



KNOW

YOUR

RIGHTS

**A legal guide for
activists in Tasmania**

BOB BROWN FOUNDATION



**PROTECT
TAKAYNA /
TARKINE**

BOB BROWN FOUNDATION



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Always was, always will be Aboriginal land

Bob Brown Foundation acknowledges the traditional owners of the land on which we live and work, the Muwinina people, and pay respect to Aboriginal Elders past and present.

Sovereignty was never ceded.

Disclaimer

Although this zine has been created with advice from our legal team, the authors of this zine are not lawyers.

When it comes to the law and discussion of legal activity, we cannot emphasise enough that nothing is black and white.

In this zine, we are aiming to give you a better understanding of the legal process around being arrested and going through the court process as environmental activists. However, every case can be slightly different, and there are no guarantees or standards. For example, we cannot tell you that a certain action will result in a specific sentence. We can, however, tell you what likely outcomes might be for certain courses of action.

This zine is not a replacement for direct legal advice on your individual case, and we encourage you to seek legal advice from a legal practitioner with experience working with activists. Having said this, being informed about the process and knowing your rights is invaluable as you enter into this complicated world.

Note that the information contained in this zine is specific to the laws in Tasmania, and cannot be easily extrapolated to other states. If you are getting involved in civil disobedience in other states of Australia you will need to research the legislation specific to that state. Further, laws and precedents are constantly shifting, and it is also important to remain up to date as politics shift.

WHY

CIVIL

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DISOBEDIENCE?

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PROTEC



Why civil disobedience?

Civil disobedience, by definition, means being involved in legally questionable and sometimes outright illegal activities.

Stopping, slowing, or interfering with business as usual by using non-violent direct action (NVDA) is a powerful and historically effective tactic in movements for change.

In this zine, the terms ‘civil disobedience’ and ‘non-violent direct action’ are used interchangeably, and an ‘activist’ is a person who chooses to participate in civil disobedience.

As activists, we are aware that certain actions that we take are illegal in the perspective of our judicial system. However, we make informed choices to take these illegal actions for a number of reasons:

1. Sometimes the only avenue left to us to stop activity from proceeding is to enter private property and use our bodies to occupy the space or attach ourselves to machinery. In these examples, the primary objective is to stop the destructive operation, for example, logging of old-growth forest; the fact that this requires taking illegal action is secondary.
2. There are deep and fundamental problems with industrial civilisation, not least of which is that industry and property are seen as more important than wild places, indigenous cultures, and non-humans. The legal system accompanying this civilisation reflects this. We do not believe that legal equates to right, nor that illegal necessarily equals wrong. The actions of big corporations and corrupt governments, although they may be ‘legal’ in the eyes of industrial civilisation, are often violent and destructive, and we believe that taking illegal action to protect these places, cultures and beings is the right thing to do, regardless of the laws written by those in power.
3. Civil disobedience often gains more media attention and grabs public interest in a more dramatic way than other forms of protest. Engaging in illegal activity can therefore achieve a broader platform from which to spread our messages.
4. In some cases, we do not believe that certain laws are right or just and we want to challenge these laws with the objective of changing the legislation. Civil disobedience can provide us with a platform from which to fight these unjust laws.

There is a lot of fear in our culture around getting arrested and acquiring a criminal record. In most cases, this fear is unfounded and getting involved with civil disobedience will very rarely close doors for you, despite common belief.

It is important to note, however, that **you can be a powerful and effective activist without ever putting yourself in an arrestable position.**

Many activists have specific reasons that make getting arrested difficult. Only **you** can make the decision about whether to take on an arrestable role in an action. Remember that. You should **never** feel pressured or coerced to get arrested, and if you do make the decision to do so, make sure that you are well-informed and feel comfortable that all your questions have been answered.

Getting arrested is a very personal choice and has potential personal implications on your life for years after the fact and if you receive a conviction, this can stay on your record forever.

Your criminal record can, in some cases, affect work and travel in your future. We will try to address these concerns in more detail in the following pages.

What is legal is not always what is right.

There is nothing right about destroying ancient forests.



GLOSSARY

Act	A statute or law passed by both Houses of Parliament and enacted. Acts are also known as primary legislation.
Arrestee	A person who has been placed under arrest by a police officer.
Bail	A written undertaking given upon release from police custody detailing a court date and limitations placed upon you until then.
Blocker	A person at an action who locks on temporarily or impedes access to the site to allow time for the rest of the action set-up to take place behind them. Once the arrestees are in position, the blocker locks off and leaves site or joins the rest of the crew.
Buddy	Arrestable activists at each action will have a 'buddy', whose primary role it is to care for the arrestable person. In most cases, buddies leave when asked to by police and are usually not arrested.
Burner phone	A mobile phone which has been wiped and all information cleared, except for a very few essential contacts. This can be used during an action for communication, but there is very little risk of sensitive information getting to the police if this phone is confiscated.
Dragon	A vehicle placed to block access to a worksite in which an activist can lock-on to a cement pipe.
Legislation	Consists of Acts of Parliament. Can refer to a single law or a collection of laws.
Locking on	Attaching yourself voluntary to a structure, vehicle, building or road in a way that you cannot easily be removed or that you are unable to remove yourself.
Locking off	Making the decision to detach yourself from whatever you have locked on to, without being removed by police.
Magistrates court	Where summary offenses are heard, also known as the Court of Petty Sessions. This is where (almost) all activist-related court hearings are held.

Glossary

Penalty units	Penalty units determine the amount a person is fined when they commit an infringement offence and change over time with inflation.
Police liaison	A designated activist within an action whose responsibility it is to facilitate communication between police and all activists on-site.
POLSAR	Police Search and Rescue. These are the police who remove protesters who have locked on or installed themselves in an aerial structure.
Possum	An activist taking on an arrestable role at an action in a tree-sit or other aerial blockade structure such as a tripod or monopole.
Security culture	A set of customs shared by a community whose members may be targeted by the government, designed to minimise risk.
Summary offense	These offences are less serious than indictable offences and the penalties that can be imposed are not as great. These are generally the offenses we face in direct action.
Sustainable Timbers Tasmania (STT)	A Government Business Enterprise responsible for all logging on public land in Tasmania. Also known as Forestry Tasmania.
Tree-sit	A platform in a tree occupied by an arrestee that can be connected to machinery, gates, or other infrastructure to prevent works.
Wombat	An activist taking on an arrestable role on the ground. This may include attaching themselves to a gate, machine, truck, locking themselves into a dragon, or sitting on the road or on a machine refusing to leave when asked.



PROTECT
NATIVE FORESTS



BOON BROTHERS

A person wearing a red helmet and a black puffy jacket is climbing a rope in a forest. The person is looking upwards and has their hands on the rope. The background is a dense forest with green foliage.

ROLES

AT

ACTIONS

People take on different roles at each action, and these roles are decided in advance with plenty of time for discussion and to allow informed consent.

Risk of arrestability for different roles are site-dependent. For example, a buddy on a mine site may be arrested for trespass while this would be highly unlikely on public forestry land. We use a colour-coded system to describe the probability of arrest; although, as mentioned above, nothing is certain.

● **Green**

People taking on green roles are going into the action **with no intention of getting arrested**. These roles may include drivers, log observer, police liaison, media crew, and other support crew

● **Orange**

People taking on orange roles are going into the action **with no intention of getting arrested**, but accept that arrest or a summons is a possibility. These roles include anyone entering private property, including mining leases, as well as sometimes wombat and possum buddies, blockers, and the police or worker liaison.

● **Red**

People taking on red roles are going into the action **with the intention of getting arrested**. These roles including wombats and possums – anyone occupying an aerial structure, locking on, or obstructing machinery or vehicles and refusing to leave. Note that people taking on red roles do not always get arrested – there are cases where police do not show up; where possums are left up trees to come down later; or where police promise a summons that is never delivered.

A photograph of a crime scene investigation. Three white police SUVs with blue and yellow checkered markings and 'POLICE' written on the back are parked on a dirt road. A person in a high-visibility vest and a hard hat is visible in the background. The scene is surrounded by tall trees and a cloudy sky. The text 'POLICE' is written in large white letters on a teal background at the top of the image.

POLICE

POWERS

AND

RESPONSIBILITIES

Police in Tasmania are governed by, and accountable to, the *Police Service Act 2003*, which defines how police officers should behave whilst on duty.

Tasmanian police officers are bound by a Code of Conduct, which is outlined in this Act: www.legislation.tas.gov.au/view/html/inforce/current/act-2003-075

The *Police Service Act* requires police officers to act in accordance with the orders in the Tasmania Police Manual: www.police.tas.gov.au/uploads/TPM-RTI-18-December-2018.pdf

Basically, police officers must behave in a way that is respectful, honest, and non-discriminatory. They should remain neutral and not take sides.

However, despite this Act, there are countless examples of police behaving in ways that break this code of conduct.

At every action, there is a person whose role it is to record all interactions with police – we call this person the “Legal Observer”. This gives us a record which we may need

to refer back to if there is misconduct and we want to make a complaint later. In any interaction with police, make sure to record the name and badge number of the officer you are dealing with – you have the right to ask for this.

Providing your name and address to police

If a police officer believes that a person has committed, is committing, or is likely to commit an offence, they may demand that that person provide their name and address. The police have the right to arrest you if you refuse to provide these details. In this instance, it is an offence to refuse to provide this information or to provide false information (10 penalty units).

A note on “no fixed address” or having an interstate or overseas address.

The police want your address in order to identify you, as well as to know where to find you (for example to deliver a summons). If you are living out of a van or travelling around and have no fixed address, they don’t like this as they don’t have any way to find you. It is legally acceptable to tell them the truth if you don’t have a fixed address, but it will be less hassle if you give them a Tasmanian address. The same applies to folks who have an overseas or interstate address. In addition, to the police worrying that

Police powers and responsibilities

they won't be able to find you, they may consider you a 'flight risk.'

This means if you are arrested they may not release you on bail if you don't provide a Tasmanian address.

If you need a Tasmanian address, let us know during action planning, and we will provide you with one.

Search (not in custody)

Generally, police can't search you (without a warrant), unless they have a good reason to. Some reasons the police can search you:

- » **Dangerous articles:** police can search you and your vehicle if they reasonably believe you have a dangerous article or stolen goods, or items used to commit a crime.
- » **Drugs:** Same deal. Police can search you or your car if they have a reasonable belief that there are drugs there.
- » **Loitering or having an article for the commission of a crime:** Police can detain and search you if they think you're about to commit a crime or have a reasonable belief that you have an implement that you intend to use for the commission of a crime.

Search (in custody)

Once you're in custody (under arrest), police have much broader search powers. When under arrest, police have the right to search you, which can be a pat-down or a strip search.

You have the right to request that any pat-down or strip search be conducted by a police officer of your preferred gender. This search can happen either at the site of the action or at the station. During this search, police have the right to confiscate any items that they believe were used to commit a crime. This can include climbing gear, lock-on, and communication/recording devices (cameras, mobile phones, etc). Be aware of this, and have minimal gear on you when going into a red role. If you require a mobile phone or communications device, we will provide you with a 'burner phone', which contains minimal contacts and information. It won't matter too much if it falls into police hands but still allows you to communicate with the rest of your team during and immediately after the action.

If you're given police bail (discussed below), it's unlikely that you would be strip-searched, but if you're held at remand (without police bail) for any length of time, especially overnight, you will be strip searched (which includes a 'squat and cough') and given clothes to change into.

If you have gear confiscated, the police must fill out a form stating what they are taking from you. They should provide you with a copy of this. Make sure that they do this, and retain this piece of paper. In most cases, after your case has been resolved in court, these items will be returned to you.

“Move-on” directions

During an action, if you are not one of the people in an arrestable role, you can be asked to leave a site by the land manager in the presence of the police, who can enforce this direction. We call this a ‘move-on direction’.

The police need to define the period of the move-on order, which is more than 4 hours (in the *Police Offences Act* there is no maximum time limit, but it is unusual for them to give a move-on order of more than 14 days). They also need to define the boundaries of this order and tell you where it is safe for you to move on to. If you return to the area defined by this move-on direction within the time frame given, you risk immediate arrest for trespass.

Sometimes during an action, the police liaison will try to negotiate with police to stay with the people locked on, or to have a buddy stay with them. However, at this point anyone else should leave site. Unexpected

arrests are difficult to manage, so if you are not in an arrestable role which has been agreed prior to the action, you should leave when asked to do so.

IMPORTANT: Be courteous and respectful to police and any contractors or workers, as well as police Search and Rescue (POLSTAR) at all times. Swearing, shouting, arguing and being verbally or physically abusive damages our cause, as well as our professional relationship with these people, and can lead to unnecessary charges and arrests. You are more likely to be treated with respect by the police if you are respectful towards them.

If you are arrested and then manage to get away from police, a separate charge, “Escape” added when you are eventually caught by police.





YOUR RIGHTS

WITH
POLICE

- » You do not have to provide ID (like a driver's license) but it can help make the process faster. If you are driving a vehicle and the police request to see your driver's license, you may be fined if you do not show it.
- » To be under arrest, you must know you are under arrest, as well as what you are being arrested for. **If you're not under arrest, you don't need to go anywhere with police.** Police can be manipulative, and make you think you have to go with them, because it makes their job easier. So if you're not sure, you should ask something like 'am I under arrest?' or 'am I free to go?'
- » You have a right to communicate with a friend **and** legal practitioner once arrested and taken into police custody. Police must give you this option and provide you with a phone to do this. Have a number written on your body ready for this; we try to avoid being arrested with phones or other devices on us as these can be confiscated.
- » If you are arrested for only trespass, police don't have the right to take your DNA. If charges of resist arrest or obstruct are added, they **do** have this right.
- » If anything the police say to you is unclear, ask for clarification. **You have the right to ask questions.**

The only information you ever have to give police is your name and address

(and your date of birth if you look less than 18 years old).

Your right to silence

In all interactions with police, and during the entire time that you are under arrest and in police custody, you have the right to remain silent.

You don't need to answer **any** other questions. You **do not** have to do an interview. You **do not** have to fill in any forms, nor answer any questions that they have on a form or computer system. You **do not** have to provide your phone number or give a next of kin, and we strongly discourage you from providing this information to police.

It can be uncomfortable to remain silent during this process, and there is always a temptation to chat or to engage in polite conversation with police officers. However, once

Your rights with police

you start talking it is very easy to accidentally let slip sensitive or confidential information that can compromise the security culture of the group and that can be used against you in court. You are well within your rights to say things like, 'no comment' or 'I won't be answering any other questions'. We recommend preparing the police for your silence by saying something like, 'I understand my rights. I have provided the information I am legally required to provide. I will not be answering any further questions nor taking part in an interview.'

NEVER, EVER DOB IN FELLOW ACTIVISTS. Police will sometimes try to get information out of you about fellow activists. Sometimes this is done in exchange for an offer of a lighter sentence or dropping certain charges. This is not true and there is **no benefit** to you in handing over information about others to the police. Plus, you will lose the trust of your fellow activists.

A note on filming/ photographing police

You have the right to film all interactions with police. They are filming you, often with a body camera. Even if the body camera is not showing any lights or obviously on, it can still be filming.

It is an important role at any action to film these interactions.

This shows the police officers that they are being watched and will be held accountable for any actions, and consequently helps keep us safe.

It is not legal to film or record private conversations without consent from the people present; however any interaction with police whether on public or private land can never be considered a 'private conversation' for legal purposes. If police officers claim that it is, you can state that you do not consent to participating in a private conversation. Remember, with police and media there is no such thing as 'off the record'.





POSSIBLE CHARGES

FROM

ACTIONS

Possible charges from actions

- » Trespass (this is the most common)
- » Obstructing a police officer in the line of duty
- » Resisting arrest
- » Public nuisance
- » Failing to comply with the directions of a police officer
- » Aiding and abetting

These charges all come from the *Police Offences Act 1935* (Tas):

www.legislation.tas.gov.au/view/html/inforce/current/act-1935-044

Note that these charges are the ones we see the most often, and this is not a definitive list. If you have a look through the *Police Offences Act*, you will see that there are all sorts of random charges. This just goes to show that really there are all sorts of laws you could be breaking, and police can probably charge you with something bizarre if they're in a bad mood.

Every charge (offence) in the *Police Offences Act* is a summary offence, meaning they will be heard in the Magistrates Court.

Trespass

Pretty simply, you can't enter on to any land or on to any vehicle, building, etc. without the owner's consent.

Specifics in relation to State Forest (where the majority of forest actions take place). There's a right of public access to all state forest. But, the land manager (Sustainable Timber Tasmania, STT) have the power to tell you to leave if they think there are Occupational Health & Safety (OH&S) risks or if your presence is interfering with forestry operations. There is a separate piece of legislation for this – the *Forest Management Act 2013*. Essentially, if you're in state forest, you're not trespassing until an authorised officer with STT tell you to leave and you refuse a move-on order in the presence of police. It must be 'an authorised officer' that tells you to leave, which is why any old contractor can't tell you to leave.

If you're anywhere else, for example inside a building, on a mining lease, or on a piece of machinery, you don't need to be told to leave before you're committing a trespass. Especially if you have climbed a fence or gone through a gate which is marked 'private property' or something like that. If leave when asked, it is possible that you will receive summons (even if not told at the time). You will not be arrested for trespassing unless you are told to leave and refuse.

Maximum penalty is 25 penalty units or 6 months imprisonment (double this for aggravated trespass – see below in the section on new anti-protest legislation).

Possible charges from actions

Public nuisance

This will normally be used when the action involves being a pain in the butt (official legal term) in a public place (for example blocking a road or a footpath).

Maximum penalty is 3 penalty units or 3 months imprisonment. The maximum penalty doubles if you do it again within 6 months.

Obstruct police/resist arrest

These are a little more serious than trespass or public nuisance. The maximum penalties are 100 penalty units or 3 years imprisonment. Obstructing police is basically exactly what it sounds like. If you hinder or block a police officer from 'acting in their lawful duty', you can be charged with this. This is often used by police when they tell a person that they are under arrest and then the person refused to come with them (i.e. to come down from the treesit or to lock off).

Resisting arrest is also self-explanatory and can be used in the same way as Obstructing police. It does mean that you have to actually be under arrest (will talk about this below). But once you're under arrest, if you run off, or try to break free from a police officer, you can be charged with resisting arrest. Police also may attempt to use this in cases where you refuse to lock-off.

Failure to comply

Essentially a police officer can tell you to leave an area if for a variety of reasons (e.g. they 'believe on reasonable grounds' that you're likely to commit an offence, obstruct pedestrians or vehicles or commit a breach of the peace). If you don't leave, then it is an offence and you can be arrested. Maximum penalty is 2 penalty units. If you are charged with this but think the order to leave was bogus, it's probably something you can challenge in court.

Aiding and abetting

This is an offence to help a person to commit any of these offences. For example, using your car to stop a log truck that someone else locks on to or somehow assisting someone in the process of locking on. It's something to keep in mind. For example, if you do not want to be charged, maybe the arrestee should be the person to stop a conveyor belt or a drill rig by pressing the emergency stop button.

Charges to avoid

This is all very common-sense stuff. Don't get charged with things unless you need to. Not only are they potentially serious, but they can undermine the campaign

- » **Damaging property.**
Just don't do it.
- » **Assaulting a police officer.**
Same. Just don't do it.

- » **Possession of a dangerous article.** If you're in the bush and you have a multitool with a knife, you'll probably be okay but make sure to declare this to police prior to being searched.
- » **Possession of an illegal substance (drugs).** Goes without saying. Don't take drugs to actions.
- » **Driving charges.** Driving an unregistered or non-roadworthy vehicle, driving under the influence of alcohol or drugs, driving without a license, speeding, driving with an unsecured load are all potential charges that should be avoided.

Maximum penalties

- » Most offences will state the maximum penalty in the legislation.
- » If a penalty is specified for an offence, this is the MAXIMUM penalty that a Court can impose when they sentence you.
- » The law says 'the maximum penalty is reserved for the worst possible example of a crime'. So in the world of civil disobedience, you're basically never ever going to see anyone given the maximum penalty. So don't freak out when you see that a maximum penalty is 6 months imprisonment; you won't get the maximum penalty.

Penalty units

- » Often a maximum penalty will include penalty units. This relates to fines. The amount of a penalty unit increases every year. So if an offence says that the penalty is 10 penalty units, it means the maximum fine you can get is 10 x whatever the penalty unit is at that point in time.
- » Google 'penalty unit Tasmania', which will take you to this page which gives updated information about what penalty units are 'worth' at that particular point in time: www.justice.tas.gov.au/about/legislation/value_of_indexed_units_in_legislation
- » If the penalty specified is **only** penalty units (so if it doesn't say anything about a term of imprisonment), it means that it is a "fine only" offence. This means you can't get jail time or community service as a sentence for this offence.

**NEW
ANTI-PROTEST**



LEGISLATION

Police Offences Amendment (Workplace Protection) Act 2022

As of October 2022, new laws have been introduced in Tasmania targeting Non-Violent Direct Action protests on “worksites”, including public forests, logging and mining lease sites, and roads leading to these sites.

The “Anti-protest law” is *The Police Offences Amendment (Workplace Protection) Act 2022* makes amendments to the *Police Offences Act 1935*.

In summary, the amendments make changes to the existing offence of unlawful entry on land and broaden the conduct covered in those offences and increases the maximum penalties for those offences, most significantly for alleged aggravated trespass offences.

There are 3 broad changes:

1. Harsher penalties for individuals taking part in peaceful protest activities where work is impeded in the course of a trespass offence.
2. A “body corporate” – which is a company or an incorporated association (such as Bob Brown Foundation) is liable to be charged for “trespass and obstruct” under these laws if work is impeded, which may mean

significant financial penalties for the foundation.

3. Inclusion of “aggravated trespass” for protests and an offence which applies where a person ‘causes risk to themselves or another person’.

The definition of trespass according to the new act is: *“A person, without reasonable or lawful excuse (proof of which lies on the person), must not enter into or onto, move onto, or remain in or on, any land, building, structure, premises, aircraft, vehicle or vessel”.*

The new provision requires a magistrate to impose higher sentences when sentencing a protester for trespass if:

- » Whilst trespassing, the person ‘substantially impeded, or prevented, another person from carrying out lawful work’ OR ‘intended to substantially impede, or prevent, a person from carrying out lawful work’.
- » Whilst trespassing, the person ‘caused, directly or indirectly, a serious risk to the safety of themselves or another person’ or ‘took an action which caused’ such a risk.

New anti-protest legislation

Where it is a body corporate that commits a trespass – presumably by organising a protest where work is impeded – and in doing so, the body corporate obstructs a business or undertaking, or takes an action that obstructs a business or undertaking, the body corporate would be liable to a maximum penalty of up to 250 penalty units (\$43,250).

It is important to note here that this is a brand new piece of legislation which **has not yet been tested in the court**. The police will also be talking about this, and how it will be applied in practice on the ground remains to be seen.

The maximum penalty for trespass where there is no risk to safety and where work is not impeded remains the same at a **maximum** of 25 penalty units (currently \$4,325) and 6 months imprisonment.

The penalty for trespass impeding work or posing a risk to safety is more variable. On conviction a person faces a **maximum** penalty of up to 50 penalty units (currently \$8,650) or imprisonment for a term up to 12 months.

Penalties have increased for people who ‘caused, directly or indirectly, a serious risk to the safety of themselves or another person’ or ‘took an action which caused such a risk’. In these circumstances the maximum penalty is 50 penalty units or up to 18 months imprisonment.

For someone previously convicted of this offence the maximum penalty is 75 penalty units (\$12 975) or up to 24 months imprisonment.

Note that protesters in Tasmania have never received the maximum penalties for crimes committed under the *Police Offences Act*.



PROTECT RAINFORESTS

**MMG GET OUT
OF TAKAYNA**

BOB BROWN FOUNDATION

A police officer in a high-visibility vest and a man in an orange jacket walking away from the camera in a wooded area. The officer is wearing a black cap with a checkered band and a vest with 'POLICE' written on the back. The man is wearing a light-colored cap and an orange jacket. They are walking through a wooded area with fallen branches and leaves on the ground.

THE ARREST PROCESS

AND
WHAT TO EXPECT
IN POLICE CUSTODY

Police can arrest you for any of the offences referred to previously.

Bail

Once you have been processed, you will usually be given bail by the police. This means you are released from police custody on certain conditions, which always includes the condition that you come to court on a certain date.

Most activists are bailed by police. Reasons you may not be given bail are:

- » You have committed more offences whilst already on bail. You may have broken bail in committing the most recent offense.
- » You live interstate/internationally/ no-fixed-address and the police think you are a flight risk (bear this in mind if you're from interstate, it is worth giving a Tassie address, or letting police know that you have somewhere here you can stay).
- » You have a history of not complying with bail conditions or not going to court.
- » Police cannot verify your identify (You aren't in the system because you are from another country, have had a name change, etc).

Other bail conditions can include:

- » Restrictions from certain areas (i.e. area of the offense or related company offices/sites).
- » Non-association conditions: this may ban you from associating with certain people, including others who may have been arrested at the same time or affiliates of an activist group you are associate with.
- » They can also include being restricted to a certain radius around your home, having to check in at a police station regularly, or being restricted to your home and having random police visits to make sure you are there. This group of bail conditions is very unlikely unless you have been arrested >5 times.

Police don't need to get you to sign your bail conditions before you are bound by them – the conditions are imposed on you.

HOT TIP: In Tasmania, you can refuse to sign your bail conditions without threat of being held (although police may threaten it).

If you tell them you understand you are still bound by bail conditions even if you don't sign them, it may make them chill.

You can challenge the conditions with the police at the station if you think they are unreasonable. It's up

The arrest process and what to expect in police custody

to the police whether they change them. If you are unsuccessful, your lawyer can petition to change these conditions after the fact. If you haven't signed your bail notice, this may make this process easier.

Being held for court

If you are arrested but *not* bailed by police, it means you are being held for court and will need to ask the court for bail. Courts are more likely to give you bail than police. You have to be taken before court at the "earliest possible time". This doesn't always happen though as the court only sits at certain times of day. There are sometimes out-of-hours court sessions where you may be seen. It is possible, however, that you will be held in remand overnight or even for a couple of days, especially if you are arrested on Friday night or on the weekend.

You should get a lawyer if you are held for court. Bob Brown Foundation will provide a lawyer for you once you have called to advise us of your situation. Legal Aid will also appear for you on a one-off basis at least for a bail application if a BBF lawyer is not available, or if you are taking part in direct action with a different organisation. They will generally appear in Burnie, Devonport, Launceston or Hobart if it's not out

of hours court. In Hobart, if it's out of hours court, Hobart Community Legal Service will appear for you

The magistrate will read out the charge and may give you the option to enter a plea, or adjourn it and make a bail application. If this happens, you can plead guilty and try get it over and done with, but this is not usually an option.

Sometimes, activists may try to be held for court by refusing to sign bail conditions or giving an interstate address in order to be seen as soon as possible. This completes the sentencing without having longterm and restrictive bail conditions until court. However, the police prosecutors don't like this as it doesn't give them any time to gather evidence or put their case together and in our experience this usually doesn't work.

If you are held for court and then seen to ask for bail, it is helpful to tell your lawyer the same information that is relevant to sentencing: any work/study/volunteer work; your financial position; and the fact that you were motivated to commit this crime due to concern over impending climate collapse, for example. Your lawyer pass the important and persuasive information to the magistrate. In most cases, you will then be released on bail.

Summons

Apart from being arrested, the other way you may attend court is by court summons. This is a document that is given to you weeks to months after committing the offense that tell you to come to court.

A summons has to be served on you. This means either giving it to you in person, or leaving it with someone at your last known address who is willing to accept it on your behalf, or sending it to your address by registered post. If you receive one of these documents, it means you have been charged with an offence and you have to go to court.

It is possible to be served with a summons for one offense when you appear in court for another matter. This happen sometimes even for offenses that happened months or years prior.

DO NOT EVER accept a summons for someone else, especially if you aren't likely to see them. It is useful to have a conversation with your family or housemates to advise not to accept a summons on your behalf if police do show up, to avoid them accidentally accepting a summons for you. There is no penalty on them at all if they refuse to accept a summons for you.

HOT TIP: If someone even touches the summons, it is possible that police will consider this summons "accepted". It can be beneficial to explain to your housemates and/or family their legal rights when it comes to dealing with police so they can feel appropriately briefed for any situation that may occur.

Note that a summons is dealt with in court the same way an arrest for the same offence is treated.

A woman with short grey hair and glasses, wearing a blue jacket, is smiling and talking to a police officer. The officer is wearing a high-visibility yellow vest with 'POLICE' written on the back and a white hard hat. They are outdoors, possibly at a construction site or a public event, with trees and a dirt path in the background.

THE

COURT

PROCESS

AND

POTENTIAL

OUTCOMES

Lawyers

If you are engaging in civil disobedience with Bob Brown Foundation, they will provide you with a lawyer and will cover the associated legal costs. If you are working with a different group, find out what their policy is and if they have lawyers that they work with regularly.

Disclosure

When preparing for court, you or your lawyer should make a request for disclosure of information. This will give you the charge, the ‘facts for the prosecutor’, and a copy of your police record (this is different to an official police check and it shows you what the specific charges are). Lawyers will always get this as a starting point. It’s important because it shows you what specifically the charge(s) is and what police are saying happened. You would find this out at court anyway, but this gives you time to prepare.

Your lawyer will do this for you, but disclosure can be requested by anybody, not just lawyers. So if you are representing yourself, here is the website to access this request: www.police.tas.gov.au/information-disclosure

- » Download the form under ‘prosecution information’. It’s pretty self-explanatory.

- » Send the form to the relevant prosecution agency.
- » It mentions a ‘complaint number’ on the form, but you probably won’t know this if all you have is a bail notice. Put a “TBA” in this section if this is the case.
- » As long as they have your name, date of birth and the offence you have been charged with, they should work it out.
- » It’s free for basic disclosure. If you pay the fee, you can get all of the statements as well but this isn’t necessary at this stage.

Going to court

Once you have had a look at the disclosure information (with your lawyer), you can decide whether you agree and will plead guilty, or disagree and will plead not guilty.

Your bail notice or summons will give you the detail of your court appearance. You will need to decide if you will plead guilty or not guilty. You will need a lawyer – usually this will be organised for you.

If you disagree with something in the ‘facts for the prosecutor’ but agree with the basics in the charge (the complaint), you can plead guilty but tell the magistrate that you dispute some of the facts.

The court process and potential outcomes

If you want to plead 'not guilty', you should *definitely* get a lawyer if you haven't already.

Court will probably be very busy. When you arrive, you go through the security checks. Upstairs (in the nipaluna / Hobart Magistrates Court) there is a board that contains information about who is appearing in which court. Look for your name and then go into that courtroom. The Court Clerk will ask to speak with everyone who is appearing. You should tell them your name and whether you are pleading guilty/not guilty.

Courts are generally very formal. Magistrates like it when you show respect to the court and act in the proper way. This includes being clean and dressing neatly, being on time, calling the magistrate 'Your Honour' and standing up when you speak to them. Only speak when directly spoken to. If you have a lawyer, they will be doing most of the talking for you.

The most common sentences for activism stuff are 'undertakings' and fines. This depends on the severity of the offense, and your prior criminal history (see Sentencing section).

Pleading guilty

If you plead guilty, the magistrate will give you an opportunity to tell them about yourself. If you have legal representation, your lawyer will do this talking for you. If you are representing yourself, here are some things that the court considers when sentencing you:

- » If you're working/studying
- » If you volunteer (including environmental campaigning), or do any community work
- » Your financial situation
- » That you were motivated to act by concern over [insert cause here]



POSSIBLE

**SENTENCING
OUTCOMES**

Possible sentencing outcomes

Sentencing is covered by another piece of legislation, the *Sentencing Act 1997*.

Possible sentences

- » **Dismissal of charges**
Charges dropped and you walk away with no punishment.
- » **Undertaking**
An 'undertaking', (also known as a 'good behaviour bond') is where you agree that you won't commit any more offences for a certain period of time. If you comply with the undertaking and don't commit an offence, the charge goes away and won't show up on your record. If you commit another offence in that period of time, the court will bring the original offence back, and you can be re-sentenced.
- » **Fine**
This can be however big the magistrate wants up to the maximum for that offence
- » **Community Corrections Order**
This usually includes a certain number of hours of community service, as well as other restrictions like not leaving Tasmania or an undertaking to not commit an offence punishable by imprisonment for the term of the order.
- » **Suspended sentence**
This is where things start getting more tricky. Imagine this like a high-stakes good behaviour bond. A magistrate could give you a term of imprisonment, for example 3 months, but 'suspended' over 2 years meaning that you if you don't commit an offense over the next two years, the sentence is effectively completed. If you were to commit an offense over that period, then the prosecution can make an application to 'breach' that suspended sentence. This means that they are asking the court to make you serve that suspended period of imprisonment in actual custody. If you breach a suspended sentence, the court *must* activate it unless it is 'unjust'. There is lots of case law about what 'unjust' means, but essentially if you get a suspended sentence for activist type offences and then commit the same type of offending again, the chances of you serving that time in prison are very high.

» **Home detention order
(‘house arrest’)**

You may be given a term of house arrest, possibly with a condition that you have to wear an ankle monitor, for a certain period of time. This usually means that you have to stay home except to attend appointments and court; and that you are limited to a certain radius around your home.

» **Term of imprisonment**

This can be anything up to the maximum for that offence.

Note that combined sentencing orders are also possible under this Act, meaning that the magistrate can choose to give you a fine PLUS a home detention order, or a fine PLUS a community corrections order etc.

The most common sentences for activism stuff are undertakings and fines.

If you don't pay a fine or fines, be aware that your driver's licence can be disqualified. However, there's no power to make you serve time in gaol for not paying fines in Tasmania.

Convictions

The magistrate can decide whether or not to record a conviction for any given offence committed. The offence only goes onto your criminal record if a conviction is recorded.

A person wearing a dark jacket and a colorful beanie is walking away from the camera on a dirt path through a dense forest. The path is covered in dry leaves and twigs. The trees are tall and thin, with some green and some yellowing leaves, suggesting an autumn setting. The overall scene is a natural, outdoor environment.

INFORMATION

**FOR
NON-AUSTRALIAN
CITIZENS**

When you are in Australia, for legal purposes you are treated the same as Australian residents.

We have had many non-Australian residents taking part in civil disobedience and getting arrested over the years, and all the processes described above are exactly the same.

Sometimes, identification can be more difficult if you aren't in the system. If you want to make sure you are not held, it can be helpful to bring ID with you to prove that you are who you say.

If you are planning on or hoping to stay in Australia and work towards residency and/or citizenship, it is worth seeking advice from a lawyer before making a decision to get arrested.

The path towards Australian residency is long and arduous and is made harder if you have a criminal record. One time is usually okay, as you are unlikely to have a conviction recorded.

Once you start to accumulate charges though and the magistrate starts to record convictions, it looks bad for your residency or citizenship application as it shows disrespect for the laws of Australia and the immigration officials don't like this.

Is deportation a risk? Not really, not for summary offenses and particularly not unless you accumulate a lot of charges in a short space of time. If you are concerned, get specific legal advice before putting your hand up to take on an arrestable role.

According to Australian immigration law, you can be deported if:

- » You have been convicted of certain serious crimes and received a prison sentence.
- » You are considered to be a threat to the security of Australia. Before a deportation order is made on these grounds, you will be given the opportunity to appeal against your adverse security assessment.

MAKING A COMPLAINT



If you feel like you have witnessed or been a victim of police mistreatment or unethical behaviour, you can make a complaint.

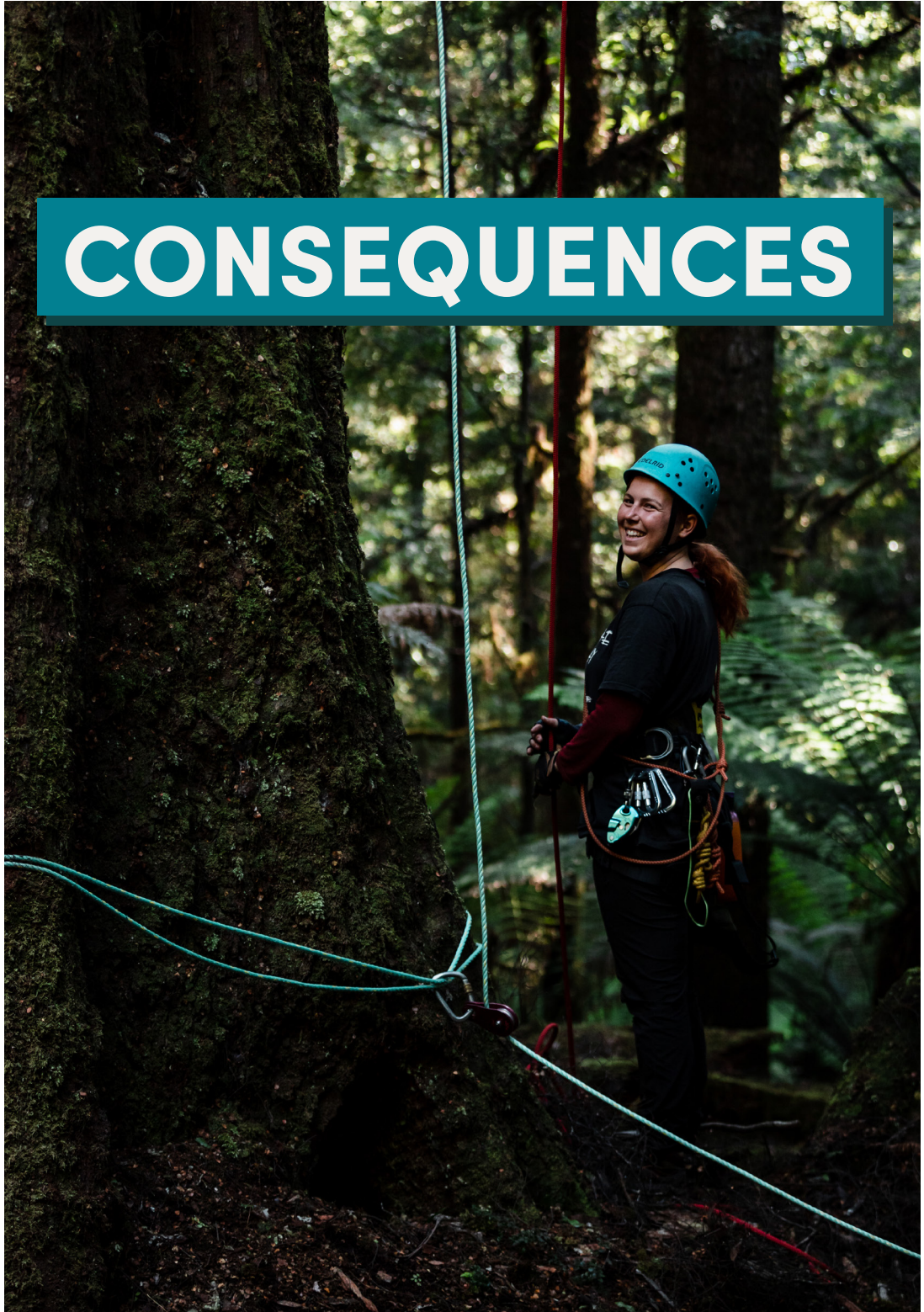
We encourage you to do this if police behaviour is out of order. If you feel threatened or intimidated by police or whilst in police custody, you should call them out. It is often more junior officers who are the perpetrators and if their bosses find out there can be repercussions for them and these complaints are often taken very seriously. There is a 6-month period following the incident where you can get this complaint in, so if you do want to make a complaint, do it as early as possible.

Important information to record:

- » Date of incident
 - » Time of incident
 - » Location of incident
 - » Name of person writing the report
 - » Police officer's name and badge number
 - » License plate numbers and description of car (if applicable)
- » Description of events – make sure you use neutral language and just report the facts. Avoid emotional or dramatic language and stick to just telling exactly what happened in simple terms.

The same process applies to making a statement to police about violent behaviour from third parties. Even if you are not sure about whether to submit the complaint or statement, it is a really good idea to write everything down as soon as possible after the event. Our memories become less reliable over time, so having written information that you can refer back to is invaluable if there is even a small chance that you will want to make a complaint. It is also useful for lawyers to use in court and for reference.

CONSEQUENCES



We are often asked questions about impact of direct action on people's lives, particularly regarding work and travel.

This is a difficult topic to discuss as it is so uncertain and dependent on so many factors. However, it can be acknowledged that accumulating charges on your criminal record can have a potential impact on employment and travel possibilities. In most cases, these impacts are less than most people imagine. Certain jobs do require an annual police check, for example 'working with vulnerable people'. With this check, they are concerned with any violent crimes or drug offences, and the majority of direct action charges are irrelevant to this.

For certain professions, like health practitioners and teachers, there is an annual registration process that requires you to disclose any changes to your criminal record. The charges on a police record from being arrested on a direct action do usually affect this, although in some cases, activists have had to write supporting statements and go through a review process.





**USEFUL
RESOURCES**

The Tasmanian Law Handbook

This is put together by the Hobart Community Legal Service. It has great information about criminal law in Tassie, and especially good stuff about your rights.

www.hobartlegal.org.au/handbook

Legal Aid Tasmania fact sheets

These are also pretty good on a whole variety of stuff.

www.legalaid.tas.gov.au/fact-sheets

Action Ready Queensland

This website was set up for activists in Queensland, so some of the specific information is not applicable to Tasmania, but there is a lot of good general information as well and it is really well done and worth a look.

www.actionreadyqld.com

A lush green forest with tall trees and ferns in the foreground. The text is overlaid on the image in white, bold, sans-serif font, with each word on a separate green rectangular background.

TAKE

ACTION

AND

FOREVER

HOLD YOUR

PEACE