

Legal Information regarding East West Link Protests

[Major Transports Facilitation Projects Act 2009](#) (MTPF Act) operates to facilitate the construction of major transport projects. On 10 September amendments were passed (the [Major Transports Facilitation Amendment \(East West Link and Other Projects\) 2013](#)) whose objective is to 'facilitate the East West Link project and other major transport projects by reducing procedural delays and red tape (s1(a)).

The Act creates several offences that protesters should be aware of.

The Act gives the project authority the power to establish 'restricted access areas' on part of the project area of land by either

- the use of fencing, barriers or other permanent or temporary means of physical demarcation
- erecting signs or causing signs to be erected on or in close proximity to the area stating that the area is a restricted access area and the restrictions (if any) which apply in relation to that area. ([section 196 MTPF Act](#))

The project authority should also include a notice in the [Government Gazette](#) that such a 'restricted access area' has been established.

The Act gives the Project Minister the power to appoint employee of the Crown or a public sector body as 'authorised officers' under the Act ([section 197 MTPF Act](#)). These authorised officers must have an identification card on them and produce this card upon request if they are exercising their functions under the Act ([section 198 MTPF Act](#)).

The Project Authority, a member of the police force or an authorised officer may warn any person [not authorised](#) to be in the restricted access area to leave ([section 201 MTPF Act](#)).

A member of the police force or an authorised officer may direct any person who is not authorised to be in a restricted access area not to enter the restricted access area ([section 202 MTPF Act](#))

It is an offence to enter or remain in any part of a 'restricted access area' unless you are authorised to do so or have a 'reasonable excuse' for entering into or remaining in an 'restricted access area'. The maximum penalty is 10 penalty units (approx \$1100) ([section 203 MTPF Act](#))

If you are in a 'restricted access area' and asked by a police officer or authorised officer to give your name and address it is an offence not to. (max 5 penalty units approx \$550). The authorised office must also provide you with proof of their identity. ([section 204 MTPF Act](#)).

It is also an offence to hinder or obstruct an authorised officer exercising their powers without a 'reasonable excuse'. Maximum penalty 10 penalty units, approx \$1100) ([section 205 MTPF Act](#))

The Act also has implications for trespass charges.

It is an offence under [section 9 of the Summary Offences Act](#) to

- wilfully trespasses in any public place and neglect or refuses to leave that place after being warned to do so by the owner occupier or a person authorized by or on behalf of the owner or occupier. The MTPF Act states that that project authority has the power to give this warning ([section 200\(2\) MTPF Act](#))
- without lawful excuse, enter any place in a manner likely to cause a breach of the peace or reasonable apprehension of a breach of the peace

The maximum penalty for these trespass charges is 25 penalty units (approx \$2750) or 6 months imprisonment.

The Max Brenner case provides guidance on how the trespass provisions should be interpreted in light of the [right to public assembly in the Victorian Charter of Human Rights and Responsibilities](#).

In that case the court stated that:

- For trespass action to be considered 'wilful', it requires **something more** than being in a public space without the permission of the owners/occupier of that space;
- It is not wilful trespass to enter an area for the purpose of conducting a **political demonstration**;
- Protesters have a **lawful right to enter public places**, and to conduct a peaceful political demonstration;
- The right to protest can only be restricted if the protest constitutes a **threat to public order** or a significant breach of the peace;
- This must be **more than behaviour** that might cause some inconvenience to other members of the public.

General Comments on protest and the risk of arrest (taken from [ActivistRights](#))

Some activists choose to disobey or break a law as an act of civil disobedience: the deliberate, open and peaceful violation of particular laws, regulations or instructions which are believed to be morally objectionable or unreasonable.

Other activists go to great lengths to avoid arrest or see arrest as an unfortunate consequence of taking part in an action. Arrest can effectively remove you from the action, make you vulnerable to police abuse, and tie you up for months in court action.

Whatever your views on getting arrested, before participating in any political action that involves the risk of arrest, two questions are worth considering.

- Will getting arrested at this action help to achieve the campaign's strategic aims?
- And are you willing and able to withstand the personal consequences of arrest and possible charges and convictions that may result? This question can only be answered by reference to your own conscience. And this may require considerable deliberation on the consequences and impacts.

Your rights if arrested

There is important information regarding your [rights if you are arrested](#) on the www.ActivistRights.org.au website.

You have the right to remain silent. Anything you do say to the police can be used as evidence against you in court or in the police decision whether or not to charge you. You should refuse to answer any questions apart from your name and addresses, until you have had the opportunity to speak to a lawyer.

You have the right to make a private phone call to a friend/family member and a lawyer before the police question you. Ask for this if the police do not offer.

Aboriginal people should also contact the Victorian Aboriginal Legal Service (Free call 1800 064 856).

Contact details for supportive lawyers

- Robert Stary Lawyers: 0407 410 821 (24 hour help line)

Victoria Legal Aid have a help line 1300 792 379 (8:45am - 5:15pm)

Legal information compiled by legally trained volunteers associated with CounterAct on 29 September 2013. **This is general information only. If you need personal legal advice, you should consult with a lawyer on an individual basis. If you have any doubts about whether you have special circumstances or if you have been charged with an offence seek legal assistance.**