

New forests legislation

Victorian government pushes the public out of state forest

By **Vanessa Bleyer**,
solicitor and
Lawyers for
Forests
president

Two pieces of legislation commenced in 2004 have created more criminal offences in Victoria's state forests. It seems the public is now excluded from its own forests on threat of criminal prosecution.

Safety on Public Land Act 2004 (Vic)

The *Safety on Public Land Act* commenced on 21 December 2004. It enables the Secretary of the Department of Sustainability and Environment (DSE) to make declarations to exclude the public from areas of state forest (Zones) for an array of purposes, including public recreational activities and conservation of flora and fauna.¹

The first and only declaration was made on 14 January 2005 for the purpose of timber harvesting operations.²

This Act is predominantly made up of criminal offence provisions, which can impact on anyone in state forests.

- It is an offence to carry out any activity in a Zone and to contravene any condition or restriction applying to a Zone (as contained in the declaration). The maximum penalty is a \$2050 fine.³ You can apply for authorisation to enter a Zone.⁴

- It is an offence to refuse to leave a Zone after an officer of the DSE has directed you to leave. However, that officer must first have informed you that you are in a Zone and that it is

an offence not to leave the Zone. That officer must also have produced proof of his or her identity, so it is your right to ask for that proof. The maximum penalty is a \$2050 fine.⁵

- It is an offence to re-enter a Zone after being directed to leave. The maximum penalty is a \$2050 fine.⁶

- It is an offence for a holder of a Miner's Right to re-enter a Zone after being directed to leave. The maximum penalty is a \$2050 fine.⁷ The introduction of this discrete provision must be in response to the successful defence to charges in the Magistrates' Court in February 2004, where the government charged an individual with hindering a logging operation when he was in state forest fossicking for minerals under his Miner's Right. The Court dismissed the charges.⁸

- It is an offence to fail to give your name and address to an officer of the DSE. The maximum penalty is a \$512.50 fine. The officer must have produced proof of his or her identity before requiring your name and address, so again, you can ask for it.⁹

- It is an offence to hinder or obstruct an officer of the DSE while exercising his or her duties or powers under this Act. "Reasonable excuse" is a defence, however the Court has not yet had the opportunity of determining what constitutes a "reasonable excuse" under this Act. The maximum penalty is a \$6150 fine.¹⁰

Sustainable Forests (Timber) Act 2004 (Vic)

The *Sustainable Forests (Timber) Act* 2004 commenced on 16 June 2004. The purposes of this Act are to facilitate logging or alternately to provide a framework for "sustainable forest management" and "sustainable forest timber harvesting" in state forests (although this Act fails to

provide any sustainability criteria and indicators and only makes it discretionary for the Minister to develop a sustainability charter¹¹), and to amend the *Conservation Forests and Land Act* 1987 (Vic) and the *Forests Act* 1958 (Vic).¹²

This Act introduces the following criminal provisions:

- It is an offence to fail to give your name and address to an officer of the DSE. The maximum penalty for failing to do so is a \$512.50 fine.¹³ However, the officer must first produce proof of his or her identity, so again, you have the right to ask for it.¹⁴

- It is an offence to hinder or obstruct an officer of the DSE who is exercising his or her duties or powers under this Act. "Reasonable excuse" is a defence, however again, the Court has not yet had the opportunity of determining what constitutes a "reasonable excuse" under this Act. The maximum penalty is a \$6150 fine.¹⁵

- It is an offence to threaten or abuse an officer of the DSE in the execution of his or her duty. The maximum penalty is a \$6150 fine.¹⁶

These criminal provisions are not novel. There have always been an array of virtually identical criminal offences in the *Conservation Forests and Land Act*, the *Forests Act* and the *Land Act*.

Perhaps what is then more noteworthy in this Act is the amendment to the *Conservation Forests and Land Act* which removes what was an extensive public consultation and panel process for reviewing the Code of Forest Practice for Timber Production. The Code is used to mark out areas of state forest for logging on the basis of promoting the ecologically sustainable management of native forests proposed for timber production. This amendment is just in time for the five-year review of the Code and further excludes the public from its forests.

These recent legislative introductions suggest that the government is even more concerned to keep the public out of state forest and away from logging operations. It comes at a time when the trade off between uneconomic logging of state forest and the consequent damage to water supplies is becoming more widely known and so there is increased public scrutiny in the value of logging operations.

For more information visit the Lawyers for Forests Inc website at www.lawyersforforests.asn.au or email info@lawyersforforests.asn.au. ■

1. *Safety on Public Land Act* 2004, s4.
2. *Victorian Government Gazette*, No. S 9, Friday 14 January 2005
3. Note 1 above, s13.
4. Note 1 above, s10.
5. Note 1 above, s14.
6. Note 1 above, s15.
7. Note 1 above, s16.
8. *Department of Primary Industries v Nick Dubic-Timson*, Magistrates' Court of Victoria at Broadmeadows, 4 February 2004, before Magistrate Jennifer Bowles; reported in the *Herald Sun*, "Digger strikes gold in court", 4 February 2004. The article can be viewed at www.jamiecatlin.com on the "Publications and Articles" page.
9. Note 1 above, s18.
10. Note 1 above, s20.
11. *Sustainable Forests (Timber) Act* 2004, ss6 and 11.
12. Note 11 above, s1.
13. Note 11 above, s84.
14. Note 11 above, s85.
15. Note 11 above, s86.
16. Note 11 above, s87.

