



5 November 2015

Submission to the Scrutiny of Acts and Regulations Committee regarding the Public Health and Wellbeing Amendment (Safe Access Zones) Bill 2015

Women's Health Victoria (WHV) strongly supports amending the *Public Health and Wellbeing Act 2008* to provide safe access zones to ensure that staff and patients can safely access premises at which abortions are provided.

WHV is a statewide women's health promotion, information and advocacy service. We work collaboratively with health professionals, policy makers and community organisations to influence and inform health policy and service delivery for women.

WHV supported abortion law reform in 2008, ensuring that women in Victoria have the right to a safe and legal abortion service. We now need to ensure that this is available to women without intimidation, obstruction or violation of medical privacy. We are therefore pleased to support further legislative reform to safeguard the rights of women to safely access essential health services.

WHV appreciates the opportunity to provide this submission to the Scrutiny of Acts and Regulations Committee and would be happy to provide further advice to the Committee as requested.

Yours sincerely,

Rita Butera

Executive Director



Why we need safe access zones legislation in Victoria

Safe access to abortion is good public health practice and plays an important role in supporting women's broader health and wellbeing. The ability to access safe reproductive health and abortion services has lifelong impacts for women's ability to participate equally in work and community life, earn an income and care for their families.

Inability to access sexual and reproductive health services, including abortion, contributes to social and economic disadvantage for women and their communities and further exacerbates health inequalities. Improving sexual and reproductive health is recognised as a health and wellbeing priority in the Victorian Government's Public Health and Wellbeing Plan 2015-2019.

Safe Access Zones legislation enables women, and those accompanying them, to access premises that provide abortion in a safe and confidential manner, and without the threat of harassment or shaming. It also enables health professionals and staff to access their workplace without being verbally abused, obstructed or threatened.

Despite Abortion Law Reform in 2008 making abortion legal in Victoria, and broad community support for a woman's right to choose, groups opposing abortion have continually attempted to obstruct and harass women accessing abortion-related services. The general aim of anti-abortion groups is to deter women from accessing abortion services.

Many women experiencing unplanned or unwanted pregnancies are already feeling distressed, isolated, anxious and fearful. Being confronted by anti-abortion groups at an already difficult, sensitive and personal time exacerbates these feelings. It is intimidating and demeaning for women to have to run the gauntlet of anti-abortion groups in order to access essential and legal health services.

Targeting health services in this way can also have impacts on women's health and wellbeing. For example, health services have reported that some patients are too afraid to attend clinics when anti-abortion groups are out the front, or to return for follow-up appointments because of their experience when previously accessing the clinic.¹

There is evidence on the local and international level that encountering anti-abortion groups while attempting to access legal abortion services has significant impacts on the health and wellbeing of women.

A 2015 report from the United Kingdom analyses the comments made by women seeking an abortion who have encountered anti-abortion activists outside the clinic. The research shows that the presence of anti-abortion activists outside clinics is a significant source of distress for women seeking abortions.

The report found that many informants considered the presence of activists outside the clinic to be an inappropriate intrusion into a private medical decision. Even if not

¹ Hansard, Public health and Wellbeing Amendment (Safe Access Zones) Bill 2015, Second Reading, 22 October 2015. Available: <http://hansard.parliament.vic.gov.au/isysquery/8f8c9865-96cf-4cd1-9764-8d3a26a10d59/2/doc/>



approached directly, many women reported that being watched by the activists was very intimidating. The presence of activists was considered to draw public attention to the private medical decision they had made. Many service users reported significant levels of alarm and distress, suggesting that some service users experience the presence of activists outside the clinic as harassment.²

The Victorian Law Reform Commission Final Report on Abortion Law in Victorian in 2008 specified the following impacts on abortion service users and providers in the Victorian context:

- A woman, who wished to remain anonymous, described her own experience as one where she was in 'no position to defend myself from such a cowardly attack at a vulnerable time in my life'. She felt there was a lack of protection for women and their friends, partners, families, and support people and said this was of 'grave concern'. She submitted that the law should provide protection for workers at and clients of abortion services.
- The Victorian Women with Disabilities Network noted that women with disabilities use clinics for a variety of reproductive health services. It reported that women may be confronted by protestors regardless of their reasons for using the clinic.
- A medical practitioner, who claimed to have received a death threat in the past, said one of the reasons for local specialists in regional areas not performing abortions is the 'concern about verbal or physical attacks'.³

While anti-abortion groups have targeted many women and clinics across Victoria before and since abortion law reform in 2008, their continued and harmful presence at the Fertility Control Clinic in East Melbourne has highlighted the need for specific legislation to finally address this longstanding problem for all abortion providers and their patients.

The impacts of the continued anti-abortion presence at the Fertility Control Clinic means that patients and staff have to walk the gauntlet to access the centre on a daily basis and are often subjected to misinformation, offensive signs and photographs and unsolicited contact and advice.

As recently as 2001 an anti-abortion activist murdered the clinic's security guard in an attempt to enter the clinic and commit further violence on staff and patients. The ongoing impacts on staff and patients of unwanted and unavoidable contact with anti-abortion groups at the clinic are significant given this context.

Reports have been made by the clinic staff to police on numerous occasions. However, police have been unwilling or unable to intervene due to a lack of clarity as to whose responsibility it is to address the longstanding nuisance posed by the groups. Police have

² Dr Graham Hayes and Dr Pam Lowe, 'A Hard Enough Decision to Make': *Anti-Abortion Activism outside Clinics in the Eyes of Clinic Users*. Aston University, 2015, p. 4.

³ Victorian Law Reform Commission, *Law of Abortion, Final Report*, 2008, p.139.



tended to regard this issue as a matter between individuals, urging staff and patients to take names of individual anti-abortion group members and to pursue intervention orders.

This approach is impracticable and ineffective as it places the burden on individual patients and staff to manage their safety, rather than addressing the harassing and intimidating behaviour of anti-abortion activists. Given the daily presence of numbers of rotating anti-abortion group members and the sensitive nature of abortion, patients are extremely unlikely to be able to pursue individual legal action against anti-abortion groups.

The Victorian Law Reform Commission in 2008 commented that, during its consultations, several people and organisations raised the issue of protection outside abortion clinics, citing concerns that the safety and wellbeing of patients and staff were jeopardised because of the intimidation and harassment by anti-abortion protesters.

Although the commission did not make a formal recommendation on this issue, which fell outside its terms of reference, it encouraged the then Attorney-General to consider options for a legislative response.⁴

In the absence of a legislative response to safe access since 2008, the Fertility Control Clinic has sought to remedy the problem by urging Melbourne City Council to address the issue as a matter of public nuisance. However, in early 2015 the Supreme Court found that the Council was obliged only to assess the nuisance, not to remedy it.⁵

Public Health and Wellbeing Amendment (Safe Access Zones) Bill 2015

We note that the government has undertaken significant consultation with relevant stakeholders including WHV in order to draft the Bill. The terms proposed are consistent with World Health Organisation guidelines for abortion. The Bill reflects the scope and key principles that WHV and other expert organisations have advocated for, and is consistent with best practice.

According to the WHO's technical and policy guidance for safe abortion, the fear that confidentiality will not be maintained deters many women – particularly adolescents and unmarried women – from seeking safe, legal abortion services, and may drive them to clandestine, unsafe abortion providers, or to self-induce abortion. Confidentiality is a key principle of medical ethics and an aspect of the right to privacy and must be guaranteed.⁶ Barriers contribute to unsafe abortion by deterring women from seeking care and providers from delivering services within the formal health system.⁷

⁴ Hansard, Public health and Wellbeing Amendment (Safe Access Zones) Bill 2015, Second Reading, 22 October 2015. Available: <http://hansard.parliament.vic.gov.au/isysquery/8f8c9865-96cf-4cd1-9764-8d3a26a10d59/2/doc/>

⁵ The judgment of Justice McDonald of the Supreme Court is available: <http://www.austlii.edu.au/au/cases/vic/VSC/2015/424.html>

⁶ World Health Organisation, *Safe abortion: technical and policy guidance for health systems*, 2012, p.68

⁷ World Health Organisation, *Safe abortion: technical and policy guidance for health systems*, 2012, p. 94.



WHV agrees freedom of speech means that anti-abortion protesters have the right to protest, however this does not mean they have the right to harass or obstruct women from exercising their legal right to medical services and to privacy. **Protesting should be done at a distance from health services so that it does not intimidate or harass patients.**

WHV believes that the proposed legislation **strikes the right balance** between allowing anti-abortion groups the right to protest and freedom of speech outside of access zones and allowing patients and staff to safely access abortion and reproductive health services.

Safe Access Zones in other jurisdictions

Safe access zones have been in place internationally since the 1990s and have been shown to work. This legislation would put Victoria on par with other jurisdictions that provide for safe access to medical services. Tasmania and the A.C.T have successfully introduced access zones legislation and similar legislation is being considered in N.S.W.

Although the Tasmanian legislation is relatively new, it has provided a clear precedent and framework that can be adapted to suit the Victorian context. The A.C.T legislation employs a different model of access zone specifying that anti-abortion protesters are not allowed to enter the 50 metre (minimum) zone at particular times of day. Furthermore, the A.C.T legislation requires the Health Minister to declare each access zone around an approved medical facility on a case by case basis.

The Tasmanian model sets a better precedent for Victoria because it provides a wider safe access zone (150 metres) around all premises at which abortion is provided and does not require case by case approval from the Health Minister.

Similar access zones are already in operation in Victoria in relation to voting booths, logging and duck hunting and have been found not to infringe on freedom of expression.

Distance encompassed by safe access zones

The Bill would have the effect of prohibiting certain conduct within a safe access zone of 150 metres around premises where abortions are provided. However, section 185B does not provide a definition of “premises”. It is therefore unclear whether the zone begins at a premises’ entrance, or from its perimeter. WHV believes that the zone should commence from the external perimeter of the premises, and not at the entrance.

WHV believes that a distance of 150 metres is necessary to enable women and their support people to access premises safely and in a manner that protects their dignity and privacy.

Although anti-abortion groups have been known to follow women and their support people to and from their cars, a distance of 150 metres will enable services to advise women of how to best access their premises in safety.



Prohibited conduct

It is unclear from the definition of prohibited behaviour in section 185B of the Bill if behaviours prohibited within safe access zones would include silent prayer or religious observance. As stated by the Victorian Minister for Health at the Bill's second reading, 'the fact that such communication occurs in the form of religious practice does not diminish the impact upon the rights of people accessing abortion services, nor their right to privacy and dignity'.⁸ WHV believes these behaviours should be included within the definition of prohibited behaviours.

Clarification of the role and jurisdiction of police

The bill provides that the new provisions of the Public Health and Wellbeing Act will be enforced by Victoria Police. WHV welcomes the clarification of the role and jurisdiction of police in protecting women's emotional and physical safety when accessing abortion services, and in enforcing safe access zones. Victoria Police currently enforce the Summary Offences Act, which contains a range of similar offences, for example, relating to trespassing, public order and threatening behaviour. Given their experience, skills and capabilities, Victoria Police are best placed to enforce the new offences.

The bill prohibits communicating in relation to abortions in a manner that could possibly be seen or heard by a person accessing or leaving premises at which abortions are provided where the communication is reasonably likely to lead a person to suffer distress, upset or anxiety. **WHV supports an approach that does not require individual women patients to prove that they have suffered harm as a result of prohibited behaviours within a Safe Access Zone.**

Instead, the Bill will require Police to exercise their discretion as to whether behaviour constitutes a breach of a Safe Access Zone and enables them to issue warnings to move people to a location outside the safe access zone.

It is important that protocols or guidelines are put in place to support police to enforce these laws in a way that will protect women from all forms of harassing behaviour.

Premises and services protected by the Bill

One of the key concerns raised by WHV during consultation on the drafting of the Bill was that all services or premises that provide abortions should be protected by safe access zones. This was to **ensure that women accessing medical abortions (which may be provided in a GP clinic) as well as surgical abortions (more often provided in a hospital or specialist clinic setting) are equally covered by safe access zones.**

WHV supports the wording of the bill that specifies safe access zones "around premises where abortions are provided", regardless of the setting or abortion type.

WHV welcomes the introduction of Public Health and Wellbeing Amendment (Safe Access Zones) Bill 2015 and considers it an important and long overdue step towards better sexual and reproductive health outcomes and a safer community for Victorian women.

⁸ Hansard, Public health and Wellbeing Amendment (Safe Access Zones) Bill 2015, Second Reading, 22 October 2015. Available: <http://hansard.parliament.vic.gov.au/isysquery/8f8c9865-96cf-4cd1-9764-8d3a26a10d59/2/doc/>