with offences, or is under investigation regarding outstanding matters that have not yet been heard at Court, Victoria Police will release details of the charges or pending matters and state that they are yet to be determined at Court. Victoria Police only releases traffic offences where the Court outcome was imprisonment or detention.

### **Exceptions**

There are some circumstances where a record that is over ten years old may be released. These are:

- If the record includes a term of imprisonment longer than thirty months;
- If the record includes a serious offence of violence or a sex offence and the records check is for the purposes of employment or voluntary work with children, elderly, disabled or vulnerable people;
- If the record check is for the purposes of employment in prisons, State or territory police forces or the gaming industry, in which case it is mandatory that you have serious offences involving sex or violence on your record;
- In other exceptional circumstances where the release of older information is in the interests of crime prevention, the administration of justice or public safety.

If your matter resolved by diversion it will not appear on your record.

### **What won't be included on my personal police record?**

- not guilty outcomes;

- charges dropped by the police;
- on-the-spot fines and infringement notice that do not go to court (whether or not paid);
- Infringements Court (formerly PERIN Court) orders;
- police cautions;
- details of a case dealt with under a diversion program;
- Children's Court welfare orders;
- an order that you pay a civil debt;
- cases prosecuted by agencies or individuals other than police (e.g. local councils); and
- overseas cases.

### **Will a criminal record impact on my job prospects?**

Some people put details of their activist charges proudly on their resumes as a demonstration of their sincerity/dedication and concern. This may also allow you to explain and clarify the circumstances of a charge. Other people may not wish to disclose details of a criminal record for fear that it will limit their opportunities in the future.

Generally, it is unlikely that a criminal record for a minor offence will automatically be a barrier to employment. It will usually be assessed by the employer and considered according to the individual circumstances of the case. Unfortunately there are cases of discrimination based on a person's criminal record. Although there is only limited protection available to people who have been treated unfairly on the basis of having a criminal record, if you think you have been treated unfairly, you may have a remedy and should seek legal advice.

For specific information on this issue, and matters such as employment in the public service, admission to the bar, or holding public office see: [www.activistrights.org.au](http://www.activistrights.org.au) for the section relating to criminal records.

### **What if I am from overseas/ on a visa?**

#### **Can I be arrested in Australia on a visa?**

Yes, you can be arrested in Australia even if you are not an Australian citizen or permanent resident.

### **Will I be deported if I am arrested?**

You will not automatically be deported if you are arrested. However, if you are not an Australian citizen and you are convicted of an offence, depending on the nature and severity of the offence, you may receive a Notice of Intention to cancel your visa on the grounds that you are of bad character or have a substantial criminal record. This depends entirely on the nature of the offence and whether the Department of Immigration decide to issue a Notice of Intention to Cancel your visa. In practice only those who have committed offences punishable by more than 12 months imprisonment are deported or removed. However, even conduct that does not amount to a criminal offence can be used by the Minister to cancel a visa under section 501 of the Migration Act. Various factors are taken into consideration when cancelling a visa, including the nature of the offence, the circumstances, the nature of the penalty, previous criminal history and the public interest.

### **Will my overseas criminal record come up in court?**

Possibly. It depends how much information the Department of Immigration have on your overseas criminal record and whether this information is considered relevant by the prosecuting authorities. If you do have a criminal record from another country and it is placed before the court, the court will take it into consideration when determining what penalty to impose upon you.

Historically speaking, this has not occurred in forest protest matters to date.

### **Will I be able to come back to Australia?**

If your visa is cancelled under section 201 or 501 of the Migration Act, you will be barred from ever re-entering Australia. There are other bans if you have been removed from Australia which depend upon the circumstances of removal. If you have a criminal record, this will be relevant for the grant of further visas to Australia, but will not necessarily be an automatic bar to re-entry to Australia. It primarily depends upon on the seriousness of the criminal record.

## What about overseas travel?

### Going overseas

Some countries require you to disclose any past arrests or convictions on visa applications. Laws vary from country to country, and you should call the relevant consulate or embassy to find out how they use criminal records.<sup>11</sup>

Generally, for summary (minor) offences related to forest protest, your ability to travel is NOT affected. For more serious or violent offences, specific legal advice should be sought.

### Can I be searched?

Police can only search you if they suspect on reasonable grounds that you have in your possession or under your control:

- anything stolen or otherwise unlawfully obtained;
- anything used or intended to be used in the commission of an offence;
- a dangerous article that is being or was used in the commission of an offence;
- a prohibited plant or a prohibited drug.

Police can do a “strip search” if they suspect on reasonable grounds that you are carrying a weapon, illegal drugs or stolen property. It should not be conducted in a public space and should be done by a police officer of the same gender as you. Police cannot touch you improperly or conduct an external or internal physical examination without a Court order or your consent.

If you are arrested, police will routinely do a pat-down search and may remove items of property such as belts, earrings, piercings, necklaces and the contents of your pockets. Make sure that they list all of these items so that you can get them back later.

### Can I convert my fines to community service?

Please see the section on ‘Fines imposed in the Magistrate’s Court’.

### Can police take body/forensic samples in Victoria?

For police to obtain a forensic sample (blood, hair, mouth swabs etc) they require your consent or a Court order. You should refuse to consent to providing a forensic sample, and ask to speak with a lawyer.

<sup>11</sup> Two examples are as follows: (NB: The United States is included in this section as impacts of forest offences on travel to the US is frequently asked of campaign lawyers, due to the strict US entry/exit procedures).

### The United States

After 2001, the United States passed new laws that affected some aspects of the non-immigrant visa process and entry–exit procedures. In addition to being satisfied that the applicant intends to honour the terms of the visa by returning home, the consular officer must evaluate the security risk presented by the applicant. Visa applications take longer to process.

Application forms for US tourist or work visas ask the applicant whether he or she has ever been arrested for an offence, even if pardoned or the subject of an amnesty. When applying for your visa, you must declare your criminal record and state the date of the offence, the wording of the charge and the punishment. Every application is assessed on its own merits. The Embassy usually overlooks “misdemeanors” (similar to our summary offences). To get more information contact the US Embassy or go to the Destination USA website.

### United Kingdom

Australian citizens with or without criminal convictions can enter the UK without applying for a visa if they are planning to stay for less than 6 months.

If you are applying for a visa (called an Entry Clearance Certificate) for longer than 6 months you must declare your criminal record and provide documentation regarding the conviction with your application form. An examiner, who decides whether a visa will be granted, then assesses your application. Minor offences that have only attracted a fine will usually be overlooked. If you have spent 6–30 months in jail, you will have to wait until your conviction is spent before you can enter the UK. For more information visit [www.uk.emb.gov.au](http://www.uk.emb.gov.au).





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The following scenarios reflect the general application of forest laws in typical direct action scenarios.

### Scenario 1: locked on or in a tree-sit

If you are in a forest protest, locked onto a piece of logging machinery, or in a tree platform, logging contractors will generally call Vicforests and DSE. DSE employees, referred to as authorised officers, may also eventually arrive. Sometimes they have members of the Victoria police with them. Although both police officers and authorised officers have the power to charge people with relevant offences, it is usually the authorised officers who exercise these powers, while police just observe.

Most often, an authorised officer will give you an opportunity to leave, although this is not always the case. If you unlock yourself or come down from the tree sit after you are given the opportunity to do so, you might not be charged with any offence. However, the *Safety on Public Land Act* does not require authorised officers to warn you before charging you for an offence under the Act.<sup>12</sup> Accordingly, you may still be charged with an offence even if you immediately comply with a request to stop participating in the action and leave the safety zone.

When given the opportunity to leave, the authorised officer might also warn you that if you do not comply and unlock or come down, search and rescue will be called to remove you. You may also be told that you will be required to pay their costs. This is not the case. It is ultimately the Magistrate who determines whether you should pay the search and rescue costs.<sup>13</sup>

If you remain on the lock-on or in the tree sit at this point, and whether search and rescue attends to remove you or not, you are more likely to be charged with more offences. There are two further offences under the *Safety on Public Land Act* that you will be typically charged with. **Section 14(3)** of the **Safety on Public Land Act** makes it an offence to refuse to leave a public safety zone after first being directed to do leave. **Section 20** of the **Safety on Public Land Act** makes it an offence to hinder or obstruct an authorised officer who is exercising their duties under the Act unless you have a reasonable excuse. Quite often charges under Section 20 are able to be successfully defended.

### Scenario 2: on a tripod or structure

If a tripod or structure is on a logging road leading to a logging coupe, but not actually in the logging coupe and not in a public safety zone, you might be charged with obstructing a road under **Section 5** of the **Summary Offences Act**. You might also be charged with hindering or obstructing an authorised officer under **Section 96A** of the **Forests Act** or hindering or obstructing a forest operation under **Section 95A** of the **Conservation, Forests and Lands Act**.

If the tripod is in a public safety zone (so the tripod is on the road close to the logging coupe or within it) in addition to obstructing a road, you might be charged with offences under the *Safety on Public Land Act* referred to in the [TBC] section.

### Scenario 3: merely present

If you are merely present in a logging coupe within a public safety zone and have not been asked to leave, you may still be charged with carrying out an activity in the public safety zone contrary to the public safety zone declaration (**Section 1** of the *Safety on Public Land Act*). However this charge might be successfully defended depending on the circumstances (such as you have not carried out an activity) and the applicable declaration.

If you have been given a direction to leave on a prior occasion in the same public safety zone, you may also be charged with re-entry into the public safety zone (Section 15).

If an authorised officer asks you to leave and you comply with that direction, you may still be charged with carrying out an activity in the public safety zone as above. If you refuse to leave you may be charged with failing to comply with a direction to leave (Section 14(3)).

<sup>12</sup> See section that talks about Martin and Morris-Reed. See also the table in the previous section, which also explains the Act so you understand what a public safety zone is. See also section about what happens when you are charged.

<sup>13</sup> See section on when going to Court.



### Keeping records

If you are arrested, have witnessed other people being arrested, or witnessed violence by police, DSE, VicForests or logging contractors towards other activists, keep a record of every detail: who, what, when, where etc.

Write everything down as soon as possible. This information can be of critical importance in subsequent legal proceedings, either against you (for example, when you are charged with an offence), or against the police etc (for example, when you take civil action against police misconduct).

#### A Support Network

If you are due to attend a court, it can be useful to have support people there with you for support and solidarity. It is important to remember the reasons that you have been involved in a protest remain valid.

Facing the Court can be a time and resource-consuming exercise. Proceedings, particularly if you are pleading not guilty, can drag on for considerable amounts of time.

Support from other campaign/group members, family and friends can make a real difference in how you experience the Court process. The court process can be extremely isolating for those facing charges. It is important that campaigners and activists invest time and resources into supporting those facing the Court.

#### To get a lawyer or not

Understanding your legal rights and liabilities and the Court process can be complicated and intimidating for anybody without a working knowledge of the legal system. If you are confident about representing yourself in Court and have an understanding of the relevant legislation, you might consider representing yourself.

However, it is still a good idea to keep in touch with other people who were arrested so you don't feel isolated in the Court process. For most people, it is crucial to get legal advice before entering a plea, especially if they are intending to plead not guilty.

#### Keep the lawyers for forests number, or other important contacts, written on your arm.

It is very useful to have the legal contact number, and any other essential numbers (including the friend you would like to call from the police station) written on your person so that you are able to exercise your rights to make phone calls, even if your belongings have been removed.

#### Complaints Against Police

If you have been injured:

- See a doctor immediately or as soon as possible, and ensure that they provide you with a written medical report describing your injuries;
- Get someone to photograph any injuries;
- Write down as much information as you can about the person or people who injured you including name, rank, police station or similar details if DSE, VicForests or a logger;
- Write down the name of the last person to see you before you were injured and the first person to see you afterwards;
- Contact the Legal Support Team or another lawyer to help you make a formal complaint.

### Where or how should I make my complaint?

**Victoria Police Ethical Standards Department**  
All complaints about police can be made to the Victorian Police Ethical Standards Department

(ESD). Please note that ESD is a part of Victoria Police. You can also complain directly to the officer-in-charge at the station if you feel comfortable and safe doing so.

ESD has a complaint form you can fill out on their website or you can contact them to discuss your complaint:

*Victoria Police Ethical Standards Department  
Level 2, Flinders Tower  
637 Flinders St  
Melbourne 3005  
Tel: 1300 363 101*

*Mon- Fri from 8 am to 4 pm (phone messaging system operates 24 hours a day, seven days a week) [www.police.vic.gov.au](http://www.police.vic.gov.au) – follow the 'Compliments and complaints' link.*

#### Office of Police Integrity

You can also complain to the Office of Police Integrity (OPI). The OPI is an independent body and does not work for Victoria Police. The OPI has the power to investigate things like serious corruption, but does not have the authority to investigate all complaints. By law, the OPI may have to give your complaint to ESD to handle.

#### Other police complaint issues:

Where you do not feel safe or comfortable making a police complaint via the ESD or the OPI, you do not feel your complaint will be/ has been handled fairly, or you would like to discuss options for following up police misconduct, please contact a campaign lawyer.

Where excessive force has been used, civil legal proceedings can make police accountable for their actions. Civil legal proceedings may be expensive and can take a long time to finalise. Seek specialist legal advice before taking such action.



Pic:

For further information or to request free legal advice or representation, please contact LFF by email:  
[lff@lawyersforforests.asn.au](mailto:lff@lawyersforforests.asn.au)  
Phone: 0423 254 514  
Or visit LFF's website [www.lawyersforforests.asn.au](http://www.lawyersforforests.asn.au).

*This guide was prepared on behalf of Lawyers For Forests, and authored by Lauren Caulfield, Vanessa Bleyer and Neal Funnell. Please email [lff@lawyersforforests.asn.au](mailto:lff@lawyersforforests.asn.au) with any feedback, information, comments or updates. Thank you to Fiona York, Tyron Wood, Alice Cregan, David Caldwell, John Flynn, Luke Chamberlain, Louise Morris, Amelia Young and 'activistrights.org.au' for contributions, information, images and editing work. Thank you to Willhemina Wahlin for design and layout. Thanks to The Wilderness Society Vic. and the Australian Conservation Foundation for donations to cover printing costs.*

## Activist Rights

[www.activistrights.org.au](http://www.activistrights.org.au)

For activist legal information, including information on police tactics, security laws and activist surveillance, we thoroughly recommend you visit this website for easy, downloadable fact sheets from the good folks at Fitzroy Legal Service (and the longstanding work of the Activist Defence Network).

## The Environmental Defenders Office

[www.edo.org.au/edovic](http://www.edo.org.au/edovic)

The EDO is an independent, non-profit, community legal service, specialising in public interest environmental law. The EDO provide planning and environmental law advice and assistance to people who wish to protect the environment and who cannot otherwise afford to pay for private lawyers, and also facilitate legal research.

## Legal Aid

To download publications, including 'Police Powers: Your rights in Victoria' or to examine your eligibility for legal aid, visit [www.legalaid.vic.gov.au](http://www.legalaid.vic.gov.au)

## Legislation

You can look up the offences and penalties discussed above, including those stipulated by The Safety on Public Land Act, the Sentencing Act and the Summary Offences Act (Vic) at [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au).



Pic: Luke Chamberlain



[www.lawyersforforests.asn.au](http://www.lawyersforforests.asn.au)