

OFFENCES IN RELATION TO DIRECT ACTION IN STATE FOREST

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There are five key pieces of legislation in Victoria that are used to charge people with criminal offences when involved in direct action in State forest. They are:

- 1. Conservation Forests & Land Act 1987 (“CFLA”)**
- 2. Forests Act 1958 (“Forests Act”)**
- 3. Land Act 1958 (“Land Act”)**
- 4. Sustainable Forests (Timber) Act 2004 (“SFTA”)**
- 5. Safety on Public Land Act 2004 (“SPLA”)**

Conservation Forests & Land Act 1987

Section 95A of the CFLA makes it an offence to hinder or obstruct another person in the lawful carrying out of forest operations or to hinder or obstruct the lawful carrying out of forest operations.

The “person” referred to is most often an authorised officer of the Department of Sustainability & Environment (“DSE”). Authorised officers are employees of the DSE. An authorised officer will usually warn people that if they do not leave the area of State forest (most often a logging coupe), then they will be charged with a criminal offence, which will go before the court.

If the person pleads guilty or if the court finds that the person is guilty of this offence, the maximum penalty that can be ordered by the court is a \$2,050.00 fine. The courts usually order that the defendant enter into an undertaking to be of good behaviour for a set period of time and usually only if the defendant has no relevant prior appearances before the court. This is the case for all of the criminal offence provisions outlined in this document.

Forests Act 1958

Section 96A of the Forests Act makes it an offence to hinder or obstruct an authorised officer who is exercising their duties or powers under the Forests Act.

However, it is a defence if the person charged has a “reasonable excuse”. This section of the Forests Act was only introduced in via the SFTA in December 2004. The court has not had the opportunity of determining what constitutes a “reasonable excuse” in this context.

Section 96B of the Forests Act makes it an offences to threaten or abuse an authorised officer who is exercising their duties or powers under the Forests Act.

If a person pleads guilty or if the court finds that the person is guilty of this offence, the maximum penalty that can be ordered by the court is a \$6,150.00 fine.

Land Act 1958

Section 31(3) of the Land Act makes it an offence to obstruct or assault or incite or encourage any person to obstruct resist or assault an authorised officer in the execution of his duty under the Land act or to threaten or abuse any authorised officer.

If a person pleads guilty or if the court finds that the person is guilty of this offence, the maximum penalty that can be ordered by the court is a \$256.25 fine or imprisonment not exceeding three (3) months.

Sustainable Forests (Timber) Act 2004

The SFTA came into effect in July 2004. As at the date of this document, the courts are yet to hear any matters where a person has been charged under the SFTA.

Section 84 of the SFTA requires a person to give their name and address to an authorised officer. A person can be criminally charged if they fail to do so. The maximum penalty is a \$512.50 fine.

Similarly, Section 85 requires an authorised officer to identify themselves when exercising their power under Section 84. They must produce proof of his or her identity.

Section 86 makes it an offence to hinder or obstruct an authorised officer who is exercising their duties and powers under this Act. "Reasonable excuse" is a defence, however the court has not had the opportunity of determining what constitutes a "reasonable excuse" in this context. The maximum penalty is a \$6,150.00 fine.

Section 87 makes it an offence to threaten or abuse an authorised officer in the execution of his or her duty. The maximum penalty is a \$6,150.00 fine.

Safety on Public Land Act 2004

The SPLA came into effect in December 2004. As at the date of this document, the courts are yet to hear any matters where a person has been charged under the SPLA.

The SPLA enables the government to exclude members of the public from State forest, through the declaration of "safety zones" ("**Zones**").

Section 12 makes it an offence to alter, obliterate, deface, remove or destroy a notice that specifies that an area is a Zone, and to break down, damage or destroy a barrier or fence which has been erected to prohibit or restrict access to a Zone. The maximum penalty is a \$5,125.00 fine.

Section 13 makes it an offence to carry out any activity in a Zone, and to contravene any condition or restriction applying to a Zone which is contained in the declaration. The maximum penalty is a \$2,050.00 fine. A person can apply for authorisation to enter a Zone as provided by Section 10.

Section 14 makes it an offence to refuse to leave a Zone after an authorised officer has directed the person to leave. However, that authorised officer must first have informed the person that they are in a Zone and that it is an offence not to leave the Zone. The authorised officer must also have produced proof of their identity. The maximum penalty is a \$2,050.00 fine.

Section 15 makes it an offence to re-enter a Zone. The maximum penalty is a \$2,050.00 fine.

Section 16 makes it an offence for a holder of a miner's right to re-enter a Zone after being directed to leave (in accordance with Section 14 above).

Section 17 requires a person to give their name and address to an authorised officer. Failure to do so is an offence and the maximum penalty is a \$512.50 fine. An authorised officer must have produced proof of their identity before requiring a person's name and address.

Section 19 makes it an offence to refuse to produce authorisation to be in a Zone (as enabled by Section 10 and referred to above).

Section 20 makes it an offence to hinder or obstruct an authorised officer whilst exercising his or her duties or powers under the SPLA. "Reasonable excuse" is a defence, however the court has not had the opportunity of determining what constitutes a "reasonable excuse" in this context. The maximum penalty is a \$6,150.00 fine.