



Environmental Defenders Office

FORESTRY PROTEST FACTSHEET

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Introduction

Peaceful protest in relation to forestry activities has a long history in NSW but protestors do, on occasion, face criminal charges for their actions.

The right of citizens to participate in peaceful assemblies has been described by the Supreme Court of NSW as ‘integral to a democratic system of government and way of life’.¹ However, there are important legal limitations on a person’s right to protest and this can give rise to a broad range of protest-related offences.

This fact sheet outlines the right to protest, such as it is, and some of the potential legal implications of engaging in protest activity. It is not possible to predict the specific nature of forest protests or the likely response from law enforcement agencies. This fact sheet should therefore be seen as a general guide only.

It is also important to keep in mind that it is common for multiple charges to be laid against protestors, as well as civil claims.

The Right to Protest in NSW

There is no express right to protest in NSW. The right to protest comes from the implied freedom of political communication found in the Australian Constitution. This means that the government cannot make laws that prohibit or significantly impede a person’s implied right to protest.

Public Assemblies

¹ *NSW Commissioner of Police v Bainbridge* (2007) NSWSC 1015.

Part 4 of the *Summary Offences Act 1988* (NSW) contains provisions that facilitate protest in a public place in NSW. It does not, however, expressly provide a right to protest, nor does it prohibit protesting. The aim of Part 4 is to encourage cooperation between protesters and the police in planning a public assembly. A public assembly is a public demonstration or protest.

Once the process (as explained below) to authorise a public assembly has been complied with, there are three potential outcomes:

1. If the NSW Commissioner of the Police (**‘the Commissioner’**) does not oppose the public assembly, then it is authorised.²
2. If at least 7 days’ notice is given to the Commissioner, and the Commissioner is opposed to the public assembly, the Commissioner must apply to the Court to prohibit the public assembly. The Court then decides to either authorise or prohibit the public assembly.³
3. If less than 7 days’ notice is given to the Commissioner, and the Commissioner opposes it, the public assembly organisers must apply to the Court to authorise the public assembly. The Court then decides to either authorise or prohibit the public assembly.⁴

An authorised or prohibited public assembly – what is the difference?

Authorised Public Assembly

An authorised public assembly is:

- Where a Form 1 is not opposed by the Commissioner, or
- The public assembly is authorised by a Court.

Protesters in an authorised public assembly are afforded certain legal protections. That is, the police cannot charge protesters of an authorised assembly with participating in an unlawful assembly, or of obstructing people, vehicles, or vessels in a public place.⁵

Such protections are only provided where the public assembly is conducted substantially in accordance with the details that have been supplied to the police. For example, you cannot be charged with obstructing traffic during a protest when the police were informed of the route of the procession and that route was taken. However, you could be charged with obstructing traffic if you decide to take a different route that the police did not agree to.

While the terminology “unauthorised public assemblies” is not used in the legislation and used sparingly in caselaw, it is referred to in a policy context to describe a public assembly with no Form 1 submitted. As with a prohibited public assembly, this does not mean the public assembly is illegal, rather that the above protections do not apply.

Prohibited Public Assembly

² *Summary Offences Act 1988* (NSW) s 23(1)(f).

³ *Summary Offences Act 1988* (NSW) s 23(1)(f)(i).

⁴ *Summary Offences Act 1988* (NSW) s 26

⁵ *Summary Offences Act 1988* (NSW) s 24.

A prohibited public assembly is where, in response to a Form 1, the Commissioner applies to the Court for it to be prohibited and the Court makes such an order. A prohibited public assembly is not illegal (the use of ‘prohibited’ in the Act is quite misleading). There is no prohibition on members of the public gathering in a public place to express their political views. However, it means that the protesters will not be afforded the legal protections that are afforded in an authorised assembly and could be charged by the police with offences of obstructing people, vehicles, or vessels and unlawful assembly.⁶

Process for authorising a Public Assembly

To authorise a public assembly, notice must be given in writing of an intention to hold a public assembly. It must be addressed and delivered to the Commissioner. To effect formal ‘delivery’ the notice can be delivered to a NSW Police Officer.

The form [Notice of Intention to Hold a Public Assembly \(nsw.gov.au\)](https://www.nsw.gov.au) is located on the NSW Police website.

The notice must contain the following details:

- a) The date of the proposed public assembly;
- b) If the public assembly is not a procession, a statement specifying the time and place where people intend to gather to participate in the assembly;
- c) If the public assembly is a procession, a statement specifying the time of the procession and the route. It should contain details about where a procession may stop along its route;
- d) The purpose of the public assembly;
- e) The number of people anticipated to participate in the assembly; and
- f) Any other details that would be relevant.⁷

The notice must be signed by a person who indicates that they take responsibility for organising and conducting the assembly and provide an address for service if any issues arise.

When providing your notice to the Commissioner, it will be helpful to include as much detail as possible. Consider organising the following to support your notice:

- Assign police liaisons who are responsible for communicating with the police on the day,
- Ensure there is first aid equipment available, and people trained in first aid,
- Ensure safety risks are considered and, if necessary, risk-mitigation plans put in place,
- Any other permits and approvals obtained, for example, from councils to gather on council land.

Offences Related to Forestry Protests

⁶ See for e.g. **Commissioner of Police v Langosch [2012] NSWSC 499 [19]**; *Commissioner of Police v Jackson* [2015] NSWSC 96 [13]; *Commissioner of Police (NSW) v Bainbridge* [2007] NSWSC 105 [15]; *Commissioner of Police v Ridgewell* [2014] NSWSC 1138 [3], [4]. For thoroughness, we note that engaging in a prohibited assembly may risk a contempt of court charge. However, current court commentary suggests this is unlikely interpreting the term “prohibited” to mean protesters won’t be afforded the legal protections set out above.

⁷ *Summary Offences Act 1988* (NSW) s 23.

There are a range of general offences that can apply to forestry protests. The *Forestry Act 2012* and *Forestry Regulation 2022* contain a number of specific offences that apply to forestry areas such as State forests and flora reserves which are outlined in the table below. A number of the below offences are penalty notice offences, that is, can be dealt with by way of a penalty notice, also known as an on-the-spot fine or an infringement notice.⁸ Where relevant these on-the-spot fines have been noted in the ‘maximum penalty’ column.

Offence	Description	Maximum Penalty
Damaging or destroying timber⁹	It is an offence to damage or destroy any forest products in a State forest. ¹⁰ This offence could apply where trees are felled to construct tripods.	\$5,500 and/or 6 months imprisonment. There is a further penalty of \$10 per tree that is destroyed or damaged. ¹¹
Unauthorised use of forestry areas¹²	It is an offence to use any land within a forestry area without lawful authority.	\$2,200 and the defendant has the onus of proving lawful authority. ¹³
Camping¹⁴	Land managers of forestry areas can display a notice prohibiting camping in a forestry area. Alternatively, the land manager can impose conditions or directions on camping in forestry areas, including the number of people allowed and the location of the camp. ¹⁵ It is an offence to contravene a notice or direction about camping. ¹⁶	\$2 200. The on-the-spot fine for this offence is \$200. If a person contravenes a condition of camping to pay a charge to a land manager, in addition to a penalty a court may also order the person to pay a

⁸ *Forestry Act 2012* (NSW) s 85(1).

⁹ *Forestry Act 2012* (NSW) s 38.

¹⁰ *Forestry Act 2012* (NSW) s 38.

¹¹ *Forestry Act 2012* (NSW) s 38(1)(b),

¹² *Forestry Act 2012* (NSW) s 67.

¹³ *Forestry Act 2012* (NSW) s 67(1).

¹⁴ *Forestry Regulation 2022* (NSW) s 8.

¹⁵ *Forestry Regulation 2022* (NSW) s 8.

¹⁶ *Forestry Regulation 2022* (NSW) s 8(4).

		charge to the land manager. ¹⁷
Dangerous activities in forestry areas¹⁸	<p>It is an offence to engage in any activity whilst in a forestry area that poses a risk to yourself or other persons (including recreational activities).</p> <p>This offence could apply to the use of tripods and other elevating structures, such as tree platforms. It could also apply to clearing of any vegetation for the purpose of establishing a camp, or for firewood. This is not an offence if you are provided with the written permission of the land manager for the forestry area or the activity is authorised by a license, forest permit or forest lease.¹⁹</p>	<p>\$2 200.</p> <p>The on-the-spot fine for this offence is \$200.</p>
Damaging Forestry Areas²⁰	<p>It is an offence to undertake an activity that may damage the forestry area, (including recreational activities).</p> <p>The following activities are expressly prohibited in a forestry Area:</p> <ol style="list-style-type: none"> a. Damaging, interfering with or destroying vegetation (other than timber); b. Damaging, obstructing or interfering with a road or a drainage structure; c. Damaging obstructing or interfering with a drainage feature (this includes a watercourse or drainage line); d. Interfering with forest materials e. Erect a fence or barrier; f. Obstruct or interfere with the flow of water in a watercourse g. Damage, deface, interfere with destroy or removed a standards, sign, notice, barrier or device erected by the land manager; h. Damage, deface or destroy a building, enclosure, dam or other structure, or plant or equipment, of the land manager or a lessee or licensee of the land manager.²¹ <p>This is not an offence if you are provided with the written permission of the land manager for the forestry</p>	<p>\$2 200.</p>

¹⁷ Forestry Regulation 2022 (NSW) s 8(5).

¹⁸ Forestry Regulation 2022 (NSW) s 9.

¹⁹ Forestry Regulation 2022 (NSW) s 9(2).

²⁰ Forestry Regulation 2022 (NSW) s 10.

²¹ Forestry Regulation 2022 (NSW) s 10(2).

	area or the activity is authorised by a license, forest permit or forest lease. ²²	
Lighting fires in a forestry area ²³	It is an offence to light a fire in a forestry area unless the person is authorised by a forest permit or an authorised officer, or an exception listed in section 13 of the Forestry Regulations 2022 (NSW) applies.	\$2 200. The on-the-spot fine for this offence is \$550.
	It is both an offence to leave a fire without extinguishing it and to fail to extinguish a cigarette or lit match. ²⁴	\$2 200. The on-the-spot fine for these offences is \$350.
Firearms and hunting ²⁵	It is an offence to shoot a firearm in or into a forestry area, or have a firearm, net, trap, poison, explosive or other hunting device in a forestry area without authorisation. It is also unlawful to kill or capture any animal, excluding fish, in a forestry area without authorisation. ²⁶ A game hunting licence amounts to authorisation. ²⁷ See section 68 of the Forestry Regulations 2012 (NSW) for further exceptions to this offence.	\$5,500 and/or 6 months imprisonment. The on-the-spot fine for this offence is \$650.
Unlawful entry into forestry areas ²⁸	Forestry Corporation may prohibit the entry of persons, vehicles or other machines (such as road making equipment or felling and logging equipment) into a forestry area by displaying a notice to that effect in or at the boundary of a forestry area. It is an offence to enter a forestry area if that person is prohibited from entering.	\$2 200. The on-the-spot fine for this offence is \$200.
Approaching or interfering with	Unless you are a relevant person (defined below), it is an offence to approach within 100 metres of timber harvesting equipment or equipment used	\$2 200. The on-the-spot fine for

²² Forestry Regulation 2022 (NSW) cl 10(3).

²³ Forestry Regulation 2022 (NSW) s 13.

²⁴ Forestry Regulations 2022 (NSW) s 14-5.

²⁵ Forestry Act 2012 (NSW) s 68.

²⁶ Forestry Act 2012 (NSW) s 68.

²⁷ Forestry Act 2012 (NSW) s 68(2).

²⁸ Forestry Regulation 2022 (NSW) s 6.

<p>forestry equipment²⁹</p>	<p>to establish a plantation that is in use or interfere with such equipment.</p> <p>This includes obstructing, defacing, climbing, or attaching something to the equipment.</p> <p>A relevant person includes employees of the Forestry Corporation, police officers, and members of staff of the Department of Regional NSW, the Department of Planning and Environment and the Environment Protection Authority.³⁰</p>	<p>this offence is \$1000.</p>
<p>Failure to leave a forestry area when directed by an authorised officer³¹</p>	<p>An authorised officer can direct a person to leave a forestry area if:</p> <ul style="list-style-type: none"> • they believe there is a relevant reason; • a person enters or remains in a forestry area in contravention of the <i>Forestry Act</i> or <i>Forestry Regulation</i>; or • if the person causes inconvenience to another person. <p>A ‘relevant reason’ includes where a person’s presence likely disrupts activities in the forestry area, or poses a risk to other persons or the property of other persons in the forestry area, or poses a risk to the forestry area.³²</p> <p>It is an offence to not comply with direction to leave a forestry area, but only if the authorised officer:</p> <ul style="list-style-type: none"> • discloses that they are an authorised officer; and • informs the person that a failure to comply with the request is an offence.³³ <p>An authorised officer may remove a person from a forestry area if they fail to comply with a direction.³⁴</p>	<p>\$2 200.</p> <p>The on-the-spot fine for this offence is \$200.</p>
<p>Offences relating to authorised officers³⁵</p>	<p>It is an offence to obstruct, delay or hinder an authorised officer in the exercise of the officer’s functions.³⁶</p>	<p>\$2 200.</p>

²⁹ *Forestry Regulation 2022* (NSW) s 60.

³⁰ *Forestry Regulation 2022* (NSW) s 60(2).

³¹ *Forestry Regulation 2022* (NSW) s 5.

³² *Forestry Regulation 2022* (NSW) s 5.

³³ *Forestry Regulation 2022* (NSW) s 68.

³⁴ *Forestry Regulation 2022* (NSW) s 5(2).

³⁵ *Forestry Act 2012* (NSW) s 83.

³⁶ *Forestry Act 2012* (NSW) s 83(1)(c).

The Minister for Agriculture appoints authorised officers. People who can be appointed include employees of the Forestry Corporation, members of any Division of the Government, or staff members of a land manager other than the Forestry Corporation. ³⁷ Police officers can also exercise the functions of an authorised officer. ³⁸
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For further information on general protest related offences (some of which may be relevant to forestry protests), please see our [Protest and Police Powers in New South Wales factsheet](#).

Activities on Crown Land

State Forests are not Crown land, but many parks, reserves and community halls can be Crown land. A [search on the e-planning spatial viewer](#) can assist with determining whether land is Crown Land or a Crown Road. Authorised officers have the power to direct a person or group of people to stop carrying on certain activities on Crown land.³⁹ This includes:

- entering Crown land at a time it is not open to the public;
- taking part in any gathering, meeting or assembly (except, in the case of a cemetery, for the purpose of a religious or other ceremony of burial or commemoration);
- displaying or causing any sign or notice to be displayed;
- distributing any circular, advertisement, paper or other printed, drawn, written or photographic matter;
- camping; and
- climbing any tree, building, fence, seat, table, enclosure or other structure.⁴⁰

It is not an offence to carry out these activities on Crown land, but rather to contravene a direction from an authorised officer to *stop* carrying out the activity.⁴¹

The maximum penalty for an individual is \$11 000 and \$1 100 for each day the offence continues.⁴²

An authorised officer is someone who has been appointed by the Minister for Lands and Property as an authorised officer and can be:

- an employee of a government sector agency;

³⁷ *Forestry Act 2012* (NSW) s 70.

³⁸ *Forestry Act 2012* (NSW) s 71.

³⁹ *Crown Land Management Act 2016* (NSW) s 9.4(1)(b).

⁴⁰ *Crown Land Management Regulation 2018* (NSW) s 13.

⁴¹ *Crown Land Management Act 2016* s 9.4(2).

⁴² *Crown Land Management Act 2016* (NSW) s 9.4(2).

- an employee of a local council;
- an employee of a Crown land manager of dedicated or reserved Crown land; or
- any other person of a class prescribed by the regulations.⁴³

The Minister for Lands and Property also has the power to put up a notice on or near Crown land that prohibits a person from carrying the activities listed above.⁴⁴ A Crown land manager has the same power to put up a notice on the Crown reserve they manage.⁴⁵ It is an offence for a person to carry on an activity if a notice prohibits them from doing so.⁴⁶

The maximum penalty for an individual is \$11 000 and \$1 100 for each day the offence continues.⁴⁷

Criminal Proceedings

Penalty Notice

Many of the offences outlined in this fact sheet can be dealt with by way of penalty notice (also known as an on-the-spot fine).⁴⁸ If a penalty notice is issued, the recipient can elect to pay the fine or challenge it in Court.

Court Attendance Notice

If police proceed to charging a person, they may:

- Issue a Field Court Attendance Notice which will list out the offences for which a person has been charged and the date and location they are to attend court.
- Take a person's details and send them a Court Attendance Notice (CAN) in the mail which includes details of the offences and the date and location a person is to attend court.
- Arrest a person and either release the person with or without bail conditions with a CAN (for further information in relation to bail please refer to our [Bail Factsheet](#)).

Generally, criminal prosecutions must commence within two years of the date of the alleged offence, or two years after the date evidence of the alleged offence first came to the attention of an authorised officer.⁴⁹

Compensation orders

⁴³ *Crown Land Management Act 2016* (NSW) s 10.6.

⁴⁴ *Crown Land Management Act 2016* (NSW) s 9.5(1).

⁴⁵ *Crown Land Management Act 2016* (NSW) s 9.5(2).

⁴⁶ *Crown Land Management Act 2016* (NSW) s 9.5(3).

⁴⁷ *Crown Land Management Act 2016* (NSW) s 9.5(3).

⁴⁸ *Forestry Act 2012* (NSW) s 85; *Forestry Regulation 2022* (NSW) sch 1.

⁴⁹ *Forestry Act 2012* (NSW) s 84(2)-(3).

In addition to monetary penalties or imprisonment, a Court can also order a person who has been convicted of an offence to pay the Forestry Corporation or another land manager compensation for loss or damage to land or property, or costs and expenses incurred by the Forestry Corporation or land manager in their attempts to prevent or mitigate damage.⁵⁰

For offences outside of Forestry land, a Court may order an offender to pay compensation to an “aggrieved person” (including a corporation) for any loss incurred as a result of their offending.⁵¹ The Court may make such orders either in response to an application from the aggrieved party or of its own volition.⁵² Such an order may only be made to compensate for *actual* loss suffered by the aggrieved person and not for any other purpose. There must be evidence of the actual loss suffered and a direct causal link between the offence committed and the loss incurred must also be established.

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⁵⁰ *Forestry Act 2012* (NSW) s 86.

⁵¹ *Victims Rights and Support Act 2013* (NSW) s 97.

⁵² *Victims Rights and Support Act 2013* (NSW) s 97(2).