

PROTEST IN THE FOREST:

Legal guide for forest protectors in Victoria

June 2023



Acknowledgement of Country

We pay our respects to Traditional Owners and acknowledge their continuing connection to culture, community, sea, rivers and land, including Victoria's ancient forests. We acknowledge that we live and work on stolen lands and that sovereignty was never ceded.

There is no justice without First Nations justice.

This Guide is a joint publication by Environmental Justice Australia and Lawyers for Forests.

This Guide is for information purposes only. It is not legal advice and should not be relied upon as legal advice. Information in this Guide is based on the most common forest protest-related scenarios in Victoria and refers to the most frequently used charges. Situations vary, and the police and the Game Management Authority can charge people with offences that are not referred to in this Guide. To seek specific advice and for further information, please see the Contacts and Other Resources section.

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

For further information or to request free legal advice or representation, please contact Environmental Justice Australia or Lawyers for Forests via the details in the Contacts and further resources section.

This Guide reflects legislation in effect as at 20 May 2023.

CONTENTS

Introduction	3
01 Legal framework	5
02 Who's who?	6
03 In the forest	9
04 Common offences and penalties	10
05 Knowing your rights	13
06 Infringement notices	17
07 Charge sheets	20
08 Going to court	21
09 Criminal convictions	27
FAQs	31
Contacts and further resources	32

As our climate and ecosystems collapse before our eyes, **the right to protest native forest logging is more important than ever.**

INTRODUCTION

Communities have long used peaceful protest to safeguard important environmental and civic values. **Protesters have played a significant role in the campaign to protect** Victoria's old growth forests, water catchments and threatened species habitats from the impacts of native forest logging.

Across the continent, we are seeing an alarming trend of state governments moving to impose tighter restrictions and harsher penalties on protestors standing up for our forests and the animals that live in them.

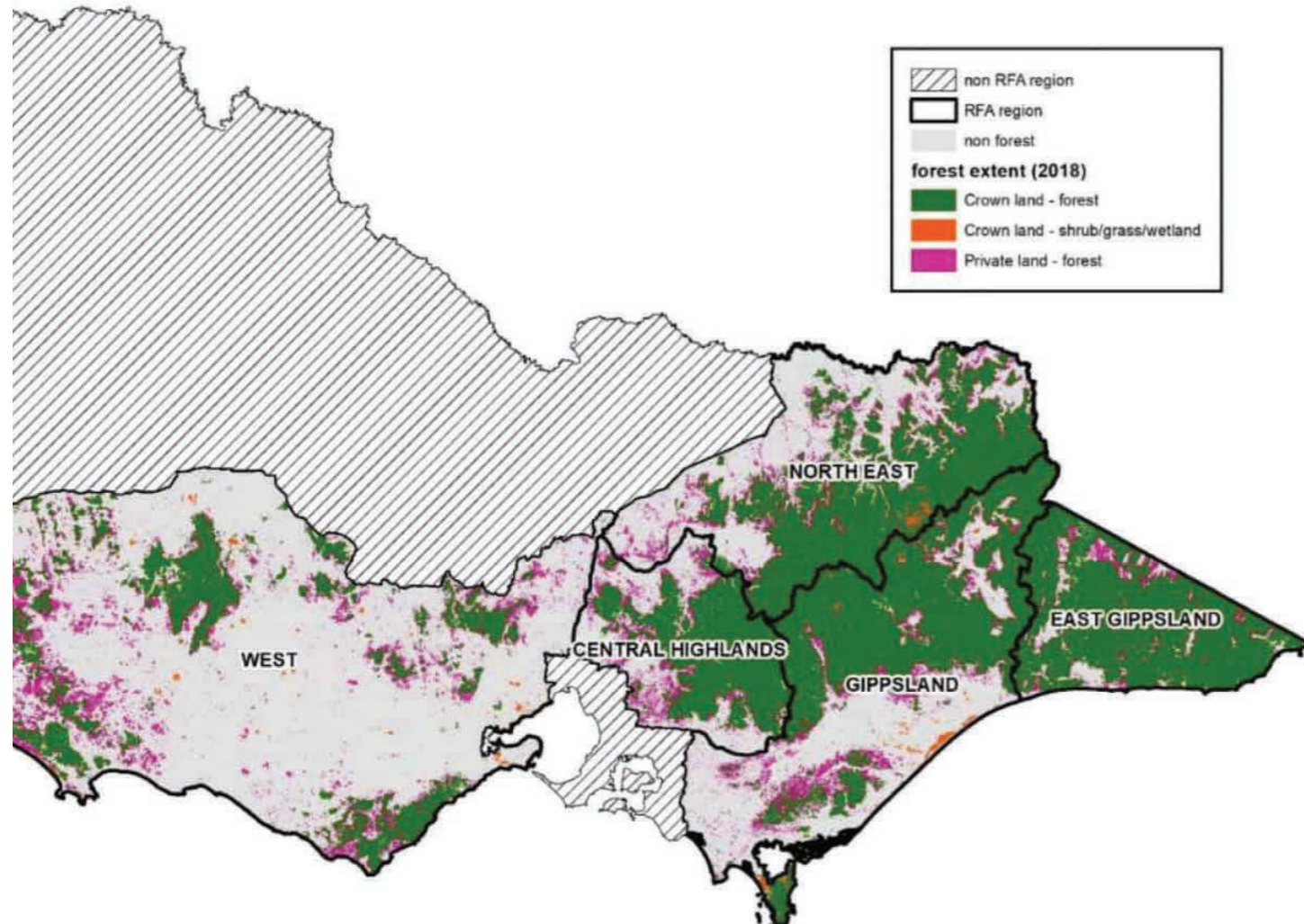
In the face of catastrophic bushfires and as our climate and ecosystems collapse before our eyes, **the right to protest native forest logging is more important than ever.**

This guide, prepared by Environmental Justice Australia (EJA) and Lawyers for Forests Inc. (LFF), responds to some of the most common legal questions and issues that arise in forest actions. The guide incorporates the amendments to forest protest laws in the ***Sustainable Forests Timber Act 2004*** (Vic) in effect from 20 May 2023.

ABBREVIATIONS

CCO	Community Correction Order
DEECA	Department of Energy, Environment and Climate Action
DFA	Defined Forest Area
EJA	Environmental Justice Australia
GMA	Game Management Authority
LFF	Lawyers for Forests
SFT Act	<i>Sustainable Forest (Timber) Act 2004</i> (Vic)
The Code	The Code of Practice for Timber Production 2014 (as amended)
THSZ	Timber Harvesting Safety Zone
TRP	Timber Release Plan
TUP	Timber Utilisation Plan

Map of RFA Regions in Victoria



Source: <https://vnpa.org.au/another-decade/>

01 THE LEGAL FRAMEWORK

The key Act governing both logging and protests in Victoria's forests is the ***Sustainable Forest (Timber) Act 2004 (Vic)***. It sets out rules that govern logging operators in the forest, and also establishes criminal offences that apply to community members in and around logging coupes in certain circumstances.

Which laws apply?

The Code of Practice for Timber Production 2014 (the Code) is the primary instrument regulating native forest logging in Victoria. The Code regulates commercial native forest logging in Victoria's forests and applies to logging operators, including VicForests. The Code sets out environmental rules that apply to VicForests and contractors when planning and conducting logging operations.

The Sustainable Forest (Timber) Act 2004 (Vic) (the SFT Act) sets out laws that manage logging in Victorian state forests. This includes regulating and defining Timber Harvesting Safety Zones (THSZ) in Victorian forests (see more on Timber Harvesting Safety Zones in Section 3 below).

The SFT Act also contains criminal offences that apply to community members in Timber Harvesting Safety Zones and in some other circumstances. Particular government authorities are empowered to enforce these laws in the forest.

The SFT Act applies to coupes on both the **Timber Release Plan (TRP)** and the **Timber Utilization Plan (TUP)**.

- The TRP lists coupes selected by VicForests for logging in Eastern Victoria (generally, east of the Hume Highway, including the Central Highlands, Gippsland, East Gippsland and the North East). The TRP is the plan prepared by VicForests for logging within the area allocated to it by the Victorian Government via the Allocation Order.
- The TUP lists coupes selected by VicForests for logging in Western Victoria, and in parts of Eastern Victoria that are not covered by an Allocation Order. TUP coupes require the issuing of a Forest Produce Licence prior to harvesting under section 52 of the Forest Act 1958 (Vic).

There are different obligations on VicForests to give notice of a Timber Harvesting Safety Zone for a coupe depending on whether the coupe is on the TRP or the TUP (see Section 3: How do I know if I'm in a Timber Harvesting Safety Zone?).

What does "timber harvesting operations" include?

Timber harvesting operations are defined in section 3, SFT Act as any activities carried out for the purposes of:

- Felling or cutting trees, taking or removing timber, delivering or transporting timber to a buyer for collection or sale, and any works or roadworks ancillary to those activities; or
- The provision or use of machinery or equipment for timber harvesting in a Timber Harvesting Safety Zone; or
- Engaging in timber harvesting operations in a Timber Harvesting Safety Zone as an authorised person; or
- The supply of pulpwood in accordance with the Plan of Utilization and the Wood Pulp Agreement; or
- Regeneration burning.

What is a "coupe"?

Coupe is defined in section 3, SFT Act as a specific area of State forest identified for the purposes of timber harvesting and regeneration in a timber release plan and in Part 7A, including:

- a coupe specified in a Wood Utilisation Plan prepared under the Code of Practice for Timber Production made under Part 5 of the Conservation, Forests and Lands Act 1987 (Vic);
- an area specified in a licence granted under section 52 of the Forests Act 1958.

02 WHO'S WHO

A number of key government agencies and departments are involved in logging and regulating community interaction with logging in the forest.

VicForests is the state-owned commercial enterprise that conducts timber harvesting in Victorian State forests.

The Department of Energy, Environment and Climate Action (DEECA) prosecutes community members for common charges laid during forest protests. It is also the Victorian government department responsible for regulating VicForests.

Game Management Authority officers are authorised to enforce laws under the SFT Act, including giving directions to community members and investigating alleged offences. Game Management Authority Officers are often 'authorised officers' under the SFT Act. They are otherwise responsible for regulating game hunting activity in Victoria.

Fines Victoria is the government body tasked with administering and enforcing fines across the state – including fines issued under the SFT Act.

An **“authorised officer”** is an officer appointed by a government authority who has the power to charge people with offences and enforce laws under the SFT Act. Game Management Authority officers are often authorised officers.

An **“authorised person”** is someone who is undertaking an activity in the forest as a function of the government or in accordance with a licence. It can also cover members of a Traditional Owner group under certain circumstances. Authorised persons do not have power to enforce laws under the SFT Act, and cannot give directions to the public, make arrests or request a name and address.

VicForests

VicForests is a state-owned enterprise established under the State Owned Enterprises Act 1992 (Vic) that conducts commercial logging operations and regeneration burning in Victorian State forests. All timber resources in State forests are the property of the Crown, however the Minister may allocate timber to VicForests for the purposes of harvesting and selling timber resources under section 13 of the SFT Act.

Details of the areas of forest (logging coupes) that VicForests intends to harvest, including the location and size of the coupes, are contained in the TRP and TUP.

Department of Energy, Environment and Climate Action (DEECA)

DEECA (formerly known as the Department of Environment, Land, Water and Planning (DELWP)) is the government department responsible for regulating VicForests. DEECA is more broadly responsible for:

- Forest management policy and planning including the regulation of commercial forest uses, such as logging across the state.
- Bushfire management as well as the administration and approval of fire in the landscape including regeneration burning.
- Landscape level biodiversity, weed and pest management.

DEECA also acts as the prosecuting agency on behalf of GMA when people are charged with offences under the SFT Act. The Department of Jobs, Precincts and Regions (DJPR) was previously responsible for prosecuting offences under the SFT Act on behalf of GMA. However, on 1 January 2023 the Resources and Agriculture divisions of DJPR moved into DEECA and DEECA took over responsibility for matters involving SFT Act offences.

Office of the Conservation Regulator (OCR)

The OCR was established by DELWP in 2019 in response to an independent review of timber harvesting regulation in Victoria's public native forests which found that DELWP was 'neither an effective nor respected regulator'. The OCR is led by the Chief Conservation Regulator and it includes the Forest Protection Survey Program (FPSP) and the Timber Harvesting Compliance Unit (THCU). The OCR exercises some of DEECA's regulatory powers, including its timber harvesting responsibilities.

The OCR does not regulate planned burning undertaken by VicForests on behalf of Forest Fire Management Victoria.

Game Management Authority (GMA)

The GMA is established under the Game Management Authority Act 2014 (Vic) primarily to regulate and investigate activity related to game hunting in Victoria. However, GMA officers are also authorised officers under the SFT Act and usually act as the informants and arresting officers in matters involving alleged offences by community members in Victoria's forests, including in Timber Harvesting Safety Zones. GMA officers attend protests and are empowered to enforce laws under the SFT Act – including to give certain directions to people, to ask for names and addresses, and to conduct interviews relating to offences under the SFT Act (see Section 5: Knowing your rights and responsibilities).

Fines Victoria

Fines Victoria is the Government body responsible for managing the administration and enforcement of infringement fines and court fines across Victoria. This includes infringement notices issued by the GMA for offences under the SFT Act.

Who is an “authorised officer”?

An “Authorised officer” can be an Officer:

- (a) Appointed under Part 9 of the Conservation, Forests and Lands Act 1987 (Vic); or
- (b) Appointed by the Game Management Authority under Part 3 of the Game Management Authority Act 2014; or
- (c) Appointed by the Victorian Fisheries Authority under Part 3 of the Victorian Fisheries Authority Act 2016.

Often, Game Management Authority officers are authorised officers.

Who is an “authorised person”?

An “authorised person” is defined in Schedule 2 of the SFT Act.

Typically, this is someone who is in the forest performing a function or exercising a power of the government, or in accordance with a licence. It also includes a person who is a member of a Traditional Owner group when that person is acting under and in accordance with an agreement under Part 6 of the Traditional Owner Settlement Act 2010 (Vic).



NOTICE OF TIMBER HARVESTING SAFETY ZONE

Section 77C, Sustainable Forests (Timber) Act 2004 ('the Act')

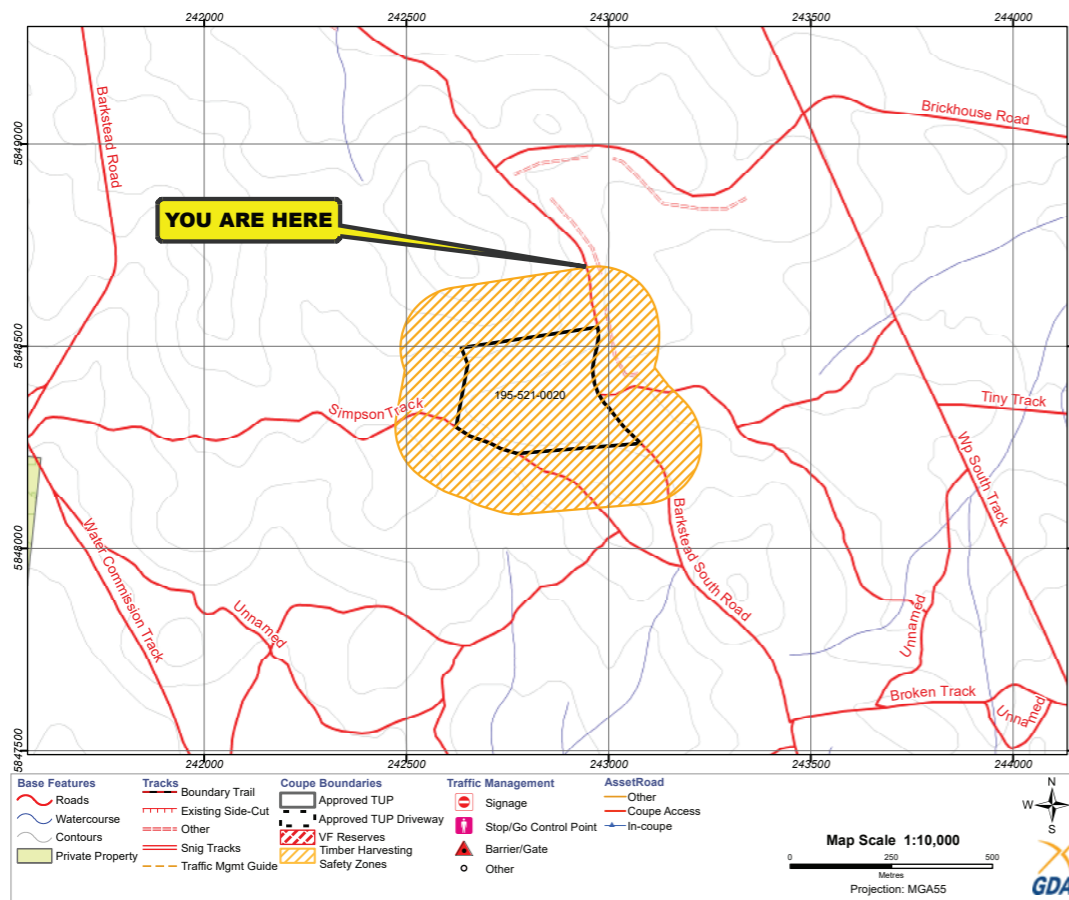
The area shown on the map below bounded by the striped orange border is a **timber harvesting safety zone** within the meaning of section 77B of the Act.

<p>The timber harvesting safety zone is comprised of all of the following:</p> <ul style="list-style-type: none"> Coupe(s) 195-521-0020 State forest within 150 metres from the boundary of the above coupe(s) Any road that is closed 	<p>Commencement</p> <p>Timber harvesting operations in the timber harvesting safety zone specified in this Notice commence on:</p> <p style="text-align: center;">/ /</p>
---	---

Offences and penalties

Offences and penalties apply in the **timber harvesting safety zone** specified in this Notice. Offences include:

- To enter or remain in the timber harvesting safety zone
- To be in possession of a prohibited thing in a timber harvesting safety zone
- To allow a dog to enter a timber harvesting safety zone.
- To remove or destroy a barrier or fence.
- To remove or destroy a notice.



This publication is made available for information purposes only. While VicForests endeavours to ensure the most accurate information is available, VicForests makes no claims or guarantees as to its accuracy, completeness or adequacy. VicForests expressly disclaims all liability for any error, loss or other consequence arising from any use of this publication. Information identified as modelled features will require field confirmation. Species detections are subject to updating.

03 IN THE FOREST - UNDERSTANDING TIMBER HARVESTING SAFETY ZONES

A Timber Harvesting Safety Zone is a coupe, any road within the coupe that is closed for timber harvesting, and forest within 150m of the coupe boundary, where correct notice of the Timber Harvesting Safety Zone is in place.

Logging operators must give notice of a Timber Harvesting Safety Zone before timber harvesting begins and must display information about the location of the zone, logging commencement date, and offences and penalties which apply in the zone.

There are a number of offences which you can be charged with for taking direct action in the forest, and a number of rights and responsibilities you have – see Table below.

The authority conducting the operations must ensure that a notice is conspicuously displayed on or near the zone including on any road that is an entry point to the zone and that the notice:

- Specifies the location of the Timber Harvesting Safety Zone; and
- Specifies the commencement date of timber harvesting operations in that zone; and
- States the offences and penalties which apply in that zone.

In the case of timber harvesting operations conducted by VicForests in a coupe on the TRP, the notice must also be published on VicForests’ website. (See Section 1: Legal framework for more information on the TRP and TUP).

If you believe that a notice did not comply with these requirements, and you have been charged with or fined for an offence relating to a Timber Harvesting Safety Zone, you should seek legal advice.

What is a “Timber Harvesting Safety Zone”?

A Timber Harvesting Safety Zone (THSZ) is defined in section 77B, SFT Act as:

- A coupe; and
- Any road that is within that coupe that has been closed for the purposes of timber harvesting operations; and
- Any area of State forest that is within 150 metres from the boundary of that coupe.

A coupe is an area of forest designated for timber harvesting in a Timber Release Plan or a Timber Utilisation Plan.

What offences relate to Timber Harvesting Safety Zones?

Offences relating to Timber Harvesting Safety Zones are the most common infringement or charge that people protesting logging in Victoria’s forests receive. It is common for these offences to be dealt with as infringements, but charges are laid in some circumstances. Infringements are more common where a person is merely present in, or entered, a Timber Harvesting Safety Zone, particularly when the person has not received an infringement for a similar offence before. Charges are more common where a person is in a tree sit or locked to machinery.

How do I know if I’m in a Timber Harvesting Safety Zone?

Logging operators must comply with specific requirements to give notice of a Timber Harvesting Safety Zone before timber harvesting activities commence and during timber harvesting activities: section 77C, SFT Act.

Common offences include:

- Hinder, obstruct and interfere with timber harvesting operations with or without a prohibited thing.
- Enter or remain in a Timber Harvesting Safety Zone, where correct notice of the Timber Harvesting Safety Zone has been given.
- Possess a prohibited thing in a Timber Harvesting Safety Zone.
- Failure to comply with a direction made by an Authorised Officer to leave a Timber Harvesting Safety Zone, or to stop or remove a vehicle from a Timber Harvesting Safety Zone.

See the Table of Offences below for more information.

Source: <https://www.vicforests.com.au/operations/timber-harvesting-safety>. This is a copy of Timber Harvesting Safety Zone notice in Daylseyford, current as at June 2023. It is provided as an example only.

04 COMMON OFFENCES

This section covers the most common offences people are charged with for taking action in a forest, **your rights and responsibilities under the law**, and maximum penalties that may apply.

You have rights and responsibilities when interacting with authorised officers and police, which cover things like providing personal information, declining to answer questions, access to a support person, and search and seizure. These are also outlined in this section.

In some cases, consequences such as arrest, bail or a banning notice may apply to you. It's important to understand how these work. The most common offences people are charged with for taking direct action in forests are listed in the table below. It is important to note that, in some cases, you may receive a Charge-Sheet or infringement notice at a later date, even if you did not see or speak to any authorised officers on the alleged offence date.

Table of common offences and maximum penalties (from 20 May 2023)

Section in SFT Act	Description	Maximum penalty*	Specified offence
s77D	Direction to leave a timber harvesting safety zone (1.) An authorised officer may direct a person to leave a THSZ (and not re-enter the zone) in a manner specified in the direction. (2.) A person must not refuse or fail to comply with a direction under subsection (1).	60 penalty units	Yes
s77E	Direction to stop or move a vehicle in a THSZ (1.) An authorised officer may direct a person operating a vehicle in a THSZ to stop or manoeuvre the vehicle in a manner specified in the direction. (2.) A person must not refuse or fail to comply with a direction under subsection (1).	60 penalty units	Yes
s77G	Offence to enter or remain in a THSZ A person (other than an authorised person) must not enter, or remain in, a THSZ notice of which has been given in accordance with section 77C.	60 penalty units	Yes
s77H	Offence to be in possession of a prohibited thing in a THSZ A person (other than an authorised person) must not be in possession of a prohibited thing in a THSZ notice of which has been given in accordance with section 77C.	60 penalty units	Yes
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 THSZ.	60 penalty units	Yes
s77K	Offence to remove or destroy Notice A person must not unlawfully either alter, obliterate, remove or destroy a notice displayed in accordance with section 77C.	60 penalty units	Yes
s84	Offence to refuse to provide correct name and address when requested If an authorised officer believes on reasonable grounds that a person has committed or is committing an offence against this Act or the regulations, the officer may ask the person to state his or her name and ordinary place of residence or business. (See Section 5: Do I have to give my name and address? below).	20 penalty units	No

Section in SFT Act	Description	Maximum penalty*	Specified offence
s86	Offence to hinder or obstruct an 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.	120 penalty units or 12 months imprisonment	Yes
s87	Offence to threaten or abuse an authorised officer A person must not threaten or abuse an authorised officer who is exercising that authorised officer's duties or powers under this Act or the regulations.	120 penalty units or 12 months imprisonment	Yes
s94A	Offence to hinder, obstruct or interfere with timber harvesting operations by using a prohibited thing A person must not intentionally hinder, obstruct or interfere with timber harvesting operations by using a prohibited thing.	120 penalty units or 12 months imprisonment	Yes
s94B	Offence to hinder, obstruct or interfere with timber harvesting operations A person must not hinder, obstruct or interfere with timber harvesting operations.	60 penalty units	Yes
s94F	Offence to contravene exclusion order A person in respect of whom an exclusion order is made must not in contravention of the order – (a.) Enter or re-enter the THSZ or area of State forest; or (b.) Remain in the THSZ or area of State forest	120 penalty units	Yes
s94H	Offence to refuse or fail to comply with direction to leave area to which exclusion order applies A person to whom direction under section 94G is given must not refuse or fail to comply with that direction.	120 penalty units	Yes
s94CD	Offence to contravene a banning notice A person to whom a banning notice is given must not, in contravention of the notice, enter, re-enter or remain in the timber harvesting safety zone specified in the banning notice.	60 penalty units	Yes
s94CF	Offence to contravene a direction to leave area to which banning notice applies A person to whom a direction under section 94CE is given must not contravene that direction.	60 penalty units	Yes

*Notes:

- The penalties above are the maximum possible penalties available to the court and are reserved for the very worst-case scenario.
- Under the laws in place prior to the 2022 amendments, no person had been fined the maximum penalty nor given a sentence of imprisonment.
- The actual penalty imposed is decided by a Magistrate in court who considers an appropriate penalty for each individual charged. The Magistrate considers things like the circumstances of the offending and your personal and financial circumstances, including any prior criminal history. See section below that deals with Going to Court.
- The Magistrate can impose a range of penalties other than a fine or imprisonment – including diversion, an undertaking to be of good behaviour and a community corrections order see Section 8: Going to court for more information.
- Penalty units are used to define the amount payable for fines for many offences. One penalty unit is \$184.92 in the 2022-23 financial year, and increases a little each year. For more information and updated values, see: <https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values>.

Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has.

- MARGARET MEAD

05 KNOWING YOUR RIGHTS AND RESPONSIBILITIES

In some cases, a failure to follow lawful directions or provide information when requested may result in additional charges against you. Important information about your rights and responsibilities when you are interacting with authorised officers and police is below.

Authorised officers and police exercising their powers may or not be in uniform, however must always carry official identification.

Do I have to give my name and address to an authorised officer or police?

It is an offence to refuse to provide your name and address, or give a false name and address, without a reasonable excuse if requested by an authorised officer who believes on reasonable grounds that you have committed or are committing an offence under the SFT Act: section 84, SFT Act (see Section 4: Table of Offences). In making the request, the authorised officer must inform you of the grounds for their belief. The same applies with police.

It is not an offence for a person to fail to comply with a request for your name and address if the authorised officer:

- (a) Did not inform you, at the time the request was made, that it is an offence to fail to comply with the request; or
- (b) Did not identify themselves and produce proof of their identity and official status before making the request.

If an authorised officer suspects on reasonable grounds that the name and address you provide them is false, the authorised officer may request that you produce evidence of the correctness of the name and address provided (for example, by showing ID). It is an offence to fail to provide identification without reasonable excuse in these circumstances.

What constitutes 'reasonable grounds' or a 'reasonable belief' will depend on the circumstances, however the courts have observed that this must be more than a mere suspicion.

Do I have to leave an area if directed?

An authorised officer (not police) can direct you to leave a Timber Harvesting Safety Zone. It is an offence to refuse or fail to comply with a direction made by an authorised officer to leave a Timber Harvesting Safety Zone and not re-enter a Timber Harvesting Safety Zone: section 77D (see Table of Offences in Section 4, and 'Banning Notices' in this Section). If a person is merely present in a Timber Harvesting Safety Zone, this offence is commonly dealt with as an infringement, particularly if the person has not previously received an infringement for a similar offence. If a person is in a tree sit or locked to machinery and fails to leave the Timber Harvesting Safety Zone when directed, it is common for that person to be charged for this offence.

Either an authorised officer or police officer can direct you to leave a timber harvesting safety zone if you are contravening:

- (a) a banning notice (see 'Banning Notices' in this section); or
- (b) an exclusion order (see Section 8: Going to court-Other Orders).

Do I have to stop or move my vehicle in a Timber Harvesting Safety Zone if directed?

An authorised officer can direct you to stop or move your vehicle in a Timber Harvesting Safety Zone. It is an offence to refuse or fail to comply with a direction made by an authorised officer to stop or move your vehicle in the manner specified in that direction: section 77E (see Table of Offences in Section 4).

Do I have to stop or move my vehicle?

Obstructing timber harvesting operations or an authorised officer is an offence: section 94B and section 86, SFT Act. If using a prohibited thing, there is a higher possible maximum penalty: section 94A (see Table of Offences in Section 4).

An authorised officer may direct an owner of, or person responsible for, an obstruction in a State forest to remove it from any road or track or area where timber harvesting operations are being carried out. This may be done in writing or orally and must specify the time by which the obstruction must be removed: section 93, SFT Act. If you do not comply with the direction, without reasonable excuse, the authorised officer may remove the obstruction instead: section 94, SFT Act.

Do I have to answer questions from an authorised officer or police?

You do not have to answer any questions, except to provide your name and address in the circumstances set out above. You have the right to answer “no comment” to all other questions.

There are no off the record conversations with authorised officers or police. Many people are charged or found guilty based on statements made to authorised officers or police in the forest, in interviews, or given by other people in conversation. Authorised officers and police will generally record conversations with a body worn camera and those recordings can be used as evidence later.

You have the right to silence, that means that refusing to answer questions cannot be used against you in court to infer guilt. However, if you answer some questions and not others, this can be used against you. If you answer “no comment”, it is best to be consistent with this.

Do I have to participate in an interview with police or an authorised officer?

No. You do not have to accept an offer to attend or participate in an interview with an authorised officer or with police. During an interview, you do not have to answer any questions other than to provide your name and address. You can answer ‘no comment’ to all other questions.

If you do choose to participate in an interview, some information about the procedure is below.

At the commencement of the interview, the officer conducting the interview must caution you and explain your rights to you, including your right to remain silent and your right to contact:

- a friend or relative
- a lawyer
- if you are on a visa, the consular office of your home country.

Before asking you any questions, the officer conducting the interview must contact:

- the Victorian Aboriginal Legal Service (VALS) within one hour of you being taken into custody, if you identify as Aboriginal: section 464FA, Crimes Act.
- an interpreter, if you require one: section 464D, Crimes Act.

The officer conducting the interview must give you a copy of the recording after the interview has concluded.

Accessing 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 or an authorised officer questions you. Ask for this if the officer does not offer. The officer must give you a private space to use the phone. A private space is where the officer cannot hear you speak on the phone.

When can an authorised officer or police search me?

An authorised officer or police officer may search you under some circumstances.

An authorised officer can only search a person inside a Timber Harvesting Safety Zone: section 88A(3).

If an authorised officer or police officer believes on reasonable grounds that you have committed, are committing, or are about to commit, an offence listed in the table above, they may search any vehicle, bag, container or other receptible if they believe on reasonable grounds that it may be or contain:

- (a) A prohibited thing (see ‘What is a prohibited thing?’ below); or
- (b) Another item used or about to be used in the commission of an offence.

Police can only search a person inside a Timber Harvesting Safety Zone for a prohibited thing or an item used, being used, or about to be used in the commission of an offence listed in the Table above.

Authorised officers and police officers are not permitted to conduct a body search.

Outside a Timber Harvesting Safety Zone, authorised officers are not empowered to conduct any searches.

Outside a Timber Harvesting Safety Zone, police have certain search powers. Police can search you in a public place, without a warrant, if they reasonably suspect you:

- have illegal drugs.
- have things that can explode or ignite.
- have guns or weapons like knives, imitation guns, knuckle-dusters or nunchakus.
- are in an area formally designated as a place where a lot of violent crime happens (termed a ‘designated area’).
- have something that could be used to make graffiti, for example, spray paint, gouging tool or even a texta (however, for graffiti offences you must be on or near public transport

property or trespassing on someone else’s property for police to have power to search for these things).

Police can search anything you are carrying and the car you are in. They can search your car even if you are not in it.

Police require a warrant to search you for anything else. If police do not have a warrant, they might ask you if you will let them search you. This is called ‘search by consent’. You can say no. The police cannot force you to consent to a search.

General information about police powers is available here: <https://activistrights.org.au/kb/police-powers-and-your-rights/being-searched/>

When can an authorised officer seize my property?

An authorised officer may seize any item they believe was used, is being used, or is about to be used to commit an offence, if they believe on reasonable grounds that you have committed, are committing, or are about to commit, an offence against the SFT Act or the regulations: section 88, SFT Act.

An authorised officer or police can only exercise their power to seize a prohibited thing or an item they believe was used or is about to be used in the commission of an offence in a timber harvesting safety zone: section 88A(1).

After seizing any items, an authorised officer must inform you of your right to have your property returned and immediately provide you with a receipt stating:

- The nature of the item seized; and
- The date and time that the authorised officer took possession of the item; and
- The name of the authorised officer who seized the item and the address where the item will be held: section 88(2), SFT Act.

You should provide a copy of the receipt to your lawyer.

What is a prohibited thing?

A prohibited thing is defined in section 3, SFT Act as:

- A bolt cutter;
- Cement or mortar mix;
- A constructed metal or timber frame;
- A linked or a heavy steel chain;
- A shackle or joining clip;
- Polyvinyl chloride (PVC) pipe or metal pipe; or
- Any other prescribed prohibited thing*.

*The Governor in Council may make regulations to prescribe any item or thing which is capable of hindering, obstructing or interfering with timber harvesting operations as a prohibited thing: section 96(1)(d), SFT Act. As at May 2023, there are no other prescribed prohibited things.

Can I get my property back?

Your right to have your property returned to you will depend on the property in question (particularly whether it is a ‘prohibited thing’ or not) and whether you are charged with an offence or receive an infringement notice for an offence under the SFT Act.

If the item is a ‘prohibited thing’, it is likely that it will not be returned to you and will instead be forfeited to the Crown: sections 89A(5) and 91 SFT Act.

If the item is not a ‘prohibited thing’ and...

... you are not charged with an offence within 90 days of the property being seized	an authorised officer must return it to you within that 90-day period. You may also apply to the authorised officer to have it returned to you earlier.	s 89
... you are charged with an offence within 90 days of the property being seized	you should seek legal advice about your right to have the property returned to you (for example, if an authorised officer seizes your vehicle, camping gear or electronic devices). Your lawyer can request the return of your property on your behalf. It is possible that the property will not be returned to you until after your court matter is finalised or it may be the subject of an application for a Forfeiture Order if you are found guilty (See 8: Going to court (Other Orders – Forfeiture)). If you are found not guilty, you are entitled to recover the seized property, or, if it has been destroyed, compensation equal to the market value of the item at the time of the seizure.	s 90
... you receive an infringement notice for an offence under section 77H, SFT Act but the infringement notice is later withdrawn (and no Official Warning is issued in its place)	an authorised officer must take reasonable steps to return the property to you within 90 days of the infringement notice being withdrawn.	s 89A

See 8: Going to court (Other Orders – Forfeiture).

Arrests

Authorised officers and police can arrest a person that they find committing an offence where they believe, on reasonable grounds, the arrest is necessary to ensure the attendance of the arrestee at court, to preserve public order, to prevent continuation or repetition of the offence or commission of further offences, or for the safety of the public or the offender.

Authorised officers and police are not required to give you a warning prior to arresting you, but sometimes they will. An authorised officer or police must formally tell you they are arresting you, and what for, and if they don't, you should ask and remember what they say. The officer must tell you that you are under arrest as soon as it is practicable to do so.

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 cooperate, but an authorised officer may then use 'reasonable force' to take you into custody.

See also 'FAQs: What can I do if I have been treated unfairly by an authorised officer?'

Bail

If you are offered bail that includes special conditions which you do not agree with, you can:

1. Ask the police to contact your lawyer or legal support and put you on the phone to speak to them.
2. Refuse to sign the bail form. This means that you may be kept in custody until you sign the form, or the police change the conditions or take you before a Magistrate. You or your legal representative can ask the police or a Magistrate for the conditions to be changed or removed.
3. 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 date (see Section 8: Going to court – Bail).

Banning Notices

The Sustainable Forests Timber Amendment (Timber Harvesting Safety Zones) Bill introduced new provisions that enable authorised officers or police officers to issue banning notices to people in the forest if they suspect on reasonable grounds that a person has committed, or is committing, a 'specified offence'.

'Specified offence' is defined in section 94C, SFT Act and includes most of the offences listed in the Table of Offences in Section 4 (see 'specified offence' column).

Before giving a banning notice, an authorised officer or police officer must produce evidence of their identity.

The period specified in the banning notice must not exceed 28 days including the date on which the notice is given. It must state:

- The name of the person to whom the notice is given; and
- The specified offence that the authorised officer or police officer giving the notice suspects that the person has the name of the authorised officer or police officer giving the notice and:
 - In the case of a notice given by an authorised officer, the officer's employer and place of duty; or
 - In the case of a notice given by a police officer, the police officer's rank and place of duty; and
- The specified timber harvesting safety zone in which the banning notice applies; and
- The specified period for which, and the times during which, the notice applies; and
- That the person must not enter or re-enter the timber harvesting safety zone to which the notice applies during the specified period of the notice; and
- That if the person is in the timber harvesting safety zone to which the notice applies, the person must leave the area without delay; and
- That it is an offence to contravene the notice; and
- That it is an offence to contravene a direction given by an authorised officer or a police officer to leave the timber harvesting safety zone to which the notice applies; and
- The maximum penalties for those offences; and that the notice may be varied or revoked.

A banning notice may be varied or revoked in certain circumstances: section 94CC, SFT Act.



06 INFRINGEMENT NOTICES

Infringement notices, also known as fines, can be issued to you if it is alleged that you have committed an offence outlined below.

If you receive an Infringement Notice in the mail, you may:

1. Submit an internal review application to seek to have the fine withdrawn;
2. Request that the matter be heard in court; or
3. Pay the fine.

Paying an infringement notice is not an admission of guilt and will not appear on your criminal history: section 32, Infringements Act 2006 (Vic).

An authorised officer may give you an infringement notice instead of charging you if the alleged offence is listed in Schedule 9 to the Conservation, Forests and Lands (Infringement Notice) Regulations 2013 (Vic), as follows:

Section	Description	Infringement amount*
s77D	Direction to leave a Timber Harvesting Safety Zone (1.) An authorised officer may direct a person to leave a THSZ (and not re-enter the zone) in a manner specified in the direction. (2.) A person must not refuse or fail to comply with a direction under subsection (1).	4 penalty units (\$739.68)
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 THSZ to stop or manoeuvre the vehicle in a manner specified in the direction. (2.) A person must not refuse or fail to comply with a direction under subsection (1).	4 penalty units (\$739.68)
s77G	Offence to enter or remain in a Timber Harvesting Safety Zone A person (other than an authorised person) must not enter, or remain in, a THSZ notice of which has been given in accordance with section 77C.	3 penalty units (\$554.76)
s77H	Offence to be in possession of a prohibited thing in a Timber Harvesting Safety Zone A person (other than an authorised person) must not be in possession of a prohibited thing in a THSZ notice of which has been given in accordance with section 77C.	4 penalty units (\$739.68)
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 THSZ.	6 penalty units (\$1,109.52)
s77K	Offence to remove or destroy Notice A person must not unlawfully either alter, obliterate, remove or destroy a notice displayed in accordance with section 77C.	6 penalty units (\$1,109.52)

- The penalty units prescribed for infringements are the set amount that you will be fined under the infringement notice for the offence, up to 30 June 2023. For infringements, the court does not select a penalty individually for each person based on their circumstances.
- One penalty unit is \$184.92 in the 2022-23 financial year, and it increases a little each year.
- You have rights to a process to seek review and withdrawal of infringement notices.

How you choose to deal with the Infringement Notice may depend on the circumstances surrounding the alleged conduct, including whether you believe the allegation is accurate and any admissions you made to GMA or police officers as the time, as well as your personal circumstances.

Seeking an internal review

You, or your lawyer, may apply for a review of your infringement notice if one or more of the grounds for review (below) applies to your matter. If you are not sure if any of the grounds for review applies to you, you should contact a lawyer for advice. If you have received several infringement notices for the same protest, you should contact a lawyer for advice – there may be grounds to seek to withdraw some of the infringements.

You, or your lawyer, may apply for an internal review once per infringement notice. If you have received multiple infringement notices, you may submit one application that covers more than one infringement notice (rather than a separate application for each notice).

You may like to draft this application yourself or engage a lawyer to do this on your behalf.

Grounds for review

You may apply for an internal review under section 22, Infringements Act 2006 (Vic) if you believe that the issuing of an infringement notice:

- (a) Was contrary to law,
- (b) Involved a mistake of identity,
- (c) Is unfair because special circumstances apply,
- (d) Is unfair because exceptional circumstances apply, or
- (e) Was done without your knowledge (for example, it was sent to your previous address and you had updated your address beforehand with Vic Roads).

For more information, see the Fines Victoria website: <https://online.fines.vic.gov.au/Your-options/Request-a-review>

Contrary to law

This ground may cover a situation where, for example, you believe the alleged offence is inaccurate, or that notice of the timber harvesting safety zone was not given in accordance with the requirements under section 77C, SFT, and therefore the Infringement Notice is invalid.

Special and exceptional circumstances

Special and exceptional circumstances are different:

- ‘Special circumstances’ is defined in section 3A of the Infringement Act 2006 (Vic) and refers to mental or intellectual disabilities, addictions, homelessness, family violence, and other long-term circumstances that may impact a person’s capacity to pay the fine that are not solely related to financial circumstances.
- ‘Exceptional circumstances’ is not defined in the Infringements Act 2006 (Vic) and may include public interest considerations, matters in mitigation and other factors. (See the list of factors to consider for an Official Warning in ‘Official Warnings’ in this Section).

Timeframes

An internal review application may be made at any time before the outstanding amount of an infringement penalty, together with any penalty reminder notice fee, are registered with the Director under the Fines Reform Act 2014 (Vic). This means, you may request a review if your fine is at the ‘infringement notice’ or ‘penalty reminder notice’ stage (you can check the status of your infringement notice on the Fines Victoria website: <https://online.fines.vic.gov.au/Your-Fines/Your-Fines-Login>).

If possible, it is best to submit your review application prior to the infringement notice due date.

The exception is if you are seeking an internal review on the basis that you were unaware of the fine. In this case, you must submit your application within 14 days of receiving or becoming aware of the infringement notice.

After receiving your application, DEECA has 90 days to make a decision and advise you of the outcome: section 24(3)(a)(i), Infringements Act 2006 (Vic); reg 16, Infringements Regulations 2016 (Vic). During this time, your infringement notice will be placed on hold.

Possible outcomes

After receiving an application for internal review, DEECA can:

- (a) Confirm the decision to serve an infringement notice;
- (b) Withdraw the infringement notice and serve an official warning in place of the infringement notice;
- (c) Withdraw the infringement notice;
- (d) Withdraw the infringement notice and refer the matter to

the court or, in the case of an infringement notice served on a child, withdraw the infringement notice and file a charge-sheet and summons in the Children’s Court for the matter to be dealt with in that court;

- (e) In the case of an infringement offence involving additional steps, alter or vary those steps provided the alteration or variation is consistent with the Act or other instrument establishing the offence;
- (f) Waive all or any penalty reminder notice fees;
- (g) Approve a payment plan;
- (h) Do any combination of any of the actions referred to in paragraphs (a) to (g).

Official Warnings

If DEECA forms the view that an offence took place but decides to withdraw the infringement notice on other grounds (for example, due to exceptional circumstances), they may withdraw the fine and instead issue an official warning: section 25(b) Infringements Act 2006 (Vic). You are not required to do or pay anything if you receive an official warning. However, if you engage in similar conduct in the future and an authorised officer is deciding whether to issue you with an infringement notice or a Charge-Sheet, they may take into account the fact that you have previously received an official warning.

In determining whether to issue an official warning, DEECA may consider:

- Whether the offender made a genuine mistake or took reasonable steps to comply with the law, although a defence may not apply;
- Whether the offender is likely to be successful on the review ground of special or exceptional circumstances;
- If known by the issuing officer, the offender’s lack of any prior criminal history, particularly where the offender is a child;
- Circumstances of the offence or offender that are not exceptional or unique but that nevertheless justify not issuing an infringement notice or prosecuting the person;
- The severity of the harm caused by the offence (if the harm may vary);
- Whether the official warning is likely to be a sufficient deterrent to further offending.

Requesting a court hearing

You may seek that your infringement notice matter be referred to court for a hearing. In that case, the infringement notice will be placed on hold until you are issued with a Charge-Sheet and Summons, requiring you to attend court on a particular date to deal with the alleged offence. The offence will then proceed through court as a charge instead of an infringement. A charge is generally more serious than an infringement, and the outcome of a charge is usually recorded on your criminal history.

If you are considering asking for the infringement to be referred to court to be dealt with as a charge, it is a good idea to contact a lawyer for advice as soon as possible and before making this request.

You may have to wait a number of months between requesting a court hearing and receiving a Charge-Sheet, however the prosecution is required to file a Charge-Sheet within 12 months of the alleged offence date.

It is important to note that if you choose to take the matter to court and there is a finding of guilt, higher penalties may apply and there may be other consequences associated with having a criminal conviction (see Section 9: Criminal convictions).

Paying the fine

If you choose to pay the fine, you can do so online on the Fines Victoria website. You may request to be placed on a payment plan if you are unable to pay the entire fine amount by the due date.

It is important to note that paying an infringement notice is not an admission of guilt and will not appear on your criminal history. However, GMA and DEECA will have access to these records and having received a prior infringement notice is one factor that an authorised officer may consider when deciding whether to issue an infringement notice or Charge-Sheet to you in the future if you are engaged in a similar activity.



07 CHARGE SHEETS

If you are charged with an offence, you will be provided with paperwork including a **Charge-Sheet and Court Summons** which identifies the offence(s) you are alleged to have committed and the relevant offence provision(s) in the SFT Act, and the date your charges will be heard in court. It will also include the name of the informant from the GMA.

You can be charged with an offence **up to 12 months after the alleged offence date:** *section 7, Criminal Procedure Act (Vic).*

Charge and Summons

If you are not charged on the date of the alleged offence, you may receive a Charge-Sheet and Summons in the mail some weeks or months later. The Summons will direct you to attend court on a particular date. If you receive a Charge-Sheet and Summons, it is a good idea to contact a lawyer and seek legal advice as soon as possible. You will need to provide a copy of your charge sheets to your lawyer.

Charge and Bail

You may receive a Charge-Sheet on the spot if you are arrested. In that case, you will likely be required to sign a Bail Undertaking. 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 you are permitted to leave.

Bail conditions

Your bail may be subject to specific conditions, for example, that you do not enter within 100m of a timber harvesting safety zone. If you believe that the bail conditions are unfair and it will be difficult to comply with them, for example, if you access public roads or forests within 100m of a timber harvesting safety zone, you may seek a bail variation under section 18AC, Bail Act 1977 (Vic). You, or your lawyer, can also try to negotiate the bail conditions before you sign the bail form. You should contact a lawyer as soon as possible about this (see also Part 5: Knowing your rights and responsibilities, and Part 8: What happens on the first court date?).

08 GOING TO COURT & YOUR SENTENCE

You may end up in court for engaging in direct action or protesting in forests. This may occur if you are charged with an offence outlined in Section 4 and receive a Court Summons.

Whether you receive an infringement notice or a Charge and Court Summons will depend on the facts and circumstances of your case, including the seriousness of the offence, and your personal history (if you have received any prior infringement notices or convictions for similar offences).

Direct action involving tree-sits or locking on are more likely to result in charges and court hearings than infringements.

This section outlines what you should expect if you must go to court and information about legal representation, preparing for court, and the penalty (sentence) that you may receive.

Where will my matter be heard?

In Victoria, criminal offences are categorised as either 'summary' or 'indictable' offences. Summary offences are less serious and are dealt with in the Magistrates' Court. An offence is a summary offence if it carries a maximum penalty of two years imprisonment or less, or a fine of 240 penalty units or less.

All offences in the SFT Act are summary offences.

Your matter will generally be scheduled for hearing at the Magistrates' Court closest to where the alleged offence occurred (for example, Orbost for cases in East Gippsland or Kyneton for cases in the West). You can check the court location and future dates on the Magistrates' Court website: <https://dailylists.magistratesvic.com.au/>

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. If you are not legally represented, you can contact the court to make this request yourself. It may also be possible to have the matter heard virtually, by videolink, depending on the Magistrates' Court Practice Directions in place at the time.

Contact details for the courts are on the Magistrates' Court of Victoria website: <https://www.mcv.vic.gov.au/going-court/find-court>

What if I can't attend my court date?

If you are on bail, you must attend all court dates or else your bail can be revoked and a warrant can be issued by the court for your arrest. Upon the warrant being executed, you can be taken into custody and charged with further offences under the *Bail Act (Vic)*. If you are charged and summonsed to court and cannot attend court on the date specified on your Charge-Sheet, you must notify your lawyer as soon as possible. If you are not legally represented, you should contact the court and the prosecutor and ask if the matter can be administratively adjourned, which means having the matter moved to a future date. You will need to provide a reason and the court will decide whether or not to approve this request. Usually, if it is the first court date, the court will approve this request.

If you don't make any arrangements for your first court date (this is called a 'first mention') and you fail to appear after receiving a Charge-Sheet and Summons, 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.

What will happen on my first court date?

Your first court date is referred to as a "first return" or "first mention". You are required to attend unless you are expressly excused from attending (for example, if you have contacted the court in advance and have been granted an administrative adjournment with no appearances required, as above).

Unless you choose to finalise your matter on the first court date, usually it will be adjourned until a date in the future to give you more time to obtain a copy of the prosecutor's Brief of Evidence and review the evidence against you, before making a decision about how to plead. If you are not legally represented at the first mention, you may seek an adjournment to obtain legal advice.

If you are on bail and you do not agree with one of the specific conditions, you may make an application under section 18AC, Bail Act 1977 (Vic) to vary your bail conditions at your first court date. In deciding whether to grant the application, the court must consider the surrounding circumstances in section 3AAA of that Act including, for example, the nature and seriousness of the alleged offending, your criminal history or bail history (if any) and your personal circumstances, associations, home environment and

background. The court will grant the application if it believes that it is reasonable to do so, having regard to those circumstances.

If you are legally represented

If you engage a lawyer to act for you, it is important to provide them with clear and truthful instructions at all times during the court process.

If you have been charged with multiple offences for the same protest, your lawyer may negotiate with the prosecutor to reduce the number of charges against you and seek to have some charges withdrawn.

You should answer any questions that your lawyer has about the events that took place, and explain your reasons for taking action, your personal circumstances (including your financial, family, study or employment circumstances, and volunteer or community work) and provide them with copies of any paperwork, photos, footage, survey reports etc. that you think could be relevant. If any of the legal advice you are provided with is unclear, make sure you ask questions and seek clarification.

If you are representing yourself

When you receive your Charge-Sheet, it will contain contact details for the prosecutor at DEECA. If you would like a copy of the Brief of Evidence, you should contact the prosecutor by email or phone as soon as possible after receiving the Charge-Sheet to request a copy of the Brief. This will generally be provided to you by post or electronically (you should indicate your preference). You do not need to answer any other questions from the prosecutor and statements you make to the prosecutor can be used against you – there are no off the record conversations.

Once you have the Brief, make sure you read the Summary of Facts, Witness Statements and any other material provided to you, and listen to or watch any recordings (including body-worn camera footage and recorded interviews). This will allow you to make an informed decision about how you would like to plead.

Preparing for court

If you have a lawyer, it is best to provide them with as much information as possible in your initial discussions so that they can give you advice about how to achieve the best outcome for you. As soon as possible after the alleged offence or after you receive the Charge-Sheet, you should write down your account of what happened.

You should tell your lawyer important information about your personal circumstances, including your financial circumstances, employment status, current or recent study, your family circumstances, your volunteer and community work, whether you have any prior convictions, and whether or not you are on a visa. You should also make some notes about what led you to take the action that resulted in the charge and whether or not you believe that the charge is fair or accurate.

Your lawyer will likely request a copy of the Brief of Evidence from the prosecution after they have been engaged so that they can review the evidence against you and provide you with advice about your options and potential outcomes.

The prosecution Brief will usually include a Summary of Facts. It is important that you carefully read the Summary of Facts, consider whether you agree with what it says, and talk to your lawyer about any disagreement you have with it.

Penalties

The maximum penalty for each offence is contained in the SFT Act. Maximum penalties for some of the most common offences are included in the Table of Offences in Section 4. The maximum penalty is the highest penalty that can be imposed on you for the offence, it is reserved for the very worst-case scenario and is not an indication of what will be imposed on you.

The court will consider a number of factors when deciding an appropriate penalty listed in sections 5, 6 and 6AAA Sentencing Act 1991 (Vic), including:

- The circumstances that led to the alleged offence (i.e. why you were in the forest, for example surveying, protesting or observing)
- Your plea of guilty (if you plead guilty)
- Your financial circumstances
- Your employment history and any lawful environmental or community work
- Your criminal history, if any (a copy will be in the Brief of Evidence)
- Any character references (see ‘Character References’ in this section)
- Current sentencing practices.

Your lawyer will explain the possible penalties to you prior to court, and explain your specific sentence after your plea hearing. If you are representing yourself and it is not clear to you what penalty has been imposed or what the conditions are, you can speak with the prosecutor or contact the court afterwards and ask for copies of paperwork confirming the penalty and your obligations (known as a ‘Certified Extract’).

Depending on the maximum penalty for the offence, a range of sentencing options may be open to the court. If you are charged with more than one offence, the court may impose a combination of penalties (for example, you may receive an adjourned undertaking/good behaviour bond and a fine). For more information on sentencing orders and penalties, see the Magistrates’ Court of Victoria website: <https://www.mcv.vic.gov.au/criminal-matters/sentencing-and-penalties>

Some penalties that may be available to the court are discussed below.

Diversion

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 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 writing a letter to the officer who charged you). If you comply with these conditions, then you will have no criminal record or conviction. If you are unsuccessful in being granted diversion, your right to plead not guilty is not prejudiced by the fact that diversion was sought but refused.

Adjourned undertaking / good behaviour bond

An adjourned undertaking is a sentencing option that allows you to be released into the community unsupervised, on the basis that you comply with certain conditions, including that you be of ‘good behaviour’ (i.e. you do not commit another offence) during the period of the Order. Failure to comply with the conditions may result in you having to return to court to be resentenced on the original offence.

Fine

A fine imposed in the Magistrates’ Court may be with or without a conviction and may be imposed by itself or in addition to another penalty. If the Magistrate is considering imposing a fine, they will consider your financial circumstances, current sentencing practices and the circumstances of the offence to assist in determining the appropriate amount.

The court will either set a date for payment, or refer the fine to Fines Victoria and you will be placed on a payment plan. If you are representing yourself and you are unsure of the outcome, you can speak with the prosecutor or contact the court afterwards and ask for confirmation or paperwork confirming the penalty and your obligations.

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.

You may make an application to convert your fine into unpaid community work. See: <https://www.mcv.vic.gov.au/criminal-matters/sentencing-and-penalties/fines>.

Community Correction Order (CCO)

A CCO is an Order that allows a sentence to be served in the community. A Magistrate can impose a CCO on its own or together with another penalty, including imprisonment. A CCO may require you to perform unpaid community work and/or to participate in programs or courses to assist your rehabilitation, if relevant.

A CCO will impose a number of core conditions and you should speak to your lawyer or a Community Corrections Officer about these. It can also include conditions that you live in a certain place, don’t associate with certain people and do not attend certain places. A CCO may only be imposed if you consent.

A CCO may be ordered with or without conviction.

Term of imprisonment (custodial or non-custodial)

A term of imprisonment is the most serious penalty you can receive and is considered to be a sentence of last resort, meaning it is only imposed if no other type of penalty is appropriate. If you have spent any time in custody (on remand) awaiting sentence, that time will be deducted from your sentence.

Current sentencing practices for charges¹

Prior to the amendments to the SFT Act, people without a significant prior criminal history charged with offences in the Table above for their participation in a forest protest received a sentence of an undertaking to be of good behaviour for between 6-12 months, in total for between 3-5 charges. People without a significant prior criminal history who did not wish to enter an undertaking to be of good behaviour received a fine of between \$400-\$1500 in total for the charges. No convictions were recorded for persons without significant prior criminal histories. These penalties vary and depend on personal circumstances and the circumstances of the offending.

Other Orders

Recording a conviction

The court will decide whether or not to record a conviction for the offence. In doing so, the court will have regard to social and economic consequences of having a conviction recorded: section 8, Sentencing Act 1991 (Vic) (see Section 9: Criminal conviction sfor more information about this and potential consequences).

Disbursements / Service costs

If you plead or are found guilty of an offence you may be ordered to pay disbursements or service costs to cover the informant's costs of serving the Charge-Sheet on you or filing the charges with the court. This is usually an amount between \$100 and \$200. Your lawyer will find out whether the prosecution is seeking this Order in advance.

Forfeiture

If your property was seized on the alleged offence date and has not been returned to you since, the prosecution may seek an Order requiring that property to be 'forfeited' to the Crown if you are found, or you plead, guilty. This will depend on the property in question and its connection to the offence. Sometimes, some property will be forfeited and other items will be returned to you. It is important you talk to your lawyer before your court date about all the items of property that were seized from you.

A 'prohibited thing' will be forfeited to the Crown if a court finds you guilty of an offence under section 77H or section 94A, SFT Act, in connection with that property.

Exclusion Orders

If you are convicted of an offence in court, the Magistrate may make an Order under section 94E, SFT Act excluding you from a Timber Harvesting Safety Zone or any area of State forest specified in the Order, for the period specified in the Order, if they are satisfied that it may be an effective and reasonable means of preventing you from committing a further specified offence. The exclusion period in the Order cannot exceed 12 months.

In deciding whether to make an Exclusion Order, the court must consider the factors set out in section 94E, including:

- The nature and gravity of the specified offence;
- Whether you have previously been found guilty of a specified offence;
- Whether you are or have been the subject of an exclusion order previously;
- The likely impact of the exclusion order on you and any alleged victim of the specified offence;
- Public safety and public order;
- Any other matters that the court considers relevant.

It is an offence to contravene an exclusion order by entering, re-entering or remaining in the Timber Harvesting Safety Zone or area of State forest specified in the Exclusion Order: section 94F, SFT Act. The maximum penalty is 60 penalty units.

Deciding how to plead

Whether you decide to plead guilty or not guilty to the charge(s) is entirely your decision. In deciding how you would like to deal with the charge(s), you should review the evidence against you and consider your own personal circumstances. It is a good idea to seek legal advice about the options available to you and the potential risks and benefits associated with those options (see Section 9: Criminal convictions). It is important that you ask your lawyer questions and think carefully about your options so that you can make an informed decision about what is best for you.

Pleading guilty

If you plead guilty, this means that you are accepting that the elements of the offence are made out. The 'elements' of an offence are the facts or circumstances that the prosecution must prove beyond a reasonable doubt in order for you to be found guilty of an offence. For example, if you plead guilty to an offence under section 77G of Entering or remaining in a Timber Harvesting Safety Zone, you are accepting the following elements:

- You have been correctly identified.
- You entered or remained (whichever the case may be) in the Timber Harvesting Safety Zone identified in the Charge-Sheet and Summary of Facts on the alleged date.
- You accept that notice was given of the Timber Harvesting Safety Zone by VicForests in accordance with the law (s 77C, SFT Act).

If you accept the elements but believe there is an error in the Summary of Facts provided by the prosecution, you should talk to your lawyer about seeking an amendment. For example, you accept that you were in a Timber Harvesting Safety Zone but you believe that the conversation you had with a GMA officer or logging contractor has been misrepresented in the Summary of Facts.

If you do not accept one of the elements, you should talk to your lawyer about any potential defences (see 'Potential defences' in this section).

If you would like to plead guilty to some charges and not guilty to others, your lawyer can enter 'plea negotiations' on your behalf with the prosecutor. For example, if you plead guilty to Entering or remaining in a Timber Harvesting Safety Zone, but you wish to plead not guilty to Failing to comply with a direction to leave, on the basis that you left the Timber Harvesting Safety Zone when asked. Your lawyer will review the evidence against you in the Brief to provide you with specific advice prior to entering plea negotiations.

Pleading not guilty

If you plead not guilty, your matter will be listed for a contest mention hearing before it is ultimately listed for a contested hearing. A contest mention is a hearing where you or your lawyer indicate 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 on and an estimate of how long you anticipate the hearing will take (for example, half a day or one or two days). The matter will then be listed for a contested hearing on a future date(s).

The contested hearing often 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 prosecution calling their witnesses in an effort to prove the charge(s) and both parties 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.

Generally, if you are successful, the court will order that the charges be dismissed and the prosecution 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 you are unsuccessful, however this is ultimately a matter for the court to decide. If you do not think that you should have to pay legal costs, you or your lawyer should prepare any submissions explaining why not in advance.

Sentence indication

At any time during the court process, you can ask the Magistrate for a 'sentence indication'. That means, you can ask the Magistrate to provide you with an indication of the type of sentence you would receive if you pled guilty to the charge(s): section 60, Criminal Procedure Act 2009 (Vic).

If the court gives a sentence indication and you plead guilty to the charge(s) at the first available opportunity (the next court date) the court must not impose a more severe type of sentence than the type of sentence indicated. You may still enter a plea of not guilty after being given a sentence indication.



Koori Court

If you identify as Aboriginal or Torres Strait Islander and you are charged with an offence that can be heard in a Magistrates' Court and you wish to plead guilty, you may elect to have your matter heard in Koori Court.

In Koori Court, you will sit around a table with the Magistrate, Elders and Respected Persons, a Koori court officer, the prosecutor, community correction officer, your lawyer and family. Koori owned and controlled agencies may also be in attendance in the courtroom to contribute to the conversation and offer support.

Everyone is encouraged to take part in a sentencing conversation by having a yarn and avoid using legal language. Aboriginal Elders or respected persons may give cultural advice to help the Magistrate make a judgment that is culturally appropriate and intended to help reduce the likelihood of reoffending.

Potential Defences

Your lawyer will speak to you about potential defences and the prospects of pleading not guilty in your particular matter. Some defences that have previously been raised in the context of SFT Act offences are discussed below.

Mistake of fact

A mistake of fact defence can be used to argue that you did not realise or know what you were doing was unlawful because of a mistaken fact. Australian courts have observed that if the facts of a case allow for an inference consistent with an offender's innocence, then the offender must be given the benefit of doubt. For the defence of mistake of fact to be made you must satisfactorily show that:

- The mistaken belief was honestly held by you at the time of the offending;
- The mistaken belief must have been reasonable in the circumstances; and
- The mistaken belief related to a fact, not law.

You might raise this defence if you are charged with an offence of entering or remaining in a Timber Harvesting Safety Zone and you honestly did not believe that you were within a Timber Harvesting Safety Zone at the time, for example. You would need to provide an explanation and evidence, if any, to support your belief (e.g. you did not see any signs or machinery).

In some cases, this may amount to exceptional circumstances justifying the withdrawal of an Infringement Notice.

Mistaken identity

If you believe that you have been incorrectly identified as the person who committed an offence in an infringement notice or Charge-Sheet, you may raise the defence of mistaken identity and you should seek legal advice as soon as possible.

Character References

If possible, it is helpful to obtain 2 or 3 character references that can be handed up to the court at a plea hearing. It is best to obtain the references from an employer/colleague, lecturer/teacher if you are studying, organisation with whom you have volunteered or long-term friend.

You should ask the referees to:

- Address the reference to the Presiding Magistrate of the Magistrates' Court where the matter is being heard (for example, "to the Presiding Magistrate of the Magistrates' Court at Orbost");
- Sign and date the reference;
- Include details about:
 - (a) The referee's position (i.e. their role in your place of employment, study or volunteer organisation),
 - (b) How the referee knows you and how long they have known you,
 - (c) That the referee is aware of the charges against you and the incident that led to those charges (no further details are required),
 - (d) Work that you have done relevant to conservation/environment protection that they are aware of (i.e. any surveying or revegetation or education work),
 - (e) Their opinion about your character and commitment to the community or environment protection.

Support Network

Facing the court can be a time and resource-consuming exercise and can be isolating for those who are charged. Proceedings can drag on for considerable amounts of time, particularly if you are pleading not guilty, and support from other campaign/group members and family and friends can make a real difference in how you experience the court process. It can be useful to have people attend court with you for support and solidarity.

It is important to remember the valid reasons for your involvement in forest protection.

09 CRIMINAL CONVICTIONS

Forest activism can lead to criminal convictions, which may or may not show up on your criminal record. It is important to understand that a finding of guilt in court and the penalty you receive may have additional consequences that go beyond the courtroom, for example for your employment or visa status. This section covers some of the things that may be impacted by a criminal conviction.

If you believe that any of the below circumstances apply to you, you should tell your lawyer as soon as possible as it may affect the submissions they make to the court about the recording of a conviction and appropriate penalty. Your lawyer may also be able to assist you to make any necessary arrangements with government agencies.

Will a conviction show up on my criminal history?

Infringements will not result in the recording of a conviction. Charges can sometimes result in a conviction being recorded, but this will depend on the circumstances.

This will depend on whether a conviction is recorded by the Magistrate at the conclusion of the sentence. The Magistrate will announce whether they are recording a conviction or not, after deciding the penalty. Generally, it is uncommon for a conviction to be recorded if you have no prior criminal history. The Magistrate will consider the nature and seriousness of the offending and your personal circumstances, when deciding whether to record a conviction.

If you are not sure if a conviction was recorded in your matter, you should check with your lawyer or the court.

In 2021, legislation, known as the Spent Convictions Act 2021 (Vic), was passed in Victoria that changed the way convictions show up on

a person's criminal history. A conviction that is 'spent' does not form part of your criminal record and you are not required to disclose it or information in relation to it, to another person.

If you have a criminal conviction, your conviction may be spent:

- Immediately (for example, if you receive a fine with no conviction recorded);
- Automatically after completing any conditions attached to your sentence (for example, when your adjourned undertaking or good behaviour bond period ends), or
- By making an application to the court in relation to a serious conviction.

Offences under the SFT Act will not result in a 'serious conviction'.² Sections 21 and 22 of the Spent Convictions Act set out the circumstances in which a spent conviction can be disclosed to a third party. For example, a copy of your criminal record showing any spent convictions will be available to law enforcement agencies, courts and tribunals during legal proceedings.

You can also download a Spent Convictions Fact Sheet here: <https://www.justice.vic.gov.au/spent-convictions>. If you are unsure about when you might be required to disclose a spent conviction, you should seek legal advice.

Will a conviction affect...

... my employment?

If you believe that the recording of a conviction may affect your employment or result in professional disciplinary proceedings against you, you should tell your lawyer as soon as possible or the Magistrate at your plea hearing, if you are representing yourself. The court is required to take this into account when deciding whether or not to record a conviction: section 8, Sentencing Act (Vic).

Some people put details of their activist charges proudly on their resumes as a demonstration of their 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. If you think you have been treated unfairly, you may have a remedy and should

². 'Serious convictions' are convictions for sexual offences or serious violent offences, or result in detention for more than 30 months imprisonment (2.5 years). The maximum penalty for an offence under the SFT Act is 2 years.

seek legal advice. For further information on this issue see: www.activistrights.org.au.

...my visa?

You should seek specific advice if you are on a visa in Australia and you are charged with a criminal offence. Whether or not a conviction is likely to affect your visa status will depend on your visa type, the type of offence you are charged with and the penalty you receive.

A visa can be refused or cancelled if a person does not meet the character test in section 501, Migration Act 1958 (Cth). A person will automatically fail the character test if they have a 'substantial criminal record', which means they have been:

- Sentenced to imprisonment for life
- Sentenced to imprisonment for 12 months or more
- Sentenced to two or more terms of imprisonment where the total of these terms is two years or more
- Acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result they have been detained in a facility or institution.

No person charged with offences for their participation in a forest protest in Victoria has received a sentence of this severity to date.

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.

See the Human Rights Victoria website for more information: <https://humanrights.gov.au/our-work/2-when-can-visa-be-refused-or-cancelled-under-section-501> See also the Legal Aid Victoria website: <https://www.legalaid.vic.gov.au/immigration-and-migration>

... my travel overseas?

Some countries require you to disclose any past arrests or convictions on visa applications. Laws vary from country to country, and you should contact the relevant consulate or embassy to find out how they use criminal records. Generally, for summary (minor) offences related to forest protests, your ability to travel will not be affected. For more serious or violent offences, specific legal advice should be sought.

You should also check any conditions attached to your sentence that may require you to seek permission before travelling internationally (for example, if you are on parole).

... my Centrelink payments?

If you receive a term of imprisonment with a period of time to be spent in custody, you will not be entitled to receive Centrelink payments while you serve your sentence. You might also have

notification requirements that require you to advise Centrelink within 14 days of a change in circumstance. More general information about Centrelink payments and custodial sentences can be found in the Australian Government Social Security Guide: <https://guides.dss.gov.au/social-security-guide/3/1/4/05> and <https://guides.dss.gov.au/social-security-guide/3/1/4/10>

When you are released from prison, you may be eligible to apply for a one-off Crisis Payment to help you if you are experiencing financial hardship. See the Services Australia website for more information.

If you receive a penalty which requires you to perform unpaid community work for more than 20 hours per week, you may be given a special circumstances exemption from your mutual obligations, for example your obligation to search for and take up new employment for up to 13 weeks while in receipt of JobSeeker payment. If you receive a CCO with these conditions, you should contact Centrelink for specific information about your benefits and the requirements that apply to you.

For further information and free legal advice, contact Social Security Rights Victoria: <https://www.ssr.org.au/>

... my Child Support payments?

Child Support payments that are registered with the Australian Government may be affected if you receive a custodial sentence. If you believe this applies to you, you should tell your lawyer so that they can make the necessary arrangements to prevent you from incurring a debt while you are in prison.

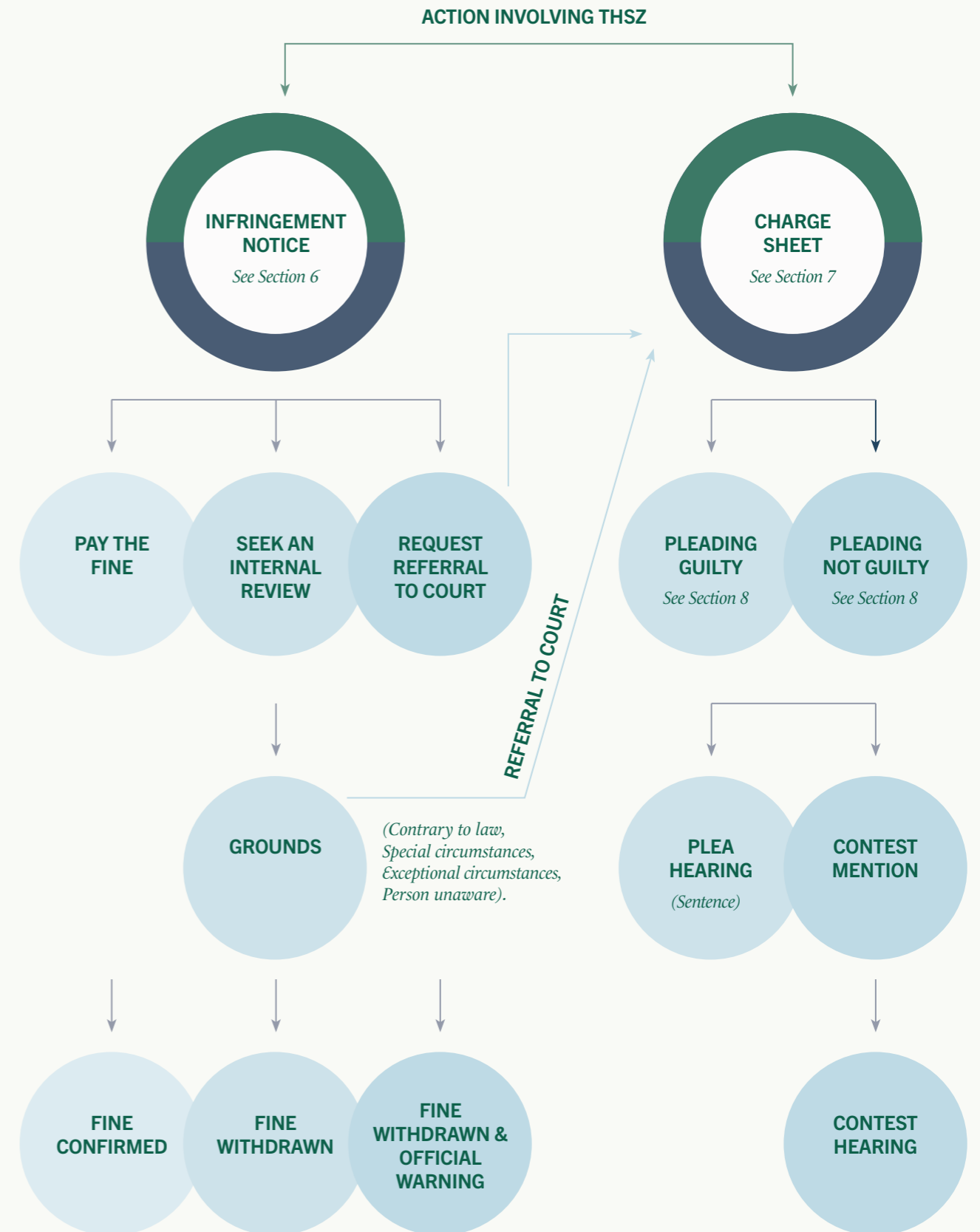
If you do not have a lawyer and you are unsure about whether this is likely to affect you, you should contact Victorian Legal Aid Child Support Legal Service for more information (see the Contacts and Other resources section).

... my Working With Children Check (WWCC)?

A conviction for a non-violent offence under the SFT Act has not in the past, and is unlikely to, result in a finding that a person poses an unjustifiable risk to the safety of children. Criminal convictions may impact your WWCC, depending on a number of factors including the nature and gravity of the offences and its relevance to child-related work, whether a conviction was recorded and any sentence imposed.

For further information, see the WWCC Fact Sheet on VCAT's website: <https://www.workingwithchildren.vic.gov.au/vcat-applications-factors-for-consideration>

Flow Chart of Potential Outcomes



This is about
this great web of life
that we are all deeply
embedded in.

FAQs

What if the logging is illegal?

The SFT Act makes certain conduct unlawful irrespective of the legality of the timber harvesting activities taking place in the Timber Harvesting Safety Zone.

You may still be charged with and found guilty of offences under the SFT Act, or issued with an infringement, even if the logging is found to be unlawful.

What if I didn't know I was within a Timber Harvesting Safety Zone?

This may be grounds for challenging an Infringement Notice or defending your matter in court. However, most offences are 'strict liability' offences, which means that the prosecuting agency is not required to prove that you knew you were committing an offence to successfully prove the offence. It is open to raise a 'mistake of fact' defence (see Section 8: Possible defences).

What can I do if I have been treated unfairly by an authorised officer?

If you believe that you have been treated unfairly or experience rude, aggressive or violent behaviour by an authorised officer or police officer, you can make a complaint:

- About a GMA Officer: <https://www.gma.vic.gov.au/enforcement/authorised-officer-feedback>
- about a Victorian Police Officer: <https://www.police.vic.gov.au/complaints>

If you were injured during an arrest or interaction with an authorised officer:

- 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 as soon as possible;
- 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 GMA, VicForests or a logger, the circumstances of the injury and the date;

- Write down the name of the last person to see you before you were injured and the first person to see you afterwards;
- Contact a lawyer to help you make a formal complaint.

See more information about interactions with authorised officers, excessive force and your rights: <https://activistrights.org.au/kb/police-powers-and-your-rights/>

Are Victoria's protest laws similar to other jurisdictions?

The amendments to Victoria's protest laws are part of a national trend aimed at cracking down on protest activity in Australia. Changes to protest laws in New South Wales and Tasmania were made in 2022, and in Queensland in 2019. However, the laws are different in each State and this Guide is only relevant to Victoria.

Have laws like this been challenged before?

Some protest laws have previously been the subject of challenges in the High Court of Australia, where it has been argued that they are incompatible with the freedom of political communication in the Australian Constitution. The test for deciding whether a law is compatible with this freedom is:

- Does the law effectively burden the freedom in its terms, operation or its practical effect (the burden question)?
- If so, are the purpose of the law and the means adopted to achieve that purpose legitimate, in the sense that they are compatible with the maintenance of the constitutionally prescribed system of representative government (the legitimate end question)?
- If the answer to the second question is 'yes', is the law reasonably appropriate and adapted to advance that legitimate object (the reasonably appropriate and adapted question)? This question involves a proportionality test to determine whether the law is justified as suitable, necessary and adequate in its balance.

The *Bob Brown v Tasmania* case³ is an example of a successful challenge to Tasmania's protest laws in the High Court of Australia. In that case, the plaintiffs challenged the validity of provisions that prohibited people from taking part in protest activities in or around business premises, including on forestry land.

The Environmental Defender's Office (EDO) also commenced a challenge to the New South Wales laws in the Supreme Court of New South Wales in 2022.

3. *Brown v Tasmania* [2017] HCA 43

Contacts and other resources

Legal support

Environmental Justice Australia (EJA)

Level 3, The 60L Green Building
60 Leicester Street, Carlton

PO Box 12123

A'Beckett Street, Vic 8006

Ph: (03) 8341 3100

Email: admin@envirojustice.org.au

www.envirojustice.org.au/

Lawyers for Forests (LFF)

PO Box 550

West Melbourne, Vic 8007

Ph: 0415 764 015

Email: lff@lawyersforforests.asn.au

www.lawyersforforests.org.au/

Fitzroy Legal Service (FLS)

124 Johnston St, Fitzroy

Ph: (03) 9419 3744

279 Spring St, Reservoir

Ph: (03) 9419 3744

E-mail: enquiries@fitzroy-legal.org.au

www.fls.org.au/

Melbourne Activist Legal Support (MALS)

Locked Bag 7

Collingwood, Vic 3066

Email: admin@mals.au

[www.https://mals.au/](https://mals.au/)

Human Rights Law Centre (HRLC)

PO Box 319

Melbourne, Vic 8007

Email: admin@hrlc.org.au

Ph: (03) 8636 4450

www.hrlc.org.au/

Victorian Aboriginal Legal Service (VALS)

273 High St, Preston, Vic 3072

Email: vals@vals.org.au

Ph: 1800 064 865

www.vals.org.au/

Victorian Legal Aid (VLA)

List of office locations: <https://www.legalaid.vic.gov.au/our-offices>

Ph: 1300 792 387

www.legalaid.vic.gov.au/

Justice Connect

(Referral service)

PO Box 16013

Melbourne VIC 8007

DX 128 Melbourne

Ph: (03) 8636 4400

www.justiceconnect.org.au/

Other states and territories:

Environmental Defender's Office (EDO)

Offices in the Australian Capital Territory, New South Wales, Northern Territory, Queensland, South Australia, Tasmania and Western Australia.

Email: info@edo.org.au

www.edo.org.au/contact-us/

Resources and information

- Fitzroy Legal Service Law Handbook
<https://fls.org.au/law-handbook/>
- Fitzroy Legal Service Activist Rights Website
<https://activistrights.org.au/>
- Melbourne Activist Legal Service
<https://mals.au/resources/>

Forest Support Network

- Victorian Forest Alliance
www.victorianforestalliance.org.au/





Because the law is a powerful tool
envirojustice.org.au

