
Safe access zones in Australia

Legislative considerations

Acknowledgement

Marie Stopes Australia acknowledges the Traditional Owners and Custodians of the land on which we live and work. We pay our respects to Aboriginal and Torres Strait Islander Elders past, present and emerging. We also acknowledge the enduring connection to their Traditional estates across Australia and to the ongoing passion, responsibility and commitment for their lands, waters, seas, flora and fauna as Traditional Owners and Custodians.

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1. Forewords

I am pleased to facilitate the work of University of Queensland law students Caitlin Holmes and Eleanor Taylor. Both have volunteered their time to prepare this overview of the law as part of their commitment to working in the public interest for the benefit of the community. Every year the University of Queensland Pro Bono Centre supports organisations through the work of student volunteers, alongside academic supervisors, to undertake a range of law related activities in the public interest.

This particular pro bono project is close to my heart. Safe access to health care should be available to everyone and safe access to abortion care should be no different to other health care. Studies have identified that protests outside abortion clinics can have detrimental effects on both the staff who work in them and those who attend to have an abortion. Protests can cause stress, anxiety and fear to those accessing a clinic. Protests can also discourage people from attending the clinic for an abortion, or delay their attendance and post-abortion care, and thus contribute to health complications.

When the High Court handed down its decision in the case of *Clubb v Edwards; Preston v Avery* [2019] HCA 11, Kiefel CJ, Bell and Keane JJ said:

A public demonstration or manifestation about abortions in the vicinity of a clinic inevitably constitutes a threat to the equanimity, privacy and dignity of a pregnant woman seeking medical advice and assistance in relation to a termination (at [126]).

I hope this overview is useful for those jurisdictions yet to introduce safe access zones.

Professor Heather Douglas
School of Law
University of Queensland

Access to sexual and reproductive healthcare is crucial for women and people who are pregnant in upholding their reproductive rights and bodily autonomy. It is about the choice, bodily autonomy, empowerment and freedom from coercion and violence. For those who have been subjected to sexual and gender-based violence and/or became pregnant as a result of it, access to abortion is a part of their recovery process.

Unfortunately, the rights to healthcare, privacy and control over your life is being eroded when picketers are present around sexual and reproductive health clinics and choose to harass and intimidate women and pregnant people seeking healthcare, as well as their support persons and clinics' staff. With their actions, picketers not only cause harm to people accessing clinics but undermine the progress achieved in responses to all forms of sexual and gender-based violence. They are hindering access to healthcare and erode women's reproductive rights.

Safe access zones surrounding clinics maximise safety for both people accessing sexual and reproductive healthcare and staff working there. Safe access zones exist to ensure the right to privacy and freedom of choices for women and pregnant people.

Safe access zones function in all jurisdictions in Australia with the exception of South Australia and Western Australia. With the move to legislate safe access zone in two remaining states, this report is crucial to our understanding of the efficacy of safe access zones with regard to sexual and reproductive rights and choices.

Australian Women Against Violence Alliances, as one of the six National Women's Alliances working to address all forms of sexual and gender-based violence, we are thankful to the Marie Stopes Australia and the University of Queensland (UQ) Pro Bono Centre for an opportunity to be a part of this important reform. It is time that we ensure the equality of access to sexual and reproductive health services around Australia.

Tina Dixon
Acting Program Manager
Australian Women Against Violence Alliance

Everyone has the right to access healthcare services safely and with their privacy and dignity protected and respected. This premise is at the very core of Australia's healthcare system and at the heart of Australia's Charter of Healthcare Rights.

Unfortunately, people accessing abortion care services have not been afforded this basic healthcare right. For many years patients and staff of healthcare services providing abortion care have been harassed, intimidated, threatened and even had their privacy breached by anti-abortion picketers outside these healthcare services.

The harassment and intimidation outside healthcare services providing abortion care has led to most States and Territories enacting legislation to protect patients from these picketing activities. Safe access zones are in place around abortion clinics across this country to provide a bubble of safety for both patients accessing abortion care services and the staff that work within these services.

Western Australia and South Australia have yet to put in place this vital, protective legislation. However, both governments have made clear steps towards introducing safe access zones in their respective states.

It really is sad that we need safe access zones. However the experience of our staff and clients has shown how necessary they are. In places where they have been enacted, they have made a huge, positive impact on the feelings of safety and privacy for staff and clients.

I am proud to present this paper that explores safe access zones across Australia and provides vital lessons for Western Australia and South Australia as they progress their safe access zone legislation.

Thank you to the University of Queensland (UQ) Pro Bono Centre for collating much of the information in this paper. Specifically thank you to Caitlin Holmes and Eleanor Taylor who worked under the academic supervision of Professor Heather Douglas.

Jamal Hakim
Managing Director
Marie Stopes Australia

Managing a clinic that delivers vital sexual and reproductive health services such as abortion care is a rewarding and challenging role. Each day I work with incredibly passionate, caring, and talented people. We care greatly for each client who walks through our doors and we do so without judgement and prejudice.

What makes this work so challenging is the presence of picketers outside our clinic. I have worked for Marie Stopes Australia for 5.5 years and the picketers that assemble outside our clinic have had a cumulative impact on me, my team, and the clients in our care. While I respect their right to have opinions about abortion care, I do not agree with their tactics and the negative impacts they have on all of us.

I have contended with abusive behaviour, I have been told that what I do is wrong, evil and that I should be ashamed. I have had my car covered in 'holy water' that has blistered the paint. My staff have been followed to their cars and confronted by strangers. I have held the hands of clients and support people who have been confused and hurt by the judgement and acts of these picketers.

Every person who steps foot in this clinic, be they a nurse, doctor, administrator, counsellor, cleaner or client, should be able to do so feeling safe and respected. Sadly, the presence of picketers jeopardises our ability to do this. It also impacts on our families who worry about the aggression and judgement we have faced over the years.

Safe access zones are necessary to make sure we can do our jobs and our clients can access services safely and privately. They make a huge difference to staff and clients when they are put in place. My hope is that this paper combined with our ongoing advocacy and the support of Government's such as the one we have here in Western Australia, will result in safe access zones becoming a reality in Western Australia and South Australia.

Leigh Keane
Nurse Unit Manager
Marie Stopes Australia

Feeling safe in our communities is vital to building community trust and social cohesion¹. When it comes accessing health services, it is also important that people not only feel safe but also that their privacy is respected and protected.

In 2018, Marie Stopes Australia's clinic in Midland, Western Australia, was subject to a large number of picketers during the Lent period. The organisation received a number of complaints from clients and support people. Here are quotes that highlight just some of the concerns raised with clinic staff.

“Made the mistake of walking into carpark past them.”

“Using very emotive language. You're killing babies, Jesus hates sinners.”

“Rude and harassing protesters approached us....”

“Absolutely unacceptable and inappropriate.”

“Feel threatened.”

“Disgusting the way they speak to people. As a patient was confronting and unnecessary. Should not be able to make females feel like that in a hard time.”

“Felt very judged.”

“Very emotional- confronting posters of babies.”

“Approached by protesters who were pushing views and ancient opinions....”

“Both myself and my partner were affected by this totally unacceptable.”

“...quite intimidating especially in the way they approached me. I am here as a support person for my sister I'm glad I was approached and not her.”

“Protestor put hand inside car and dropped a bag, I threw it back.”

“Protester paced onto the driveway, I had to brake and she waived her brochures at me while trying to tap on my window.”

¹ Australian Bureau of Statistics (2010). 1370.0 - Measures of Australia's Progress, 2010. Accessed 28 August 2020
[https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1370.0~2010~Chapter~Feelings%20of%20safety%20\(4.4.4\)](https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/1370.0~2010~Chapter~Feelings%20of%20safety%20(4.4.4))

2. Executive Summary

Safe access zones have been implemented in six Australian jurisdictions, namely Tasmania, the Australian Capital Territory (ACT), Victoria (VIC), the Northern Territory (NT), New South Wales (NSW) and Queensland (QLD). Safe access zones are legislated around clinics and other facilities at which abortions are provided to ensure that patients can access reproductive health services without threat of harassment, obstruction or interference. The legislation also protects employees and others who access these facilities in the course of their duties. In most jurisdictions, safe access zones include the premises and areas within 150m of the premises.

South Australia (SA) and Western Australia (WA) are yet to enact safe access zone legislation. Any legislation implementing safe access zones must be carefully constructed to ensure that it does not impermissibly infringe the implied freedom of political communication. Several aspects of safe access zone legislation, namely the extent of the zone and the conduct prohibited within the zone, must be scrutinised to ensure that the burden on the freedom of political communication is not too great, while still enabling the law to achieve its purpose to protect the safety and well-being, and respect the privacy and dignity of people accessing premises at which abortions are provided.

It is recommended that safe access zones be established in South Australia and Western Australia, and that:

- safe access zones should be 150 metres from the termination service premises, unless the Minister otherwise prescribes a distance, being not less than 150 metres, by regulation.
- prohibited behaviour be defined as stated in Victorian legislation.
- the premises around which safe access zones are to be established be defined, including public hospitals and clinics.
- 12 -months imprisonment and/or an appropriate fine be introduced as a penalty for engaging in prohibited behaviour in a safe access zone
- the prohibited behaviour not apply to employees or other persons who provide services at termination services premises
- no exclusions of the application of the safe access zone in any circumstances are included in any South Australian or Western Australian legislation

Harmonising safe access zone legislation across jurisdictions could enable greater health access and equity. Doing so would also enable Australia to meet international commitments to preventing discrimination and violence against women.²

² Committee on the Elimination of Discrimination against Women (2018), CEDAW/C/AUS/CO/8: Concluding observations on the 8th periodic report of Australia viewed on 27 July 2020 at <<https://digitallibrary.un.org/record/1641944?ln=en>>.

3. Background

Sexual and reproductive healthcare are essential services. Safe access zones enable access to those essential services. Safe access zones are mechanisms that can increase public health equity and prevent violence against women.³

The United Nations Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Discrimination against Women (CEDAW) have enshrined sexual and reproductive within women's right to health.⁴ The Australian Government is therefore obliged to respect, protect and fulfil sexual and reproductive health and rights. Observations on Australia's eight periodic CEDAW report included recommendations to harmonise safe access zone legislation across jurisdictions to enable greater health access and equity.⁵

Safe access zones have been established in all States and Territories in Australia apart from Western Australia and South Australia. Where safe access zones have been established around clinics, the need to engage with local police for permit breaches or unlawful activity has decreased to zero. Safe access zones are automatic, and they have resulted in the almost immediate compliance by picketers to the zone boundaries.

The following report outlines existing safe access zone legislation in Australia and identifies its strengths and weaknesses. Implications of the implied freedom of political communication are considered. Relevant contextual considerations for South Australia and Western Australia are provided as a basis upon which recommendations are to be made for the implementation of safe access zones.

3.1 University of Queensland Pro Bono Centre

This report was researched and authored by University of Queensland (UQ) law students Caitlin Holmes and Eleanor Taylor under the academic supervision of Professor Heather Douglas. This report was prepared for and on behalf of Marie Stopes Australia, a national non-profit family planning organisation providing reproductive health services. Student researchers and Professor Heather Douglas undertook this task on a pro bono basis, without any academic credit or reward, as part of their contribution to service as future members of the legal profession. The UQ Pro Bono Centre and student researchers thank Marie Stopes Australia for allowing us to contribute to its vital work.

³ Committee on the Elimination of Discrimination against Women (2018), CEDAW/C/AUS/CO/8: Concluding observations on the 8th periodic report of Australia viewed on 27 July 2020 at <<https://digitallibrary.un.org/record/1641944?ln=en>>.

⁴ Office of the United Nations High Commissioner (2020), Sexual and Reproductive Health and Rights, viewed on 27 July 2020 at <<https://www.ohchr.org/en/issues/women/wrgs/pages/healthrights.asp>>

⁵ Committee on the Elimination of Discrimination against Women (2018), CEDAW/C/AUS/CO/8: Concluding observations on the 8th periodic report of Australia viewed on 27 July 2020 at <<https://digitallibrary.un.org/record/1641944?ln=en>>.

3.2 Australian Women Against Violence Alliance

Australian Women Against Violence Alliance (AWAVA) is one of the six National Women's Alliances funded by the Australian Government to bring together women's organisations and individuals across Australia to share information, identify issues and contribute to solutions. AWAVA's focus is on responding to and preventing violence against women and their children. AWAVA's role is to ensure that women's voices and particularly marginalised women's voices are heard by Government, and to amplify the work of its member organisations and Friends and Supporters. AWAVA's members include organisations from every State and Territory in Australia, representing domestic and family violence services, sexual assault services, services for women in the sex industry and women's legal services, as well as organisations representing Aboriginal and Torres Strait Islander women, young women, women educators and other groups. AWAVA's contract manager is the Women's Services Network (WESNET).

3.3 Marie Stopes Australia

As an independent, non-profit organisation, Marie Stopes Australia is Australia's only national accredited provider of abortion, contraception and vasectomy services, and the country's longest running provider of teleabortion. Our holistic, client-centred approach empowers individuals to lead their own reproductive healthcare safely, and with dignity, regardless of their circumstances. Through active partnerships with healthcare providers, researchers and communities, our models of care ensure the total wellbeing of our clients is supported at every stage¹.

4. Existing Safe Access Zone Legislation

Jurisdiction	Law
Queensland	<i>Termination of Pregnancy Act 2018 (Qld)</i> Part 4
New South Wales	<i>Public Health Act 2010 (NSW)</i> Part 6A
Australian Capital Territory	<i>Health Act 1993 (ACT)</i> Part 6 Div 6.2 ss 85-87
Victoria	<i>Public Health and Wellbeing Act 2008 (Vic)</i> Part 9A ss 185A-185H
Tasmania	<i>Reproductive Health (Access to Terminations) Act 2013 (Tas)</i> s 9
Northern Territory	<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i> Part 3 ss 14-16

4.1 Queensland

Queensland	
Legislation	<i>Termination of Pregnancy Act 2018</i> (Qld) Part 4
Creation	Automatic – all termination service premises; ministerial declaration not required.
Size	150m unless otherwise prescribed by Minister
Measured from	Entrance to premises
Hours of effect	Implied: when patients/staff are present
Prohibited Behaviours	Conduct relating to termination that would be visible/audible to a person at premises and likely to deter a person from entering or leaving the premises, undergoing a termination, or performing a termination. Making an audio or visual recording of a person that identifies them (without consent), or distributing or publishing this kind of recording.

Section 13 Meaning of termination services premises

In this part –

termination services premises –

- (a) means premises at which a service of performing terminations on women is ordinarily provided; but
- (b) does not include a pharmacy.

Section 14 Meaning of **safe access zone**

- (1) A place is in the safe access zone for termination services premises if the place is –
 - (a) **in the premises**; or
 - (b) **not more than the prescribed distance from an entrance to the premises.**
- (2) Unless a distance is prescribed under subsection (3), the prescribed distance for subsection (1)(b) is **150m**.
- (3) A regulation may prescribe a distance for subsection (1)(b) for state termination services premises.

- (4) The **Minister may recommend** to the Governor in Council the making of a regulation under subsection (3) only **if satisfied** that, having regard to the location of the premises, **a prescribed distance of 150m is insufficient, or greater than necessary, to achieve the purpose of this part** in relation to the premises.

Section 15 Prohibited conduct in safe access zones

- (1) A person's conduct in the safe access zone for termination services premises is **prohibited conduct** if the conduct –
- (a) Relates to terminations or could be reasonably perceived as relating to terminations; and
 - (b) Would be visible or audible to another person in, or entering or leaving, the premises; and
 - (c) Would be reasonably likely to deter a person mentioned in paragraph (b) from –
 - (i) Entering or leaving the premises; or
 - (ii) Requesting or undergoing a termination; or
 - (iii) Performing, or assisting in the performance of, a termination.
- (2) A person's conduct may be prohibited conduct whether or not another person sees or hears the conduct or is deterred from taking an action mentioned in subsection (1)(c)(i) to (iii).
- (3) A person must not engage in prohibited conduct in the safe access zone for termination services premises.
- (4) Subsection (3) does not apply to a person employed to provide a service at the termination services premises.

The enactment of the *Termination of Pregnancy Act 2018* (Qld) created safe access zones around termination service premises in Queensland. The Act defines the safe access zone for termination service premises as being in the premises and not more than 150 metres from an entrance to the premises.⁶ The Act provides that 'prohibited conduct' must not be engaged in within a safe access zone. 'Prohibited conduct' is not defined by reference to specific types of conduct (e.g. protesting). Rather, any conduct that meets the criteria in s 15(1)(a)-(c) is prohibited conduct.

Broadly, prohibited conduct is any conduct that: relates to terminations; would be visible to a person entering or leaving the premises; and, would be reasonably likely to deter a person from entering or leaving the premises, requesting or undergoing a termination, or performing a termination.

⁶ Termination of Pregnancy Act 2018 (Qld) s 14.

The Act creates two new criminal offences. It creates an offence of engaging in ‘prohibited conduct’ in a safe access zone and offences for a person to make, publish or distribute a restricted recording of another person without the other person’s consent and without reasonable excuse. Each of these offences carry a maximum penalty of 20 penalty units or one year’s imprisonment. This penalty is approximately double the penalty for a public nuisance under the *Summary Offences Act 2005*.⁷

The legislation provides flexibility to vary the automatic safe access zone of 150 metres around termination services premises, allowing the particular location or features of the premises to be taken into account. The ability to vary the extent of a safe access zone is unique to Queensland.

4.2 New South Wales

New South Wales	
Legislation	<i>Public Health Act 2010</i> (NSW) Part 6A
Creation	Automatic – all premises at which at which abortion are provided; ministerial declaration not required.
Size	150m
Measured from	(i) any part of the premises of clinic, or (ii) a pedestrian access point to a building that houses a clinic.
Hours of effect	Implied: when patients/staff are present (except blocking road)
Prohibited Behaviours	<p>Intimidating, besetting, threatening, hindering, obstructing or impeding a person accessing facility.</p> <p>Obstructing or blocking footpath or road leading to facility.</p> <p>Communication relating to abortion able to be seen or heard by a person accessing facility that is likely to cause distress or anxiety.</p> <p>Capturing visual data of a person, or publishing or distributing a recording of a person that is likely to identify them.</p>

⁷ Queensland Law Reform Commission (QLRC), Review of termination of pregnancy laws (Report, June 2018) 5.

Section 98A Definitions

In this Part –

reproductive health clinic means any premises at which medical services relating to aspects of human reproduction or maternal health are provided, but does not include a pharmacy.

safe access zone means –

- (a) The premises of a reproductive health clinic at which abortions are provided, and
- (b) The area within **150 metres** of –
 - (i) any part of the premises of a reproductive health clinic at which abortions are provided, or
 - (ii) a pedestrian access point to a building that houses a reproductive health clinic at which abortions are provided.

Section 98C Interfering with access of persons to reproductive health clinics

(1) In this section -

interfere with includes harass, intimidate, beset, threaten, hinder, obstruct or impede by any means.

(2) A person who is in a safe access zone **must not interfere** with any person **accessing, leaving, or attempting to access or leave**, any reproductive health clinic at which abortions are provided.

Section 98D Causing actual or potential distress or anxiety to persons in safe access zones

(1) A person who is in a safe access zone **must not make a communication that relates to abortions**, by any means, in a manner –

- (a) that is **able to be seen or heard by a person accessing, leaving, attempting to access or leave**, or inside, a reproductive health clinic at which abortions are provided, and
- (b) that is **reasonably likely to cause distress or anxiety** to any such person.

Section 98E Capturing and distributing visual data of persons in safe access zone

- (1) A person must not **intentionally capture visual data of another person**, by any means, without that other person's consent if that other person is in a safe access zone.
- (2) A person must not **publish or distribute a recording of another person** without that other person's consent if the recording -
 - (a) was made while that other person was in a safe access zone, and
 - (b) contains particulars likely to lead to the identification of that other person.

Safe access zones were established in NSW in 2018 by the *Public Health Amendment (Safe Access to Reproductive Health Clinics) Act 2018* (NSW). This Act inserted Part 6A 'Access to certain reproductive health clinics' into the *Public Health Act 2010* (NSW).

A safe access zone is defined to include the premises of a reproductive health clinic at which abortions are provided and within 150 metres of any part of the premises and a pedestrian access point to a building that houses a reproductive health clinic. There is no capacity to alter the 150m extent of a safe access zone.

Sections 98C, 98D and 98E outline three types of conduct which must not be engaged in in safe access zones. A person must not interfere (harass, intimidate, beset, threaten, hinder, obstruct or impede by any means) any person accessing or leaving any reproductive health clinic or obstruct a footpath or road leading to any reproductive health clinic.⁸ A person must not make a communication that relates to abortions that is reasonably likely to cause distress or anxiety to any person accessing, leaving or inside a reproductive health clinic.⁹ A person must not intentionally capture visual data of another person if that other person is in a safe access zone or publish or distribute a recording of another person if that person is in a safe access zone and the recording contains particulars that may allow identification of that person.¹⁰

The penalty for each of these offences is 50 penalty units or imprisonment for six months for a first offence, and 100 penalty units or imprisonment for 12 months for a second or subsequent offence.¹¹

⁸ Public Health Act 2010 (NSW) s 98C.

⁹ Ibid s 98D.

¹⁰ Ibid s 98E.

¹¹ Ibid s 98C, 98D, 98E.

4.3 Australian Capital Territory

Australian Capital Territory	
Legislation	<i>Health Act 1993 (ACT) Part 6 Div 6.2 ss 85-87</i>
Creation	Ministerial declaration
Size	>50m
Measured from	'The approved medical facility'
Hours of effect	7am-6pm on days of operation
Prohibited Behaviours	Harassment, hindering, intimidation, interference with, threatening, obstruction, capturing visual data, or any act that can be seen or heard by a person, designed to stop a person from entering the facility or having or providing an abortion. Protest relating to abortion.

Section 85 Definitions - div 6.2

(1) In this division:

prohibited behaviour, in a protected area around a protected facility, means any of the following:

- (a) the **harassment, hindering, intimidation, interference with, threatening or obstruction of a person, including by the capturing of visual data of the person**, in the protected period **that is intended to stop the person from –**
 - (i) entering the protected facility; or
 - (ii) having an abortion, providing a surgical abortion or prescribing, supplying or administering an abortifacient in the protected facility;
- (b) **an act that -**
 - (i) **can be seen or heard** by anyone in the protected period; **and**
 - (ii) **is intended to stop a person from –**

(A) entering the protected facility; or

(B) having an abortion, providing a surgical abortion or prescribing, supplying or administering an abortifacient in the protected facility;

(c) **a protest**, by any means, in the protected period in relation to a person doing any of the things mentioned in paragraph (b) (ii) (A) or (B).

protected area means **an area declared under section 86**.

(2) For this section, protected period, in relation to a protected facility, means the period between 7 am and 6 pm on each day the facility is open or any other period declared by the Minister.

Section 86 Declaration of protected area

(1) The Minister must declare an area around an approved medical facility to be a protected area.

(2) **The Minister may declare an area** around a place where an abortifacient is prescribed, supplied or administered to be a protected area.

(3) In making the declaration, the Minister must be satisfied that the area declared is -

(a) **not less than 50m** at any point from the protected facility; and

(b) sufficient to **ensure the privacy and unimpeded access** for anyone entering, trying to enter or leaving the protected facility; but

(c) **no bigger than necessary** to ensure that outcome.

Section 87 Prohibited behaviour in or in relation to protected area

(1) A person commits an offence if the person –

(a) is in a protected area; and

(b) engages in prohibited behaviour.

Maximum penalty: 25 penalty units.

(2) A person commits an offence if –

- (a) the person **publishes captured visual data of a person** (the recorded person) entering or leaving, or trying to enter or leave, a protected facility; and
- (b) the person does so **with the intention of stopping a person from –**
 - (i) having an abortion; or
 - (ii) providing a surgical abortion; or
 - (iii) prescribing, supplying or administering an abortifacient; and
- (c) the recorded person did not consent to the publication.

Maximum penalty: 50 penalty units, **imprisonment for 6 months**, or both.

The *Health (Patient Privacy) Amendment Act 2015 (ACT)* amended the *Health Act 1993 (ACT)* by inserting division 6.2 'Patient privacy in protected areas'. This amendment gave the Minister power to establish 'protected areas' around medical facilities. The Minister must declare a protected area around approved medical facilities; however, the Minister may declare a protected area around where an abortifacient (a drug causing abortion) is prescribed, supplied or administered.

The ACT legislation differs from other safe access zone legislation in Australia because it does not stipulate an automatic zone around clinics or medical facilities. The Minister must declare a 'protected area' (the equivalent of a safe access zone) and specify the size of the protected area. The protected area may not include area beyond 50 metres from the premises, while other jurisdictions stipulate that the protected area or zone must include area within 150 metres of the premises.

The Act also makes it an offence to engage in prohibited behaviour in the protected area and an offence to publish captured visual data of a person in a protected area with the intention of stopping a person from having an abortion or providing abortion services. The ACT legislation differs from other similar cases in that it requires a person to act with the intention to stop a person from entering or leaving an abortion clinic or receiving abortion services.

The penalty for the offences are 25 penalty units for engaging in prohibited behaviour or 50 penalty units/imprisonment for 6 months for publishing visual data.

4.4 Victoria

Victoria	
Legislation	<i>Public Health and Wellbeing Act 2008</i> (Vic) Part 9A ss 185A-185H
Creation	Automatic – all premises at which abortions are provided; ministerial declaration not required.
Size	150m
Measured from	“premises” defined as perimeter of the land where the premises is situated
Hours of effect	Implied: when patients/staff are present (except blocking road)
Prohibited Behaviours	<p>Besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding by any means a person accessing facility.</p> <p>Communication relating to abortion, able to be seen or heard by a person accessing facility, which is likely to cause distress or anxiety.</p> <p>Interfering with or impeding a footpath, road or vehicle in relation to premises of facility.</p> <p>Recording a person accessing facility.</p>

Section 185B Definitions

(1) In this Part –

premises at which abortions are provided does not include a pharmacy;

prohibited behaviour means –

- (a) in relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or
- (b) subject to subsection (2), communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety; or

- (c) interfering with or impeding a footpath road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided; or
- (d) intentionally recording by any means, without reasonable excuse, another person accessing, attempting to access, or leaving premises at which abortions are provided, without that other person's consent; or
- (e) any other prescribed behaviour;

safe access zone means an area within a radius of 150 metres from premises at which abortions are provided

- (2) Paragraph (b) of the definition of prohibited behaviour does not apply to an employee or other person who provides services at premises at which abortion services are provided.

Section 185D Prohibited behaviour

A person must not engage in prohibited behaviour within a safe access zone.

Penalty: 120 penalty units or imprisonment for a term not exceeding 12 months.

Section 185E Offence to publish or distribute recording

A person must not without consent of the other person or without reasonable excuse publish or distribute a recording of a person accessing, attempting to access, or leaving premises at which abortions are provided, if the recording contains particulars likely to lead to the identification of –

- (a) That other person; and
- (b) That other person as a person accessing premises at which abortions are provided.

Penalty: 120 penalty units or imprisonment for a term not exceeding 12 months.

In 2016, the *Public Health and Wellbeing Act 2008* (Vic) was amended by the *Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015* (Vic) to include Part 9A which introduced safe access zones in the state.

In Victoria, safe access zone is defined as an 'area within a radius of 150 metres from premises at which abortions are provided'.¹² Pharmacies are not included in premises at which abortions are provided.¹³ The Victorian government explains how the 150 metre radius is measured as follows:

The 150 metre safe access zone will be measured from the perimeter of the land where the premises providing abortions is situated. This is the case even if the health service has more than one building on the land where it is situated. For a clinic in a shopping centre or similar multi-use complex, the 150 metre safe access zone is measured from the boundary of the clinic land—rather than being measured from the perimeter of the entire complex.¹⁴

The legislation in Victoria makes it an offence to engage in certain behaviours in a safe access zone.¹⁵ This prohibited behaviour includes:

- in relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means;
- with the exception of employees or other person who provides services at the premises,¹⁶ communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety;
- interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided;
- intentionally recording by any means, without reasonable excuse, another person accessing, attempting to access or leaving premises at which abortions are provided, without that other person's consent;
- any other prescribed behaviour.¹⁷

¹² Public Health and Wellbeing Act 2008 (Vic) s 185B(1).

¹³ Ibid.

¹⁴ Victoria State Government (Health and Human Services), 'Safe Access Zones around Abortion Clinics: Information for stakeholders' (April 2016).

¹⁵ Public Health and Wellbeing Act 2008 (Vic) s 185D.

¹⁶ Ibid s 185B(2).

¹⁷ Ibid s 185B (definition of 'prohibited behaviour').

It is also an offence to publish or distribute a recording. Under s 185E, a person must not, without the consent of the other person or without a reasonable excuse, publish or distribute a recording of a person accessing, attempting to access, or leaving premises at which abortions are provided, if the recording contains particulars likely to lead to the identification of that other person; and that other person as a person accessing the premises at which abortions are provided.¹⁸

The safe access zone in Victoria operates 24 hours-a-day and seven days-a-week.

The penalty for the offence of engaging in prohibited behaviour¹⁹ or for publishing or distributing a recording²⁰ is a maximum fine of 120 penalty units or imprisonment for a term not exceeding 12 months.

4.5 Tasmania

Tasmania	
Legislation	<i>Reproductive Health (Access to Terminations) Act 2013 (Tas) s 9</i>
Creation	Automatic – all premises at which terminations are provided; ministerial declaration not required.
Size	150m
Measured from	“Premises”
Hours of effect	Implied: when patients/staff are present
Prohibited Behaviours	Besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing, impeding or recording a person. Protest relating to terminations able to be seen or heard by a person accessing facility. Footpath interference.

¹⁸ Ibid s 185E.

¹⁹ Ibid s 185D.

²⁰ Ibid s 185E.

Section 9 Access Zones

(1) In this section –

access zone means an area within a radius of 150 metres from premises at which terminations are provided;

distribute includes –

- (a) communicate, exhibit, send, supply, or transmit to someone, whether to a particular person or not; and
- (b) make available for access by someone, whether by a particular person or not; and
- (c) enter into an agreement or arrangement to do anything mentioned in paragraph (a) or (b); and
- (d) attempt to distribute;

prohibited behaviour means –

- (a) in relation to a person, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person; or
- (b) a protest in relation to terminations that is able to be seen or heard by a person accessing, or attempting to access, premises at which terminations are provided; or
- (c) footpath interference in relation to terminations; or
- (d) intentionally recording by any means, a person accessing or attempting to access premises at which terminations are provided without that person's consent; or
- (e) any other prescribed behaviour.

(2) A person must not engage in prohibited behaviour within an access zone

Penalty: Fine not exceeding 75 penalty units or imprisonment for a term not exceeding 12 months, or both.

(3) A person is not guilty of engaging in prohibited behaviour within an access zone by intentionally recording, by any means, a person accessing or attempting to access premises at which terminations are provided without that person's consent if, at the time of making the recording –

- (a) the first-mentioned person is a law enforcement officer acting in the course of his or her duties as such an officer; and
- (b) his or her conduct is reasonable in the circumstances for the performance of those duties.

(4) A person must not publish or distribute a recording of another person access or attempting to access premises at which terminations are provided without that other person's consent.

Penalty: Fine not exceeding 75 penalty units or imprisonment for a term not exceeding 12 months, or both.

Safe access zones were established in Tasmanian in 2014 after the introduction of the *Reproductive Health (Access to Terminations) Act 2013*.

Section 9(1) of *Reproductive Health (Access to Terminations) Act* defines a safe access zone as an 'area within a radius of 150 metres from premises at which terminations are provided'. Section 9(2) makes it an offence to engage in certain behaviours in a safe access zone. These prohibited behaviours include:

- in relation to a person, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person; or
- a protest in relation to terminations that is able to be seen or heard by a person accessing, or attempting to access, premises at which terminations are provided; or
- footpath interference in relation to terminations; or
- intentionally recording, by any means, a person accessing or attempting to access premises at which terminations are provided without that person's consent; or
- any other prescribed behaviour.²¹

A person is not guilty of engaging in prohibited behaviour by intentionally recording, by any means, a person accessing or attempting to access the premises where abortions are provided without that person's consent if, at the time of making the recording, the first mentioned-person is a law enforcement officer acting in the course of his or her duties as such an officer; and his or her conduct is reasonable in the circumstances for the performance of those duties.²²

²¹ Reproductive Health (Access to Terminations) Act 2013 (Tas) s 9(1).

²² Ibid s 9(2).

A person must also not publish or distribute a recording of another person accessing or attempting to access premises at which terminations are provided without that other person’s consent.²³

The safe access zone in Tasmania operates 24 hours-a-day and seven days-a-week.

The maximum penalty for engaging in prohibited behaviour under s 9(2) or publishing a recording under s 9(4) is a fine not exceeding 75 penalty units or imprisonment for a term not exceeding 12 months, or both.

4.6 Northern Territory

Northern Territory	
Legislation	<i>Termination of Pregnancy Law Reform Act 2017</i> (NT) Part 3 ss 14-16
Creation	Automatic – all premises at which abortions are performed; ministerial declaration not required.
Size	150m
Measured from	Boundary or premises
Hours of effect	Implied: when patients/staff are present
Prohibited Behaviours	Harassing, hindering, intimidating, interfering with, threatening or obstructing a person, recording the person, or any act that could be seen/heard by a person in the vicinity that may deter the person from entering or leaving premises or performing or receiving an abortion. Publishing recording of another person in safe access zone.

²³ Ibid s 9(4).

Section 4 Definitions

In this act:

premises for performing terminations:

- (a) Means premises where either or both of the following take place:
 - (i) Terminations are performed by medical practitioners;
 - (ii) Health practitioners assist in the performance of terminations; but
 - (iii) Does not include a pharmacy.

safe access zone means the area:

- (b) Within the boundary of premises for performing terminations; and
- (c) Within 150 metres outside the boundary.

Section 14 Prohibited conduct in a safe access zone

(1) A person commits an offence if:

- (a) the person intentionally engages in prohibited conduct; and
- (b) the prohibited conduct occurs in a safe access zone and the person is reckless in relation to that circumstances.

Maximum penalty: 100 penalty units or imprisonment for 12 months.

(2) Subsection (1) does not apply if:

- (a) the person is a police officer acting in the duties of law enforcement and the conduct of the police officer is reasonable circumstances for the performance of those duties; or
- (b) the person is employed at premises for performing terminations and the conduct of the employee is reasonable in the circumstances.

(3) For conduct mentioned in subsection (4), definition ***prohibited conduct***, paragraph (b), it is immaterial whether a person was entering or leaving, or attempting to enter or leave, premises for performing terminations for an offence to be committed.

(4) In this section:

prohibited conduct means:

- (a) harassing hindering, intimidating, interfering with, threatening or obstructing a person, including by recording the person by any means without the person's consent and without a reasonable excuse, that may result in deterring the person from:
 - (i) entering or leaving premises for performing terminations; or
 - (ii) performing, or receiving, a termination at premises for performing terminations; and
- (b) an act that could be seen or heard by a person in the vicinity of premises for performing terminations, that may result in deterring the person or another person from:
 - (i) entering or leaving the premises; or
 - (ii) performing a termination, or receiving a termination at the premises.

Section 15 Publication of recording

(1) A person commits an offence if:

- (a) The person intentionally publishes a recording of another person who is in a safe access zone; and
- (b) The recording was made without the other person's consent; and
- (c) The recording shows that the other person was entering or leaving, or attempting to enter or leave, premises for performing terminations; and
- (d) The person is reckless in relation to the circumstances mentioned in paragraphs (b) and (c).

Maximum penalty: 100 penalty units or imprisonment for 12 months.

- (2) Subsection 91) does not apply if the recording is published to a person who is authorised under a law in force in the Territory to receive the information in the recording.
- (3) It is a defence to a prosecution for an offence against subsection 91) if the defendant has a reasonable excuse.

In July 2017, the Northern Territory ('NT')'s *Termination of Pregnancy Law Reform Act 2017* commenced, establishing safe access zones in the territory.

A safe access zone, in the NT, means the area within the boundary of premises for performing terminations and within 150 metres outside the boundary. This was further explained by the NT Minister for Health:

It is intended that the outer part of safe access zones be measured from the boundaries of premises delineated on property titles, leases or declarations. A boundary may be an external land perimeter, whether fenced or not, or a physical attribute such as a wall, but will be consistent with the outer perimeter, and should not be measured from any specific entry point of a building within the boundaries.²⁴

Pharmacies are not included in the definition of 'premises for performing terminations'.²⁵

Section 14(1) makes it an offence to engage in prohibited behaviour²⁶ in a safe access zone. This prohibited behaviour includes:

- harassing, hindering, intimidating, interfering with, threatening or obstructing a person, including by recording the person by any means without the person's consent and without a reasonable excuse, that may result in deterring the person from entering or leaving premises for performing terminations; or performing, or receiving, a termination at premises for performing terminations; and
- an act that could be seen or heard by a person in the vicinity of premises for performing terminations, that may result in deterring the person or another person from entering or leaving the premises; or performing a termination, or receiving a termination at the premises.²⁷

A person also commits an offence if:

- (f) the person intentionally publishes a recording of another person who is in a safe access zone; and
- (g) the recording was made without the other person's consent; and
- (h) the recording shows that other person was entering or leaving, or attempting to enter or leave, premises for performing terminations; and
- (i) the person is reckless in relation to the circumstances mentioned in paragraphs (b) and (c).²⁸

²⁴ Northern Territory, Parliamentary Debates, 15 February 2017, 840 (N Fyles, Minister for Health).

²⁵ Termination of Pregnancy Law Reform Act 2017 (NT) s 4 (definition of 'premises for performing terminations').

²⁶ Called 'prohibited conduct' in the Termination of Pregnancy Law Reform Act 2017 (NT).

²⁷ Termination of Pregnancy Law Reform Act 2017 (NT) s 14(4).

²⁸ Ibid s 15(1).

This provision does not apply, however, if the recording is published to a person who is authorised under law in force in the NT to receive the information in the recording.²⁹ It is also a defence if the defendant has a reasonable excuse.³⁰

The safe access zone in the NT operates 24 hours-a-day, seven days-a-week.

The maximum penalty for the offences of engaging in prohibited behaviour³¹ or for publishing a recording³² is 100 penalty units or imprisonment for 12 months.

4.7 Strengths and Weaknesses

Legislation in NSW,³³ the NT,³⁴ Queensland,³⁵ Tasmania³⁶ and Victoria³⁷, in effect, defines the safe access zone as an area within a radius of 150 metres from the termination service premises. The advantages of this model include that it does not require additional resources to implement, is efficient and has been tested by the High Court in *Clubb v Edwards*.³⁸ The disadvantage of this model, however, is that it does not detail the actual boundaries of a safe access zone.³⁹

The legislation in Queensland goes a step further by providing the additional power, at the Minister's discretion, to prescribe an area smaller or larger than the default 150 metres. This provides for flexibility to reduce the size, for example where a termination service premises is located close to an accepted place of demonstration, such as Parliament; or to increase the size of a safe access zone where, for example, the nearest bus stop is a 200 metre walk away, the zone could be extended to 200 metres from the termination service premises. This model was recommended by the Queensland Law Reform Commission ('QLRC').⁴⁰

²⁹ Ibid s 15(2).

³⁰ Ibid s 15(3)

³¹ Ibid s 14(1).

³² Ibid s 15(1).

³³ Public Health Act 2010 (NSW) s 98A.

³⁴ Termination of Pregnancy Law Reform Act 2017 (NT) s 4.

³⁵ Termination of Pregnancy Act 2018 (Qld) s 14.

³⁶ Reproductive Health (Access to Terminations) Act 2013 (Tas) s 9(1).

³⁷ Public Health and Wellbeing Act 2008 (Vic) s 185B(1).

³⁸ *Clubb v Edwards*; *Preston v Avery* [2019] HCA 11 ('*Clubb v Edwards*').

³⁹ Department of Health (WA), *Safe access zones – A proposal for reform in Western Australia* (Report, 2020) 29.

⁴⁰ QLRC (n 2) xii.

Termination services premises⁴¹ in NSW, the NT, Queensland, Tasmania⁴² and Victoria, captures public hospitals and other termination services providers such as private clinics and general practitioners.⁴³ In these jurisdictions, apart from Tasmania, pharmacies are explicitly excluded from the definition of termination services premises. This exclusion of pharmacies may prevent safe access zones being overly expansive or burdensome.

The ACT, on the other hand, provides for the Minister to declare a medical facility, or part of a medical facility, to be a termination services premise⁴⁴ and declare a protected area around a termination services premises and define the specific streets that form part of the safe access zones.⁴⁵ This allows for the creation of safe access zones on a case-by-case basis and ensures a detailed description of the zone is publicly available.⁴⁶ However, this model could result in administrative costs and delays as an application may need to be assessed and time required to approve the Ministerial declaration. Further, the flexibility in the ACT may prove detrimental to women, for example, if the Minister prioritises free speech over the health, safety and privacy of individuals entering the clinic.⁴⁷

Certain provisions pertaining to prohibited behaviour, as defined in the Victorian and Tasmanian legislation, have also withstood a High Court challenge and have been found to be constitutional.⁴⁸ In respect of the Victorian legislation, the High Court upheld the validity of the definition of prohibited behaviour in para (b) of s 185(1) of the *Public Health and Wellbeing Act 2008*; that is, 'communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety'.

⁴¹ Termination services premises is known as 'reproductive health clinics' in NSW; 'premises for performing terminations' in the NT; 'premises at which terminations are provided' in Tasmania; and 'premises at which abortions are provided' in Victoria.

⁴² The Reproductive Health (Access to Terminations) Act 2013 (Tas) does not provide a definition of 'premises at which terminations are provided'.

⁴³ See Public Health Act 2010 (NSW) s 98A (definition of 'reproductive health clinic'); Termination of Pregnancy Law Reform Act 2017 (NT) s 4 (definition of 'premises for performing terminations'); Termination of Pregnancy Act 2018 (Qld) s 13 (definition of 'termination services premises'); Public Health and Wellbeing Act 2008 (Vic) 185B(1) (definition of 'premises at which abortions are provided').

⁴⁴ Known as an 'approved medical facility' in the ACT see Health Act 1993 (ACT) s 80 (definition of 'approved medical facility').

⁴⁵ Health Act 1993 (ACT) s 86.

⁴⁶ Department of Health (WA) (n 34) 29.

⁴⁷ Ronli Sifris and Tania Penovic, 'Anti-Abortion Protest and the Effectiveness of Victoria's Safe Access Zones: An Analysis', *Monash University Law Review* 44 (October 2018) 317, 319.

⁴⁸ *Clubb v Edwards* (n 33).

The validity of other prohibited behaviours in para (a) and (c) of s 185(1) in Victoria,⁴⁹ was not in issue in *Clubb v Edwards*. However, the decision in *Clubb v Edwards* provides that a parliament can make a law prohibiting communication that would cause stress and anxiety, even if that communication does not involve the physical obstruction or aggression inherent in the behaviour described in sub-ss (a) or (c).⁵⁰

The High Court further upheld the definition of prohibited behaviour in para (b) in s 9(1) of the Tasmanian *Reproductive Health (Access to Terminations) Act 2013*, concerning protests.

The High Court in *Clubb v Edwards* did not expressly address whether the law in Victoria extends to silent vigil or prayer; however, the plurality stated that 'silent but reproachful observance of persons accessing a clinic for the purpose of terminating a pregnancy may be as effective, as a means of deterring them from doing so, as more boisterous demonstrations'.⁵¹ This suggests that the definition of prohibited behaviour can extend to silent activities such as prayer.⁵²

In respect of the Tasmanian legislation, Edelman J confirmed that silent prayer is capable of falling within the definition of prohibited behaviour in s 9(1) and noted that 'silent or quiet action can be a powerful form of protest and political communication'.⁵³ Gageler J also stated that the prohibition extends to peaceful demonstrations, pickets and silent vigils.⁵⁴

'Besetting', which is included in the Tasmanian, Victorian and NSW legislation as a prohibited behaviour, as referenced by the QLRC, means to attend or be near any place in numbers or in a manner calculated to intimidate a person in that place; or to obstruct the entrance or exit; or to lead to a breach of the peace.⁵⁵ The watching must be such as would amount to a nuisance at common law. This was not considered by the High Court in *Clubb v Edwards*.

⁴⁹ Other prohibited behaviour in ss 185(1)(a) and (b) (definition of 'prohibited behaviour') includes: (a) in relation to a person accessing, attempting to access, or leaving premises at which abortions are provided, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or ...

(c) interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premise;

⁵⁰ South Australian Law Reform Institute (SALRI), *Abortion: A Review of South Australian Law and Practice* (Report, October 2019) 403.

⁵¹ *Clubb v Edwards* (n 33) 24 [89] (Kiefel CJ, Bell and Keane JJ).

⁵² SALRI (n 60) 403.

⁵³ *Clubb v Edwards* (n 33) 166-167 [475].

⁵⁴ *Ibid* 47 [164].

⁵⁵ QLRC (n 2) 162, referencing the definition of 'watching and besetting' in LexisNexis, *Encyclopaedic Australian Legal Dictionary*, referring to *Re Van der Lubbe* (1949) 49 SR (NSW) 309.

Therefore, a strength of the Victorian and Tasmanian legislation is its approval by the High Court of its constitutional validity.

In every jurisdiction, besides the ACT, the safe access zone operates 24 hours-a-day, seven days-a-week. The constant operation of safe access zones is implied in all these jurisdictions. In the ACT, however, safe access zones only operate during the 'protected period'; that is, between 7am and 6pm on each day the facility is open, or any other period declared by the Minister.⁵⁶ The ACT's model for operation hours of safe access zones has not been followed by other jurisdictions or recommended.

Safe access zones that operate 24 hours-a-day and seven days-a-week are efficient; easy to implement, monitor and enforce; and ensures that the object of the legislation is not undermined.⁵⁷ Zones that operate 24 hours-a-day, seven days-a-week further prevent disputes arising over whether individuals had knowledge about a termination service premise's operating hours and reduces the likelihood of honest mistakes.⁵⁸ A limitation of the legislation in all jurisdictions with continuous safe access zone operation, however, may be its implied rather than explicit definition of its 24 hour-a-day and seven days-a-week operation.

The ACT legislation also contains a lesser penalty attached to engaging in prohibited behaviours than other jurisdictions. The maximum penalty for engaging in prohibited behaviour in a safe access zone is a maximum of 25 penalty units, with no term of imprisonment prescribed. This is not consistent with other jurisdictions, who generally prescribe a maximum penalty of 12 months' imprisonment.

⁵⁶ Health Act 1993 (ACT) s 85(2).

⁵⁷ Department of Health (WA) (n 34) 32.

⁵⁸ Ibid.

5. Material Considerations for Implementation of Safe Access Zones in SA and WA

5.1 Constitutional Implications: The Implied Freedom of Political Communication

Safe access zone legislation raises constitutional implications, specifically concerning the implied freedom of political communication. Safe access zones restrict the implied freedom of political communication to the extent that they prohibit protest or communications in relation to terminations.⁵⁹

The implied freedom of political communication was established in *Nationwide News Pty Ltd v Willis*⁶⁰ and *Australian Capital Television Pty Ltd v Commonwealth*⁶¹ and confirmed unanimously in *Lange v Australian Broadcasting Corporation*.⁶² The High Court recognised that the Constitution necessarily contains an implied freedom of political communication to ensure the effective operation of the constitutionally prescribed system of representative and responsible government. However, the freedom is not absolute. Legislation may place some restrictions on the freedom, provided they are reasonably appropriate and adapted to serve a legitimate purpose in a manner that is compatible with the maintenance of the system of representative and responsible government.

Whether a law impermissibly burdens the freedom is determined by analysing whether the law effectively burdens the freedom, whether the purpose of the law is legitimate and whether the law is proportionate. An assessment of a law's proportionality requires consideration of whether the law is suitable, requiring a rational connection between the law and its purpose; necessary, 'in the sense that there is no obvious and compelling alternative' or 'reasonably practicable means of achieving the same purpose' which has a "less restrictive effect on the freedom"; and adequate in balance. A value judgment, 'consistently within the limits of judicial function', is required to determine whether the importance of the law's legitimate purpose outweighs the impact on the freedom.⁶³

⁵⁹ QLRC (n 2).

⁶⁰ (1992) 177 CLR 1.

⁶¹ (1992) 177 CLR 106.

⁶² ('Lange').

⁶³ *McCloy v New South Wales* (2015) 257 CLR 178, 194.

The constitutional validity of safe access zones was considered in the recent High Court decision of *Clubb v Edwards; Preston v Avery*.⁶⁴ The High Court unanimously decided that safe access zones do not impermissibly infringe the implied freedom of political communication. The Victorian and Tasmanian safe access zone legislation was analysed in-depth in this decision and, consequently, the reasoning and result must be referenced in formulating constitutionally valid safe access zone legislation for South Australia and Western Australia.

The High Court applied the test from *Lange*, as modified in *McCloy v New South Wales*. It was held that safe access zones burden the implied freedom because communication about abortion, some of which will be political, is prohibited. This is evident from the relevant statutes.⁶⁵ The legislation had a legitimate purpose to maintain the safety and well-being, and preserve the privacy and dignity, of persons entering and leaving abortion premises. The majority held that ensuring the protection of persons is 'in the interests of an ordered society' and is readily compatible for the system of representative and responsible government.⁶⁶ It is significant to note that the purpose of the Victorian legislation was expressly stated while the purpose of the Tasmanian law was not, so the purpose of the Tasmanian law was inferred from the terms, subject matter and the relevant Second Reading Speech.⁶⁷ It is recommended that new safe access legislation should explicitly state its purpose to ensure there is no doubt as to its legitimate purpose.

A proportionate law will have a rational connection with its purpose and provide the means to realise the law's purpose. Achieving safe access to abortion services is clearly realised through the prohibition of certain conduct. A proportionate law must also be necessary. There is a history of ongoing activities by people who are opposed to terminations harassing or communicating near abortion premises which is likely to continue in the future. It is, however, important that a law not be overexpansive, particularly where there are less burdensome alternatives. In *Clubb v Edwards*, Ms Clubb suggested a variety of alternative restrictions, such as an exception during election campaigns. The majority did not agree with this suggestion and deemed that these undermined the purpose of the law.⁶⁸ Kiefel CJ, Bell J and Keane J commented that the 'anxiety and distress associated with accessing [abortion] services is not lessened during election campaigns. If anything the contrary is likely to be the case'.⁶⁹

⁶⁴ *Clubb v Edwards* (n 33).

⁶⁵ South Australian Law Reform Institute (SALRI), *Abortion: A Review of South Australian Law and Practice* (Report, October 2019) 401.

⁶⁶ *Levy v Victoria* (1997) 189 CLR 579, 608.

⁶⁷ *Clubb v Edwards* (n 33) [121], [500].

⁶⁸ SALRI (n 60) 403.

⁶⁹ *Clubb v Edwards* (n 33) [94].

The implementation of any safe access zone legislation must strike careful balance between considerations of freedom of political communication on the one hand, and the need to protect women from harassment, surveillance and obstruction when accessing abortion services. Sensible and proportionate safe access zones have been effective in curtailing harassing and intimidating conduct in other jurisdictions.

5.2 South Australia: Context-Specific Considerations

The *Health Care (Health Access Zones) Amendment Bill 2019 (SA)* was concurrently introduced to both Houses of the South Australian Parliament by the Honourable Tammy Franks in September 2019. The South Australian Law Reform Institute (SALRI) published a review of South Australian abortion law and practice in October 2019. Of the 340 submissions provided to SALRI concerning safe access zones, about 180 supported safe access zones and 25 were opposed. Of those opposed, the majority agreed that it should be unlawful to harass, intimidate or obstruct any person around abortion service premises but believe other behaviour should be permitted.⁷⁰ A further bill, the *Health Care (Safe Access) Amendment Bill 2020* was then introduced by Nat Cook MP in June 2020. Both are bills of the current session of Parliament (the 2nd session of the 54th Parliament).

Submissions to SALRI showed particular concern for vulnerable women, from rural, remote or Aboriginal communities and victims of domestic violence or sexual assault. Parties such as the Castan Centre for Human Rights Law and health practitioners submitted that the effects of harassment and obstruction on these women who are particularly vulnerable 'should not be underestimated'.⁷¹

The SA context indicates the importance of proximity of public transport in the design of a safe access zone. The Pregnancy Advisory Centre in Woodville is very close to public transport and within a 150 metre radius. It is important to consider the consequence if the public transport stops were outside the safe access zone.

Opposers of safe access zones submitted to SALRI that existing laws are sufficient to address any misconduct occurring at abortion clinics. However, the Law Society of SA noted that s 7 of the *Summary Offences Act 1953 (SA)* (concerning public nuisance) is unlikely to provide complete and adequate protection to women from the behaviours observed outside abortion clinics.⁷²

⁷⁰ SALRI (n 60) 415.

⁷¹ Ibid 416.

⁷² Ibid 419.

Significantly, it has been argued that SA does not require safe access zones because no demonstrable harm has been caused.⁷³ There had not been a prosecution of an individual for activities outside the Woodville clinic since 2012 and the 2012 charge was eventually dropped; these facts were used in support of the contention that safe access zones are unnecessary in SA. Comparison was drawn in submissions to SALRI between SA and Victoria, where there was evidence of ongoing conflict between the staff and pro-life activists at the East Melbourne clinic. 40 Days for Life, an anti-abortionist group, submitted that the only conduct that is observed at the Woodville clinic is peaceful quiet prayer vigil well away from the entrance.⁷⁴ Employees of the Central Adelaide Local Health Network (Pregnancy Advisory Centre) have contended differently. The Centre stated that regular groups of protestors gather outside the Pregnancy Advisory Centre every week with the intent to stop women from receiving abortion services. The protestors attempted to video staff and patients, and have attempted to stop women accessing the clinic. Additionally, the Human Rights Law Centre noted that anti-abortion activities had taken place every week for 25 years outside the Woodville facility. Significantly, Dr Jane Baird, the Director of the Pregnancy Advisory Centre, argued that the current practice of these groups is irrelevant because the law is being made for the future.

SALRI observed that there is a real possibility that SA clinics will become the focus for protest or national campaigns because all Australian jurisdictions except SA and WA (which is in the process of introducing safe access zones) have safe access zones. It was observed that the absence of safe access zones in SA 'allows, and almost invites' anti-abortion campaigns.⁷⁵

5.3 Western Australia: Context-Specific Considerations

Abortion was legalised in WA through the enactment of *Acts Amendment (Abortion) Act*⁷⁶ in 1998. The provisions pertaining to abortion are contained in the *Health (Miscellaneous Provisions) Act 1911 (WA)*. Since abortion was legalised, there have been ongoing instances of individuals accessing abortion services being approached by picketers outside clinics.⁷⁷

⁷³ Ibid 420.

⁷⁴ Ibid.

⁷⁵ Ibid 430.

⁷⁶ 1998 (WA).

⁷⁷ Submissions to the Report for the Minister for Health, 'Review of provisions of the Health Act 1911 and the Criminal Code relating to abortion as introduced by the Acts Amendment (Abortion) Act 1998' (17 June 2002) 28.

In WA, abortion services may be provided by public hospitals, private hospitals, clinics, general practices and telehealth services.⁷⁸ Registered pharmacists may supply medications for abortions. Two private abortion clinics operate in WA, run by Marie Stopes WA and Nanyara Medical Group respectively.

Of the 7,816 abortions notified to the WA Department of Health in 2018,⁷⁹ nearly 83 per cent of them were provided by Marie Stopes WA and Nanyara Medical Group.⁸⁰ These two clinics are the most highly impacted by the behaviour of picketers. As a result, potentially thousands of people are impacted by the regular picketing that takes place outside these clinics every year.⁸¹ Both patients and those accompanying patients to the clinic are affected by this behaviour. Staff working at these clinics, such as medical, legal and counselling staff, also experience harassment and intimidation by picketers.⁸²

Through interviews with Marie Stopes Centre Manager and Nanyara Medical Clinic General Practitioner in 2018, the Department of Health documented the behaviour of picketers outside the clinics.⁸³ Their behaviour includes confronting verbal communications, and approaching patients to try and change the minds of women seeking abortions; taking visual recordings of patients without their consent; giving gift bags containing food (to precipitate cancelling procedures that require fasting), and information pamphlets with emotive and non-evidence based information about abortion and its health impacts; visual communication through placards and posters set up at clinics with words to discourage the termination of pregnancies alongside emotional imagery of babies and foetuses; assembling outside clinics for at least two hours at a time (these groups can range from three demonstrators to 30 demonstrators); creating a physical barrier impeding a patient's free access to a clinic, or walking back and forth in front of the entry to the clinic and singing outside clinics at a volume that can be heard within the clinics.⁸⁴

⁷⁸ Department of Health (WA) (n 34) 6.

⁷⁹ Department of Health (WA), *Induced Abortions in Western Australia: 2016 – 2018* (Report, November 2019) 41.

⁸⁰ *Ibid* 6.

⁸¹ *Ibid*.

⁸² *Ibid*.

⁸³ *Ibid*.

⁸⁴ Department of Health (WA) (n 74) 6-7.

Recent reports of harassment and obstruction of patients and staff by picketers have been documented.⁸⁵ In March 2020, following the COVID-19 pandemic, the picketers who regularly gathered outside the Marie Stopes clinic in Midland, had their permission to protest rescinded. Despite this, staff at the clinic reported that they had to call the police after the picketers gathered on 27 March.⁸⁶ However, with restrictions easing, picketers have resumed their activities outside the clinic. In a June 2020 situational report by Marie Stopes Australia, it was noted that the presence of anti-choice picketers 'is intimidating and stressful for patients, their support people and health workers. In the pandemic context, the harm caused by their behaviour is magnified.'⁸⁷ The impact on staff and patients was also recognised by Health Minister, Roger Cook, who stated that '[d]emonstrations outside abortion services act as a barrier to accessing legal health services, cause distress and anxiety to patients and staff, and are unable to be adequately managed by existing laws.'⁸⁸

Currently, picketing outside termination service providers is regulated by the WA Police through various powers including permits under the *Public Order in Streets Act 1984* (WA) and Move On Orders under the *Criminal Investigations Act 2006* (WA).⁸⁹ In its 2020 report, the Department of Health recognised that 'WA's existing laws do not adequately address the full range of behaviours engaged in by people who demonstrate at, or near, premises at which abortions are provided'.⁹⁰

⁸⁵ See e.g. Kate Hedley, 'Anti-abortion protesters "upsetting clients" as they return to picket Perth clinic', *WAtoday* (online, 29 May 2020) <<https://www.watoday.com.au/national/western-australia/anti-abortion-protesters-upsetting-clients-as-they-return-to-picket-perth-clinic-20200529-p54xoo.html>>; Rhiannon Shine, 'Abortion Clinic Safe Zones Months Away in WA as Government Criticised For Lagging Behind', *ABC News* (online, 26 March 2019) <<https://www.abc.net.au/news/2019-03-26/abortion-clinic-safe-zones-considered-in-wa/10937920>>; Cathy O'Leary, 'Midland Abortion Clinic Staff Want "Safe Zones"', *Perth Now* (online, 8 February 2019) <<https://www.perthnow.com.au/news/wa/midland-abortion-clinic-staff-want-safe-zones-ng-b881098721z>>; Melissa Davey, 'Protect Us From Anti-abortion Protesters, Say Women's Clinics in WA', *The Guardian* (online, 26 January 2018) <<https://www.theguardian.com/world/2018/jan/26/protect-us-from-anti-abortion-protesters-say-womens-clinics-in-wa>>.

⁸⁶ Kate Hedley, 'Anti-abortion protesters "upsetting clients" as they return to picket Perth clinic', *WAtoday* (online, 29 May 2020) <<https://www.watoday.com.au/national/western-australia/anti-abortion-protesters-upsetting-clients-as-they-return-to-picket-perth-clinic-20200529-p54xoo.html>>

⁸⁷ Marie Stopes Australia, *Sexual and Reproductive Health Rights in Australia: A request for collaboration and action to maintain contraceptive and abortion care throughout the SARS-COV-2 / COVID-19 pandemic* (Situational Report, 15 June 2020) 6.

⁸⁸ Government of Western Australia, 'Government moves to introduce Bill for safe access zones in Western Australia' (Media Statement, 10 February 2020).

⁸⁹ Department of Health (WA) (n 34) 20.

⁹⁰ *Ibid* 24.

The WA Government is currently in the process of drafting legislation to establish safe access zones.⁹¹ In February 2020, it was announced that the legislation is expected to be introduced into Parliament later in the year.

The proposed safe access zone will provide a 150-metre buffer around premises at which abortions are provided. The establishment of safe access zones will bring WA into line with all other jurisdictions, apart from SA. Seventy per cent of respondents to the Department of Health's online survey in 2019 supported the introduction of safe access zones around premises at which abortions are provided in WA.⁹²

The safe access zones in the proposed legislation will operate 24 hours-a-day and seven days-a-week. The legislation will also set out prohibited behaviours in safe access zones, such as harassment, intimidation and obstruction, along with penalties for non-compliance.⁹³

⁹¹ Government of Western Australia (n 83).

⁹² Department of Health (WA) (n 34) 9.

⁹³ Government of Western Australia (n 83).

6. Recommendations

6.1 Size

It is recommended that safe access zones in SA and WA should be 150 metres from the termination service premises, unless the Minister otherwise prescribes a distance, being not less than 150 metres, by regulation. A radius of 150 metres for safe access zones has been recommended in various law reform reports including in Queensland,⁹⁴ SA⁹⁵ and WA.⁹⁶ A radius of 150 metres has also been found to be sufficient in meeting the object of the legislation. In an analysis of the effectiveness of Victoria's safe access zones, Sifris and Penovic conclude that '[t]he empirical data we have obtained concerning the impact of protest and the operation of safe access zones supports the conclusion that the zones' 150 metre radius is appropriate to achieve the legislation's protective function.'⁹⁷ This approach is also consistent with every other jurisdiction with safe access zones, apart from the ACT. Safe access zones of 150 metres have also been upheld by the High Court.⁹⁸

The Bill before the SA Parliament establishes the default radius for safe access zones as 150 metres; however, it provides that:

(i) if the Minister, by notice in the Gazette, specifies a distance (being not less than 150 metres) from the 20 protected premises for the purposes of this paragraph—within that distance of the protected premises;⁹⁹

This approach allows for flexibility if, for example, there is a 200-metre walk from the closest bus stop to the termination service provider, the safe access zone could be enlarged to 200 metres. The benefits of flexibility was recognised by the QLRC:

there may be cases where, due to the particular location or features of the premises, it is necessary to alter the distance of 150 metres (for example, if the termination services premises is part of a multi-level, multi complex building). For this reason, the draft legislation should also provide that the Minister may prescribe another distance by regulation.¹⁰⁰

⁹⁴ QLRC (n 2) xii.

⁹⁵ SALRI (n 60) 34.

⁹⁶ Department of Health (WA) (n 34) 30.

⁹⁷ Sifris and Penovic (n 28) 338.

⁹⁸ *Clubb v Edwards* (n 33).

⁹⁹ Health Care (Health Access Zones) Amendment Bill 2019 (SA) s 48B (definition of 'health access zone').

¹⁰⁰ QLRC (n 2) 184.

The model proposed in the 2020 SA Bill is similar to that currently in Queensland; however, unlike the Queensland legislation, the Minister is unable to specify a distance less than 150 metres in the SA model. The 2020 SA Bill, however, adopts the NSW, NT, Tasmanian and Victorian model with a safe access zone of 150 metres with no room for Ministerial discretion as to its size.

While being able to extend the safe access zones provides benefits, it has yet to be tested by the High Court. This may invite challenges as:

the High Court has indicated that any burden imposed through the extension of safe access zones beyond 150 metres will need to be proportionate to the object sought to be achieved. The area of the safe access zone in Victoria, namely 150 metres, was considered a critical factor in the High Court upholding its constitutional validity.¹⁰¹

Therefore, any extension of the safe access zone would need to be proportionate to the object it sought to achieve. With this in mind, the benefits of flexibility support the discretion of the Minister to increase the safe access zone in circumstances where this is required to fulfil the purposes of the legislation. It is therefore recommended that in SA and WA, safe access zones should be 150 metres from the termination service premises, unless the Minister otherwise prescribes a distance, bring not less than 150 metres, by regulation.

6.2 ‘Prohibited Behaviour’

It is recommended that South Australia and Western Australia define ‘prohibited behaviour’ as the Victorian legislation does.

The *Health Care (Health Access Zones) Amendment Bill 2019 (SA)* (the 2019 Bill) is more expansive than existing safe access zone legislation in other jurisdictions, particularly with respect to the definition of ‘prohibited behaviour’. Communications, and attempts to communicate, with a person about the subject of abortion are prohibited. No other Australian legislation prohibits attempts to communicate. SALRI, the Human Rights Law Centre and other parties, both supportive and opposed to safe access zones, have expressed concern that this imposes too great a burden on the implied freedom of political communication. Additionally, the Bill does not limit prohibited communication to that which is reasonably likely to cause distress or anxiety, as the Victorian legislation does; all communications on the subject of abortion are prohibited, regardless of their effect on a person.

¹⁰¹ Department of Health (WA) (n 34) 30.

Conversely, the *Health Care (Safe Access) Amendment Bill 2020 (SA)* (the 2020 Bill) is similar to the Victorian Act. Attempts to communicate are not prohibited and communication must be reasonably likely to cause distress or anxiety. Besides these key differences, the 2019 Bill is broadly similar to the Victorian Act and the 2020 Bill. Therefore, it is recommended that the 2020 Bill be enacted or the 2019 Bill be amended to replicate the Victorian Act. Adopting the Victorian approach is also advantageous because the *Public Health and Wellbeing Act 2008 (Vic)* provisions have been tested and affirmed as lawful by the High Court. Any law that restricts the implied freedom of political communication must strike a careful balance between its burden on the freedom and its effectiveness in achieving its legitimate purpose. Consequently, it is possible that, if tested, the Bill in its current state would not be found to strike an appropriate balance and would be found unlawful for impermissibly burdening the freedom.

The 2019 SA Bill is also expansive in its provision concerning recording of person in a safe access zone. The Bill provides that a person engages in prohibited behaviour if the person ‘records’, while the Victorian Act provides that ‘intentionally recording... without reasonable excuse’ is prohibited behaviour. Similarly, the Tasmanian Act provides that ‘intentionally recording... without that person’s consent’ is prohibited behaviour. Both the Victorian and Tasmanian legislation have been affirmed by the High Court.

It is recommended that the definition of ‘prohibited behaviour’ be amended, and enacted in the proposed Western Australia bill, as follows:

- (2) For the purposes of subsection (1), a person engages in prohibited behaviour if the person –
- (a) threatens, intimidates or harasses another person; or
 - (b) obstructs another person approaching, entering or leaving protected premises; or
 - (c) records (by any means whatsoever) images of a person approaching, entering or leaving protected premises; or
 - (d) communicates with a person about the subject of abortion that is able to be seen or heard by a person accessing, attempting to access, or leaving premises at which abortions are provided and is reasonably likely to cause distress or anxiety.

SALRI recommends that an alternative definition of ‘prohibited behaviour’ be adopted. It recommends that ‘prohibited behaviour’ should be defined to mean ‘intimidation, obstruction, impeding access, harassment or other conduct that relates to abortions or could reasonably be perceived as relating to abortions and would be visible or audible to another person entering, leaving or in the premises; and would be reasonably likely to deter a person from entering or leaving, or from requesting, undergoing, performing or assisting in the performance of, an abortion.’ This appears to be an appropriation of the Queensland legislation, with some modifications. By stating that a person’s conduct may be prohibited whether or not another person sees or hears the conduct or is deterred, it ensures that a breach of the offence can be proved without the need to call a person protected by legislation to give evidence.¹⁰² This is an important protection for vulnerable women. However, this legislation has not been tested, and the Queensland legislation has not been tested, so it is unclear whether this legislation would be held to impose too great a burden on the freedom of political communication. Accordingly, it is recommended that the Victorian approach is adopted.

6.3 ‘Premises’

It is recommended that the premises around which safe access zones are to be established be defined in the SA and WA legislation as they are defined broadly. In SA, many abortions take place in public hospitals. Consequently, it is vital that the premises around which safe access zones exist include public hospitals, as well as clinics. The *Health and Wellbeing Act 2008* (Vic) is simple and explicit in its definition, stating that protected premises are premises at which abortions are provided. It explicitly states that this does not include a pharmacy. Similarly, the 2020 SA Bill defines ‘protected premises’ as any premises at which abortions are lawfully performed, but does not include a pharmacy’.¹⁰³ It is recommended that protected premises are broadly defined in the manner of the 2020 Bill or the Victorian Act.

The clarification in the 2020 Bill and the Victorian Act that pharmacies are excluded ensures that safe access zones do not unduly infringe the freedom of political communication. There are many pharmacies within a city or regional centre and consequently, the restriction imposed by safe access zones would be extensive. Zones may overlap and consequently prohibit political communication through a vast area of a city or regional centre. Additionally, it may become unclear where safe access zones are or are not if there is considerable overlap; uncertainty is not desirable.¹⁰⁴

¹⁰² SALRI (n 60) 427.

¹⁰³ Health Care (Safe Access) Amendment Bill 2020 (SA) s 45B.

¹⁰⁴ Ibid 434.

6.4 Penalties

It is recommended that 12-months imprisonment and/or an appropriate fine be introduced as a penalty for engaging in prohibited behaviour in a safe access zone. A term of 12 months' imprisonment is consistent with Queensland,¹⁰⁵ NT,¹⁰⁶ Victoria¹⁰⁷ and Tasmania.¹⁰⁸ In NSW, 12 months' imprisonment is the period for a subsequent offence.¹⁰⁹ A maximum penalty of 12 months' imprisonment was also recommended by the WA Department of Health and South Australian Law Reform Institute.¹¹⁰

The Bill currently before the SA Parliament prescribes a maximum penalty of two years imprisonment.¹¹¹ This penalty has been criticised as being excessive.¹¹² Therefore, it is recommended that the maximum penalty vis-à-vis imprisonment for both legislation in WA and SA be 12 months' imprisonment.

The Department of Health recommended a \$12,000 fine in WA, as this falls within the mid-range penalties applicable in other jurisdictions.¹¹³ This sum is significantly less than the maximum fine in NT and Victoria and is comparable to the maximum fine in Tasmania and the fine in NSW for subsequent offending. The SALRI, on the other hand, recommended 'an appropriate fine'.¹¹⁴ Therefore, it is recommended that the maximum penalty in WA and SA be an appropriate fine and/or a maximum term of imprisonment of 12 months.

It is recommended that the prohibited behaviour not apply to employees or other persons who provide services at termination services premises. This allows staff and patients to speak freely with each other about abortions. This exception is consistent with the approach in Victoria.¹¹⁵

¹⁰⁵ Termination of Pregnancy Act 2018 (Qld) ss 15 and 16.

¹⁰⁶ Termination of Pregnancy Law Reform Act 2017 (NT) s 15.

¹⁰⁷ Public Health and Wellbeing Act 2008 (Vic) s 185D.

¹⁰⁸ Reproductive Health (Access to Terminations) Act 2013 (Tas) s 9.

¹⁰⁹ Public Health Act 2010 (NSW), ss 98C, 98B and 98E.

¹¹⁰ Department of Health (WA) (n 34) 41.

¹¹¹ Health Care (Health Access Zones) Amendment Bill 2019 (SA) s 48D.

¹¹² See e.g. 'Safe access zone bill in South Australia welcome, but amendments needed', Human Rights Law Centre (online, 25 September 2019) <<https://www.hrlc.org.au/news/2019/9/25/safe-access-zone-bill-in-south-australia-welcome-but-amendments-needed>>.

¹¹³ Department of Health (WA) (n 34) 41.

¹¹⁴ SALRI (n 60) 437.

¹¹⁵ Public Health and Wellbeing Act 2008 (Vic) s 185D.

6.5 Employees

It is recommended that the prohibited behaviour not apply to employees or other persons who provide services at termination services premises. This allows staff and patients to speak freely with each other about abortions. This exception is consistent with the approach in Victoria.¹¹⁶

6.6 Exemptions

It is recommended that no exclusions of the application of the safe access zone in any circumstances are included in any South Australian or Western Australian legislation. Conduct at a church, outside Parliament or Government buildings and the carrying out of any survey during the course of an election have been excluded from the operation of safe access zones in the New South Wales safe access zone legislation. The recommended legislation (above) is flexible enough to accommodate and allow activities undertaken within a church or religious institution if the activities are not visible or audible by people accessing abortion service premises. Modelled on the Victorian legislation, the recommended approach states that activities are prohibited only if it is able to be seen or heard.

¹¹⁶ Ibid.

7. Support

This report includes references to structural reproductive coercion. If you need support, please speak to a supportive person in your networks or consider one of the following support options:

- [1800 Respect](#), for professionals who work in areas of sexual, family or domestic violence and for survivors of violence: 1800 737 732.
- [Benestar](#), Marie Stopes Australia's employee assistance program (EAP) at 1300 360 364.
- [beyondblue](#) aims to increase awareness of depression and anxiety and to reduce stigma. Call 1300 22 4636, 24 hours / 7 days a week.
- [Blue Knot Foundation Helpline](#) (formerly ASCA Professional Support Line) provides help, information, support or referral for adult survivors of childhood trauma and abuse, their partners, family and friends, health professionals and anyone in the workplace working with people who have experienced childhood trauma and abuse. Call 1300 657 380, 9am-5pm AEST / 7 days a week.
- [Butterfly Foundation's National Helpline](#) provides information, counselling and referral for people with disordered eating and related issues. Call 1800 33 4673, 8am-midnight AEST / 7 days a week.
- [Lifeline](#) provides 24-hour crisis counselling, support groups and suicide prevention services. Call 13 11 14.
- [MensLine Australia](#) is a professional telephone and online support and information service for men. Call 1300 78 99 78, 24 hours / 7 days a week.
- [MindSpot](#) is a free telephone and online service for people with stress, worry, anxiety, low mood or depression. It provides online assessment and treatment for anxiety and depression. Call 1800 61 44 34 AEST, 8am-8pm (Mon-Fri), 8am-6pm (Sat).
- [QLife](#) provides nationwide telephone and web-based services to support LGBTI people of all ages. Call 1800 184 527, 3pm-12am (midnight) AEST / 7 days a week.
- [PANDA](#) (Perinatal Anxiety & Depression Australia) provides a national telephone information, counselling and referral service staffed by trained volunteers, professional counsellors and supervising staff. Many helpline counsellors have had their own experience of perinatal depression or anxiety. Call 1300 726 306, 9am-7:30pm AEST (Mon-Fri).
- [SANE Australia](#) provides support, training and education to enable mental health and wellbeing. Call 1800 18 7263, 10am-10pm AEST (Mon-Fri).
- Your General Practitioner.

Further information and feedback

If you would like to know more about the work that we do at Marie Stopes Australia, you can follow us on social media or get in touch via the following channels.

Twitter: [@mariestopesaus](https://twitter.com/mariestopesaus)

Facebook: [@mariestopesau](https://www.facebook.com/mariestopesau)

Instagram: [mariestopesaus](https://www.instagram.com/mariestopesaus)

Website: [mariestopes.org.au](https://www.mariestopes.org.au)

You can also support access to sexual and reproductive healthcare by making a tax deductible donation @ <https://www.mariestopes.org.au/donate/>

If you would like to give us feedback about this publication, please get in touch with us at policy@mariestopes.org.au



Pro Bono Centre