



Government of **Western Australia**  
Department of **Health**

# Safe access zones – Proposal for reform in Western Australia

Discussion Paper

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**This paper was prepared by:**

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## **Disclaimer**

The views expressed in this document may not, in any circumstances, be interpreted as stating an official position of the Department of Health.

This document is intended to serve as the basis for further discussion with interested stakeholders.

## Minister's Foreword

I am pleased to present this Discussion Paper inviting community feedback on how best to protect patients from harassment and intimidation when accessing abortion services, and other relevant health services. In particular, the Discussion Paper explores the value of introducing safe access zone legislation and how a legislative framework might operate in Western Australia. We are one of the few jurisdictions in Australia yet to consider the implementation of safe access zones.

Safe access zones are designed to address concerns regarding the safety and wellbeing of patients and staff entering premises to access legal health services, such as abortion services. All patients in Western Australia have a right to safety, privacy, dignity and respect when accessing healthcare.

The zones provide a buffer that shields patients from people who oppose abortion and are engaged in behaviour such as protests and sidewalk counselling. The extent of protection offered depends on the nature of the behaviour prohibited within the zone, and the size of the zone. While primarily designed to provide safe zones for patients when accessing health services, the zones can also be extended to other types of premises such as needle and syringe programs.

This Discussion Paper is an opportunity for the community to provide input into the design of the legislation. Your feedback is important in guiding the Department of Health's assessment of the issues, and will be taken into account when determining the final preferred option. The Department values genuine and timely consultation to ensure legislation developed is fit for purpose, and that the Department understands the impacts the options will have on business, community organisations and individuals.

I encourage interested parties and individuals to make written or online submissions on the various issues raised in the Discussion Paper.

**Hon Roger Cook MLA**  
**Deputy Premier; Minister for Health; Mental Health**

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## How to make a submission

You are invited to provide feedback through one of the methods below. Please explain the reasons behind your suggestions, and where possible evidence to support your views, including case studies and experiences.

### Plan for consultation

The information gathered from this stage of consultation will form the basis for the next stage of the policy development process. Your input is crucial as it will support the development of the reform and assist in identifying issues of concern.

Following the consultation period, the Department of Health will review all submissions provided prior to arriving at a preferred option for reform. The preferred option will be assessed and summarised through a Final Report to be publicly released.

Please note that your feedback forms part of a public consultation process. The Department may quote from your comments in future publications. If you prefer your name and organisation to remain confidential, please indicate that in your submission. As submissions made in response to this paper will be subject to Freedom of Information requests, please do not include any personal or confidential information that you do not wish to become available to the public.

### Submissions close

The closing date for submissions is **Friday 31 May 2019**.

### Where to send your submissions

<b>Online survey</b>	<a href="http://healthywa.wa.gov.au/safeaccesszones">http://healthywa.wa.gov.au/safeaccesszones</a>
<b>Email</b>	<a href="mailto:safeaccesszones@health.wa.gov.au">safeaccesszones@health.wa.gov.au</a>
<b>Post</b>	<p><i>Safe access zones – Proposal for reform in WA</i></p> <p>Office of the Chief Health Officer Department of Health PO Box 8172 Perth Business Centre, WA 6849</p>

# 1 Introduction

## Desired outcome

The policy outcome is to ensure patients can access health services, including abortion services, without fear of harassment or intimidation. The right to safety, privacy, dignity and respect when accessing healthcare is a right that should be protected. The same protection should also be available to staff who work at these health service clinics.

## What is a safe access zone?

A safe access zone is an imposed exclusion zone around prescribed premises. In Australia, exclusion zones have been predominantly designed to introduce a buffer around premises providing reproductive and fertility health services, such as medical and surgical abortions. Abortion is a particularly controversial and polarising moral issue. This has resulted in protestors and demonstrators targeting abortion clinics (defined as 'clinics' throughout this Discussion Paper), and impacting patients seeking access to those services. Staff members working at the clinics are also impacted when arriving and leaving their workplace.

The rationale underpinning safe access zones is that people should be able to access health services without fear of harassment, fear of being identified or public obstruction.

The zones are intended to protect the safety, dignity, wellbeing and privacy of individuals seeking health services by prohibiting certain behaviour within the prescribed zone. Such behaviour may include protesting, communicating information to a patient about abortion, providing packages, praying or taking photos of patients. The zones also protect staff, and individuals supporting or accompanying a patient, from being targeted by demonstrators. These groups can still assemble, and undertake their protests and demonstrations, but outside the safe access zone, so that they remain at a distance that does not infringe upon the rights of patients and staff.

Where legislation imposes a safe access zone, anyone caught engaging in prohibited behaviour within these zones can face heavy penalties, including imprisonment. The legislation can also make recording or photographing those accessing clinics illegal.

While predominantly imposed around the perimeter of clinics, the zones may apply in other contexts. Premises such as needle and syringe programs may equally benefit from exclusion zones.

The imposition of a zone does not prevent people from demonstrating or protesting any particular health service. Further, it does not stop people from demonstrating or protesting outside Parliament or outside Government buildings. Instead, the zone moves the assembly of people away from the immediate vicinity of a clinic, thereby preventing intimidation or harassment of patients when accessing healthcare.

*Safe access zones are designed to protect the safety, dignity, wellbeing and privacy of individuals seeking health services by prohibiting certain behaviour within the prescribed exclusion zone.*

## 2 Current situation

Following the enactment of the *Acts Amendment (Abortion) Act 1998*,<sup>1</sup> abortion became legal in Western Australia in certain circumstances,<sup>2</sup> and public hospitals, private hospitals and private clinics offer pregnancy termination services. Between 2017 and 2018, the Department of Health (the Department) noted that there were over 20 separate establishments around the State that provided abortion services. This includes a mix of public and private hospitals, as well as private clinics and general practitioners.<sup>3</sup>

There are over 8,000 abortions in Western Australia a year.<sup>4</sup> Approximately 6,300 of these terminations are undertaken by two private clinics – Marie Stopes and Nanyara Medical Group.

### 2.1 Nature of the problem

#### 2.1.1 Abortion services in Western Australia

Since abortion was legalised in Western Australia, there have been ongoing instances of individuals accessing abortion services<sup>5</sup> and being approached by protestors outside the clinics.<sup>6</sup>

The two private clinics in Western Australia are currently the most highly impacted by the behaviour of protestors and demonstrators. Together, these two clinics account for 80 per cent, or approximately 6,300, of the terminations in Western Australia per year. This means potentially thousands of women are impacted by the regular protests that take place outside private clinics every year. The behaviour affects both patients and those accompanying patients to the clinic. Staff working at these clinics, such as medical, legal and counselling staff, also report experiences of harassment and intimidation.

This behaviour includes:<sup>7</sup>

- 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.

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<sup>1</sup> The *Acts Amendment (Abortion) Act 1998* came into effect on 26 May 1998.

<sup>2</sup> *Health (Miscellaneous Provisions) Act 1911* s 334(3).

<sup>3</sup> Department of Health, Government of Western Australia, Information and Performance Governance Unit (17 October 2018), *Abortion Notification System*, MCH18195.

<sup>4</sup> Department of Health, Government of Western Australia, Maternal and Child Health Unit, July 2018, *Induced Abortions in Western Australia 2013-2015: Fifth Report of the Western Australian Abortion Notification System*, p 7.

<sup>5</sup> Abortion services can include both medical and surgical abortions. Surgical abortion involves a procedure of evacuating the contents of a uterus, and may involve varying degrees of anaesthesia. Medical abortions involve consumption of a drug to interrupt the pregnancy.

<sup>6</sup> Submissions to the Report to 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, p 28.

<sup>7</sup> Interview with Marie Stopes Centre Manager (Midland, 10 October 2018), Interview with Nanyara Medical Clinic General Practitioner (Rivervale, 16 October 2018).

- Visual communication through placards and posters set up at clinics with words to discourage the termination of pregnancies alongside emotional imagery of babies and fetuses.
- Assembling outside clinics for at least two hours at a time. 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.
- Singing outside clinics at a volume that can be heard within the clinic.

This constant stream of protests can cause anxiety and distress for staff at the clinics. For patients, the presence of these protestors, and their behaviour, can compound the emotional toll of deciding to have an abortion. It is widely acknowledged that the decision to have an abortion is already a difficult one, and the presence of demonstrators exacerbates the situation for patients, individuals accompanying the patients, and staff at the clinics.

The Department has been informed that demonstrators are most active during the 40 days of Lent campaign which takes place each year. Demonstrators will generally alternate between Marie Stopes and Nanyara Medical Group each year, and the campaign sees demonstrations taking place every day outside the selected clinic for 40 consecutive days. There have been reports of over 40 demonstrators being present outside premises during the course of the campaign. Businesses around the clinics generally do not raise concerns about protestors and demonstrators. However, during this particular period of the year, businesses can be adversely impacted by the number of demonstrations.

### 2.1.2 Needle and syringe programs across Western Australia

Protests are not limited to premises providing abortion services. The Department has also received evidence that various other sites around Western Australia have had similar occasions of members of the public interfering with patients attempting to access health services. Most recently, there have been multiple instances of needle and syringe programs across the State being targeted.

Needle and syringe programs are a primary prevention strategy aimed at reducing the transmission of HIV, hepatitis B and hepatitis C in Western Australia. The types of programs provided include the following:<sup>8</sup>

- Needle and syringe programs providing free sterile needles and syringes conditional on the return of used items. These are provided through fixed-sites, as well as outreach and mobile services.
- Pharmacy based needle and syringe programs – operating on a commercial basis supplying sterile needles and syringes, together with disposal receptacles to people who inject drugs.
- Health service-based needle and syringe programs – sterile injecting equipment and disposal receptacles are provided at no cost to clients through regional hospitals, public health units, community health centres, community drug services and other health services.
- Needle and syringe vending/dispensing machines – self-service devices which dispense sterile injecting equipment and disposal receptacles either for low cost or free.

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<sup>8</sup> Department of Health, Government of Western Australia, *Needle and syringe programs in Western Australia* (18 October 2018) <[https://www.healthywa.wa.gov.au/Articles/N\\_R/Needle-and-syringe-programs-in-WA](https://www.healthywa.wa.gov.au/Articles/N_R/Needle-and-syringe-programs-in-WA)>.

There have been reports of surveillance and photos being taken of clients accessing some sites and clients being questioned by members of the public. For example, there have been complaints of a member of the public purposely photographing clients accessing a service in Gosnells, which is run by the Western Australian AIDS Council. The Department has also received threats of protest at different sites in Western Australia.

### 3 Proposal to introduce safe access zone legislation

Stakeholder feedback is sought on the proposal to introduce safe access zone legislation in Western Australia. While the Department has considered a number of options to implement buffer zones around relevant health services, this Discussion Paper will focus primarily on safe access zone legislation and the broader implications on the community, as well as the effectiveness of this option in addressing the problem and delivering the desired outcome.

#### 3.1 Option one: Status quo

Retaining the status quo will mean no changes are made to the current regulatory system. Protestor and demonstrator behaviour will be managed by police through the permit system, and existing criminal and civil courses of action. Individuals adversely impacted by protestor behaviour will have recourse through the courts.

Instead of Government intervention, protection of patients and staff will depend on clinics addressing the problem through their own means. For example, clinics impacted by the behaviour may choose to invest more in security equipment, such as installing CCTV cameras or hiring security guards. This may be beneficial in tempering the conduct of individuals gathered outside the clinics. Rather than turning to a legislative solution, a heightened security presence may help to manage protestor behaviour.

##### 3.1.1 Impact analysis

#### Advantages

- Anecdotal evidence has suggested that the presence of a security camera impacts the way protestors choose to behave outside clinics.<sup>9</sup> Surveillance footage can help clinics capture evidence of any breaches of permit conditions or concerning behaviour.
- Clinics have the flexibility to set up their security system according to their needs and circumstances.

#### Disadvantages

- Security cameras do not prevent protestors from approaching patients or staff. Patients and staff are not protected from being captured on film or in photos, and may continue to be impacted by verbal communications.
- There is an additional financial impost on clinics as they will need to pay for the capital investment and ongoing maintenance of the surveillance equipment. This will have flow-on cost implications for patients of these clinics.
- The long term effectiveness of security cameras as a deterrent is not guaranteed. Individuals who choose to protest may be emboldened if there are no repercussions to their actions caught on camera.

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<sup>9</sup> Interview with Marie Stopes Centre Manager (Midland, 10 October 2018).

- While surveillance footage can provide useful evidence in building a case against a person for harassment or intimidation, it does not protect a patient or staff member from the behaviour. This option only provides a pathway for redress after the harm has already been caused.

### 3.2 Option two: Introducing safe access zone legislation

New legislation is proposed to introduce safe access zones around premises that provide abortion services, or other relevant health services. These premises could be defined as premises offering services such as fertility treatments, assisted reproductive services, contraception and family planning, sexually transmitted infection testing and treatment, and induced abortions.

The primary objective of the proposed legislation is to establish a buffer zone around particular premises, and to make it an offence to engage in prohibited behaviour within the zone. This is designed to protect patients, and staff, accessing clinics from harassment and intimidation.

Important considerations in the design of a safe access zone legislative framework for Western Australia include:

- **Protected premises** – safe access zones can apply to premises beyond those providing abortion services. For example, needle and syringe programs may also benefit from the imposition of a buffer zone. Whether the zones should apply facilities such as private and public hospitals, that also provide abortion services, will require further consideration. Other premises to consider may include those that provide counselling on unintended pregnancy options, as well as pharmacies or general practitioner clinics.
- **Determining the zone** – the zone can be determined in a number of ways. The Australian Capital Territory approach is for the Minister to specifically declare a safe access zone for a particular facility. Alternatively, the calculation of the zone and the proposed size of the zone can be detailed in the legislation itself. The Australian Capital Territory mandates a minimum 50 metre buffer to be declared by the Minister. Other jurisdictions impose a distance of 150 metre from either the boundary or entrance of a clinic. Further, legislation can dictate when the zone operates, including whether it will apply all day and weekend, or whether it will only apply during the operating hours of the protected premise.
- **Defining prohibited behaviour** – the legislation must detail the types of behaviour considered unlawful within a safe access zone. Generally, other jurisdictions have prohibited behaviour such as harassment, intimidation, obstruction, general protests in relation to abortions and footpath interference. Recording a person accessing premises is also prohibited. In Western Australia, there have been instances of people being filmed or recorded when entering premises. Therefore, there may be value in prohibiting this type of activity.
- **Proposed exclusions** – the New South Wales approach is to exclude certain circumstances from the operation of the safe access zone legislation. Western Australia may consider something similar. For example, churches that inadvertently fall within the zone could be excluded, and particular conduct, such as holding opinion polls or surveys during any elections, referendums, or plebiscites, could be excluded.
- **Appropriate penalties** – are varying penalties across the jurisdictions for engaging in prohibited behaviour in a safe access zone. These are outlined in further detail in the jurisdictional comparison table at Chapter 6. The maximum imprisonment term in Western

Australia is proposed to be no more than 12 months and the maximum fine proposed to be no more than \$12,000.<sup>10</sup>

The specific detail of Western Australia's proposed safe access zone legislation will be determined following feedback from stakeholders and further policy analysis.

### 3.2.1 Impact analysis

#### Advantages

- Safe access zone legislation does not prohibit protestors from engaging in demonstrations and expressing their point of view. Instead, it merely ensures a sufficient buffer between protestors and those attempting to access clinics for healthcare.
- Patients will not be confronted with protestors when attempting to access a clinic for abortion services, and staff members will not be faced with physical obstruction or intimidation when going to work.
- It will be easier to capture evidence of someone breaching a safe access zone offence, compared to a breach of a permit condition, as physical proximity to a clinic is a matter that can be more easily assessed.
- Introducing this legislation is a preventative measure to protect patients and staff. By making it unlawful for individuals to gather in a buffer zone and engage in particular prohibited conduct, the potential penalties attributed to the offence may act as a deterrent to manage bad behaviour. This avoids the need for adversely affected individuals to seek redress through individual criminal or civil action.
- The monetary penalty and risk of imprisonment may be a more effective deterrent in managing the behaviour of protestors compared to the penalties in the *Public Order in Streets Act 1984*.

#### Disadvantages

- This will require the introduction of a new legislative framework for Western Australia, which will take time to design and implement.
- Successful enforcement and monitoring of protestor behaviour may still pose a practical challenge.
- Depending on the proposed calculation of the safe access zone and the proposed exclusions, the legislation may impact neighbouring churches, businesses or residents near or within the perimeter of the proposed zone.
- Protestors may feel that their freedom of speech is being stifled by Government intervention.

## 4 Existing regulatory framework

### 4.1 Western Australia Police

In Western Australia, there is existing legislation that manages protest activities and public gatherings in public spaces and streets. As outlined in the *Public Order in Streets Act 1984*, participants may provide a notice seeking a permit to assemble for a public meeting or procession in a street.<sup>11</sup> While the legislation enables the granting of a permit for demonstrations outside clinics, it is not a mandatory requirement. Instead, obtaining a permit

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<sup>10</sup> These penalty rates are consistent with the penalty under section 63 of the *Criminal Code WA* for an unlawful assembly, and the penalty associated with failure to obey a police order (such as a move on order) under section 153 of the *Criminal Investigations Act 2006*.

<sup>11</sup> *Public Order in Streets Act 1984*, s 5.

ensures participants are protected from potential breaches of other substantive legislation regulating the movement of traffic or pedestrians, or relating to the obstruction of a street.<sup>12</sup> The legislation strikes a balance between preserving the rights and freedoms of those who wish to express a point of view through a public meeting or procession, with the rights of people going about their normal lawful business.<sup>13</sup>

The State Traffic Intelligence Planning and Co-ordination Unit (STIPCU) in the Western Australia Police are responsible for granting permits under the *Public Order in Streets Act 1984*. The Commissioner may only refuse to grant a permit if he or she has reasonable grounds to believe the meeting may cause any of the issues outlined in section 7(2).<sup>14</sup> The Commissioner may also impose conditions to ensure that order in the streets is maintained.<sup>15</sup> Conditions can limit the number of people that can attend a particular site, as well as outline dates and times for which the assembly can take place.

Other than managing breaches of permit conditions, police also have powers under the *Criminal Investigations Act 2006*. One relevant police power in relation to managing protestor behaviour is the power to issue a Move On order.<sup>16</sup> The order requires the person to move on and not return to the location for a 'reasonable period' no longer than 24 hours.<sup>17</sup> Whether or not an order is issued is left to the discretion of individual police officers attending the scene, but any conditions on the order must be reasonable, including the time frame. The officer must 'reasonably suspect' that the person is breaching the peace, hindering lawful activity that is being carried out by another person, or intends to commit an offence.

## 4.2 Criminal and civil actions

Outside of the permit framework and existing police powers, the following criminal or civil actions may be relevant to individuals affected by the behaviour of demonstrators outside clinics:

- Criminal offences of obstruction, unlawful recordings, unlawful assemblies and disorderly behaviour in public; and
- Civil actions such as the common law tort of intimidation. Injunctive relief may be available to address the behaviour.

However, these options are only available after the offending conduct has already taken place. Further, successfully arguing and winning the action will depend upon the availability of relevant evidence, which is an ongoing practical issue experienced by both clinics. Often, patients do not want to pursue further action due to the associated stress and hassle.<sup>18</sup>

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<sup>12</sup> *Public Order in Streets Act 1984*, s 4(1).

<sup>13</sup> Western Australia Parliamentary Hansard, page 7815, 3 May 1984, Mr Thompson, member for the opposition.

<sup>14</sup> *Public Order in Streets Act 1984*, s 7(2) states that the Commissioner may refuse to grant a permit where the meeting may lead to serious public disorder, or damage to public or private property, create a public nuisance, give rise to an obstruction that is too great or too prolonged in the circumstances, or place the safety of any person in jeopardy.

<sup>15</sup> *Public Order in Streets Act 1984*, s 7(1)(a)(ii).

<sup>16</sup> *Criminal Investigation Act 2006*, s 27.

<sup>17</sup> *Criminal Investigation Act 2006*, s 27(2)(b).

<sup>18</sup> Email from STIPCU to Department of Health, 1 November 2018.

## 5 Freedom of political speech in Australia

While a patient's ability to freely access health services without fear of intimidation or harassment is an important consideration, this must be balanced with the freedom of communication on government and political matters implied in the Commonwealth *Constitution*. This implied freedom is narrower than, for example, the right to freedom of speech enshrined in the United States Constitution. Australia has no such right to freedom of speech.

The freedom of political communication is implied into the *Constitution* because the *Constitution* establishes a system of representative and responsible government. It is essential to that system of representative and responsible government that electors be able to exercise a free and informed choice when choosing their representatives. For them to be able to do so, there must be a free flow of political communication within the federation.

However, the implied freedom is not absolute. It is permissible for legislation to impose restrictions or burdens on the implied freedom where:

- the purpose of the law is legitimate, in the sense that it is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government; and
- the law is reasonably appropriate and adapted to advance that legitimate purpose in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative and responsible government.

### 5.1 The Constitutional challenge to safe access zones

From 9 to 11 October 2018, the High Court of Australia heard two challenges to the constitutional validity of the legislation establishing safe access zones in Victoria<sup>19</sup> and Tasmania<sup>20</sup> respectively. These High Court challenges were based on the contention that the legislation in each State impermissibly burdened the implied freedom of political communication.

The Attorney General for Western Australia intervened in the proceedings and filed publicly available submissions which included submissions that safe access zone laws do not unnecessarily limit political communications as the restriction on free political communications created by each safe access zone is slight and reasonably appropriate and adapted to advance that legitimate object of the legislation in a manner that is compatible with the maintenance of a constitutionally prescribed system of representative and responsible government.<sup>21</sup>

The High Court delivered its decision on these challenges on 10 April 2019, with the majority of the High Court dismissing the constitutional challenge to the Victorian legislation, and the High Court unanimously dismissing the constitutional challenge to the Tasmanian legislation.

The High Court held that both the Victorian and Tasmanian legislation burdened the implied freedom. However, in both cases, it was considered that the burden was justified by reference to the legitimate purposes of the legislation. This includes the protection of the safety, wellbeing, privacy and dignity of persons accessing lawful medical services.<sup>22</sup>

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<sup>19</sup> *Public Health and Wellbeing Act 2008* (Vic), s 185D.

<sup>20</sup> *Reproductive Health (Access to Terminations) Act 2013* (Tas), s 9(2).

<sup>21</sup> [http://www.hcourt.gov.au/assets/cases/06-Melbourne/m46-2018/Clubb-Edwards\\_AGWA.pdf](http://www.hcourt.gov.au/assets/cases/06-Melbourne/m46-2018/Clubb-Edwards_AGWA.pdf).

<sup>22</sup> In relation to the Victorian Act, the majority held that the burden was justified. Other members of the Court considered that the challenge to the communication prohibition should be dismissed without determining the validity of the prohibition because it was not established that Mrs Clubb's conduct involved political communication.

## 6 Jurisdictional comparison

Jurisdictions around Australia have been gradually reforming their legislation to protect people from harassment when they access abortion services. The summary below details the status of safe access zone laws around Australia.

	Safe access zones law	Status of legislation	Distance of zone	Penalties*
<b>WA</b>	No	Not commenced	-	-
<b>SA</b>	No	Not commenced	-	-
<b>QLD</b>	Yes	Commenced on 3 December 2018	150m	\$2,611 or one year imprisonment
<b>NSW</b>	Yes	Commenced on 15 June 2018	150m	First offence: \$5,500 or 6 months imprisonment (or both) Subsequent offence: \$11,000 or 12 months imprisonment (or both)
<b>NT</b>	Yes	Commenced on 1 July 2017	150m	\$15,500 or 12 months imprisonment
<b>VIC</b>	Yes	Commenced on 1 July 2016	150m	\$19,342.80 or 12 months imprisonment
<b>ACT</b>	Yes	Commenced on 23 March 2016	Not less than 50m	Prohibited behaviour: \$4,000 Publication of visual data: \$8,000 or 6 months imprisonment (or both)
<b>TAS</b>	Yes	Commenced on 12 February 2014	150m	\$12,225 or 12 months imprisonment (or both)

Penalties are based on penalty unit calculations as at April 2019.

A full jurisdictional comparison is provided in the Appendix.

## 6.1 Queensland

The Queensland Parliament passed the Termination of Pregnancy Bill 2018 on 17 October 2018, and the Bill received Royal Assent on 25 October 2018. The legislation commenced on 3 December 2018 by proclamation.

The Queensland legislation indicates that a safe access zone applies to an area within 150 metres of the entrance of a termination of pregnancy service premises. The Minister will have the option to vary that distance under regulation. The legislation also creates a new criminal offence for any prohibited conduct within the safe access zone. This includes recording of a person in, entering or leaving termination service premises.

In terms of interaction with Police legislation, the Queensland Act expressly provides that the safe access zones provisions override the operation of the *Peaceful Assembly Act 1992* (Qld).<sup>23</sup> Further, to ensure police have adequate enforcement powers for the safe access zone offences, the Act also introduces an amendment to the *Police Powers and Responsibilities Act 2000* (Qld) to allow police to search a person or vehicle without a warrant.<sup>24</sup>

The legislation was based on the Queensland Law Reform Commission report and the consultation undertaken during that time. After the Bill was introduced into the Queensland Parliament on 22 August 2018, it was referred to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee for further consideration. Over the course of the Committee's inquiry, over 800 submissions were received during the various public hearings held at Townsville, Cairns and Brisbane, as well as through online consultation.

## 6.2 New South Wales

In June 2018, the *Public Health Amendment (Safe Access to Reproductive Health Clinics) Bill 2018* was passed and the Act commenced on the date of Royal Assent on 15 June 2018. The importance of striking a balance between the right to privacy and dignity, versus the defence of freedom of speech, was a predominant consideration during the Parliamentary debates and speeches in New South Wales Parliament. The Act amended the *Public Health Act 2010* (NSW) to provide for safe access zones around reproductive health clinics.

The amendments introduced an offence of interfering with access of persons to reproductive health clinics. Interference includes harassing, intimidating or hindering access by any means.<sup>25</sup> Any communications within the prescribed zone that is reasonably likely to cause distress or anxiety is also an offence.<sup>26</sup> Further, capturing and distributing visual data of persons is prohibited.<sup>27</sup>

Distinct from other safe access zone legislation, the New South Wales legislation also includes an exemption designed to protect the right to protest and campaign on the issue of abortion. The exemption states that during the course of Commonwealth, State or local government elections, referendums or plebiscites, a person can conduct surveys and distribute leaflets within the safe access zone.<sup>28</sup> Churches, other religious institutions and Parliament house are also specifically exempted.<sup>29</sup>

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<sup>23</sup> *Termination of Pregnancy Act 2018* (Qld) s 12

<sup>24</sup> *Termination of Pregnancy Act 2018* (Qld) ss 36-37

<sup>25</sup> *Public Health Act 2010* (NSW), s 98C.

<sup>26</sup> *Public Health Act 2010* (NSW), s 98D.

<sup>27</sup> *Public Health Act 2010* (NSW), s 98E.

<sup>28</sup> *Public Health Act 2010* (NSW), s 98F(1)(c).

<sup>29</sup> *Public Health Act 2010* (NSW), ss 98F(1)(a) and 98F(1)(b).

### 6.3 Northern Territory

The *Termination of Pregnancy Law Reform Act 2017* (NT) commenced on 1 July 2017.

The Act establishes an access zone within 150 metres outside the boundary of premises performing terminations, as well as the area within the premises itself.<sup>30</sup> Conduct that is prohibited within the safe access zone includes harassing, intimidating, recording any person leaving or entering without their consent, and performing any act that can be seen or heard by others near the premises, where the actions may result in:<sup>31</sup>

- deterring a person from entering or leaving the premises; or
- from performing or receiving a termination.

The Northern Territory legislation includes the offence of publishing or distributing the recording of a person accessing or attempting to access the premises.<sup>32</sup> However, a defence is included if the person has a reasonable excuse for their actions.<sup>33</sup>

### 6.4 Victoria

On 1 July 2016, the *Public Health and Wellbeing Amendment (Safe Access Zones) Act 2015* (Vic) commenced in Victoria. The Amendment Act inserted Part 9A into the *Public Health and Wellbeing Act 2008* (Vic) with the purpose of:<sup>34</sup>

- providing safe access zones around premises where abortions are provided;
- protecting the safety, wellbeing, privacy and dignity of people accessing the services, and staff employed at the premises; and
- prohibiting the publication or distribution of recordings of individuals accessing these premises.

Prohibited behaviour within the safe access zone includes intimidating, interfering with or obstructing the person attempting to access the premises, or any other prescribed behaviour.<sup>35</sup> A person is prohibited from communicating in relation to abortions in a manner that is reasonably likely to cause distress or anxiety.

The Victorian Act was recently the subject of a High Court challenge. The majority considered that the burden imposed by the legislation was justified by reference to its legitimate purposes, including the protection of the safety, wellbeing, privacy and dignity of persons accessing lawful medical services.

### 6.5 Australian Capital Territory

On 23 March 2016, the *Health (Patient Privacy) Amendment Act 2015* (ACT) amended the *Health Act 1993* (ACT) to introduce Division 6.2 – providing patient privacy in protected areas. The amendments introduced an offence of engaging in prohibited behaviour and protesting by any means in relation to the provision of abortions during a ‘protected period’, and within a ‘protected area’ around the facility.<sup>36</sup> The protected period is between 7 am and 6 pm on each

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<sup>30</sup> *Termination of Pregnancy Law Reform Act 2017*, s 4.

<sup>31</sup> *Termination of Pregnancy Law Reform Act 2017*, s 14(4).

<sup>32</sup> *Termination of Pregnancy Law Reform Act 2017*, s 15.

<sup>33</sup> *Termination of Pregnancy Law Reform Act 2017*, s 15(3).

<sup>34</sup> *Public Health and Wellbeing Act 2008* (Vic), s 185A.

<sup>35</sup> *Public Health and Wellbeing Act 2008* (Vic), s 185B.

<sup>36</sup> *Health Act 1993* (ACT) s 87(1).

day the facility is open, or any other period declared by the Minister.<sup>37</sup> Pursuant to section 86, the protected area must be declared by the Minister. The Act outlines the following restrictions when declaring the relevant protected area:<sup>38</sup>

- must not be less than 50 metres at any point from the facility;
- must be sufficient to ensure privacy and unimpeded access for patients and staff; and
- must not be any bigger than necessary to ensure that outcome.

Prohibited behaviour is defined to include harassment, intimidation, interfering with a person and capturing visual data of the person within the protected area, during the protected period.<sup>39</sup>

The first legal test of the Australian Capital Territory's safe access zone legislation occurred in March 2018.<sup>40</sup> The Magistrates Court looked at:

- the operation of the legislation;
- the appropriateness of the legislation; and
- the context of the behaviour of the individuals charged.

Charges against the defendants were ultimately dismissed. In the course of arriving at this conclusion, the Magistrates Court found that the safe access zone created by section 87(1) was valid, was not overreaching and did not breach the implied freedom of political communication.<sup>41</sup> The conclusion was that some restriction on the right to protests is warranted, reasonable and fair, if the protests impose an access barrier for those seeking to use the reproductive and fertility health services at the premises. While no one can be prosecuted for holding an opinion about abortion, or seeking to influence how legislation about abortion is made, the Magistrates Court concluded that protestor behaviour is not permissible at prescribed times, and within prescribed areas, in the Australian Capital Territory.

## 6.6 Tasmania

On 12 February 2014, the *Reproductive Health (Access to Terminations) Act 2013* (Tas) commenced in Tasmania. The Act establishes an access zone within a radius of 150 metres from the premises where terminations are provided. A person must not engage in prohibited behaviour within the access zone, or risk facing a fine or imprisonment.

Prohibited behaviour includes harassing, intimidating, intentionally recording a person, or any other behaviour prescribed in regulations.<sup>42</sup> The Tasmanian legislation includes the offence of publishing or distributing the recording of a person accessing or attempting to access the premises.<sup>43</sup>

The Tasmanian Act was also recently the subject of a High Court challenge. The Court unanimously held that the burden imposed by the legislation was justified by reference to its legitimate purposes, including the protection of the safety, wellbeing, privacy and dignity of persons accessing premises at which abortions are provided, and ensuring unimpeded access to those lawful medical services.

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<sup>37</sup> *Health Act 1993* (ACT) s 85(2).

<sup>38</sup> *Health Act 1993* (ACT) s 86(2).

<sup>39</sup> *Health Act 1993* (ACT) s 85(1).

<sup>40</sup> *Bluett v Popplewell & Ors* [2018] ACTMC 2.

<sup>41</sup> *Bluett v Popplewell & Ors* [2018] ACTMC 2 at [43].

<sup>42</sup> *Reproductive Health (Access to Terminations) Act 2013* (Tas), s 9.

<sup>43</sup> *Reproductive Health (Access to Terminations) Act 2013* (Tas), s 9.

## 7 Conclusion

There must be clear reasons justifying the introduction of new legislation. As outlined above, the Department has gathered some evidence suggesting the need for Government intervention to better regulate and manage the behaviour of protestors and demonstrators outside clinics that provide abortion services. There is also evidence suggesting the need for these zones to extend to other health services, such as needle and syringe programs.

The potential impact on all stakeholders, including protest groups, health service clinics and patients of the relevant health services will be considered prior to Government action.

Therefore, community feedback on this Discussion Paper will be important to inform the development of a proposal that is able to best address the problem, and achieve the desired policy outcome.

## 8 Consultation questions

1	Do you wish for your response to remain confidential?
2 3 4 5	To help us understand the context of views received during this consultation, we request your gender, your age, whether you are providing feedback on behalf of an organisation and whether you are a resident of Western Australia.
6	Prior to this consultation how would you describe your level of awareness of this issue?
7	Do you support the introduction of safe access zones around premises that provide abortion services in Western Australia?  Please provide brief reasons for your answer.
8	During what times should safe access zones apply?  (a) Only during clinic opening hours (b) 24 hours a days, 7 days a week (c) Prescribed on a case by case basis (d) Other (please provide detail) (e) No response
9	How far should the safe access zone extend?  (a) Minimum of 50 metres (b) Minimum of 150 metres (c) Prescribed on a case by case basis (d) Other (please provide detail) (e) No response
10	It is proposed that prohibited behaviours will include: <ul style="list-style-type: none"> <li>▪ 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;</li> <li>▪ 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;</li> <li>▪ interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided;</li> <li>▪ 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</li> <li>▪ any other prescribed behaviour.</li> </ul> <p>Do you agree with this approach?</p> <p>[modelled on Victorian legislation]</p>

11	<p>Should the legislation specifically exclude the application of the buffer zone in certain circumstances?</p> <ul style="list-style-type: none"><li>(a) Exclude conduct occurring at a church or other religious institution</li><li>(b) Exclude conduct occurring outside Parliament or Government buildings</li><li>(c) Exclude carrying out of an opinion poll or survey during an election, referendum or plebiscite</li><li>(d) There should be no exemptions</li><li>(e) Other (please provide detail)</li></ul>
12	<p>Are there premises, other than abortion clinics, that should also be protected by safe access zones? Please provide detail if applicable.</p>
13	<p>What (if any) other options are there for addressing the problem identified?</p>
14	<p>If you wish to, please provide any other general comments on the proposed reform.</p>

## 9 Appendix

	<i>Health Act 1993 (ACT)</i>	<i>Public Health Act 2010 (NSW)</i>	<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i>	<i>Termination of Pregnancy Act 2018 (Qld)</i>	<i>Reproductive Health (Access to Terminations) Act 2013 (Tas)</i>	<i>Public Health and Wellbeing Act 2008 (Vic)</i>
<b>Relevant definitions</b>	<p><b>Approved medical facility</b> [s 85(1)]</p> <p><b>Capture visual data</b> [s 85(1)]</p> <p><b>Prohibited behaviour</b> [s 85(1)]</p> <p><b>Protected area</b> [s 85(1)]</p> <p><b>Protected period</b> [s 85(2)]</p> <p><b>Recorded person</b> [s 87(2)]</p> <p><b>Publish</b> [s 87(3)]</p>	<p><b>Reproductive health clinic</b> [s 98A]</p> <p><b>Safe access zone</b> [s 98A]</p> <p><b>Interfere with</b> [s 98C(1)]</p> <p><b>Capture visual data</b> [s 98E(4)]</p> <p><b>Distribute</b> [s 98E(4)]</p>	<p><b>Premises for performing terminations</b> [s 4]</p> <p><b>Publish</b> [s 4]</p> <p><b>Safe access zone</b> [s 4]</p> <p><b>Prohibited conduct</b> [s 14(4)]</p>	<p><b>Termination services premises</b> [s 13]</p> <p><b>Safe access zone</b> [s 14]</p> <p><b>Prohibited conduct</b> [s 15(1)]</p> <p><b>Restricted recording</b> [s 16(1)]</p> <p><b>Distribute</b> [s 16(5)]</p> <p><b>Publish</b> [s 16(5)]</p> <p><b>Visual recording</b> [s16(5)]</p> <p><b>Premises</b> [Schedule 1]</p>	<p><b>Access zone</b> [s 9(1)]</p> <p><b>Distribute</b> [s 9(1)]</p> <p><b>Prohibited behaviour</b> [s 9(1)]</p>	<p><b>Distribute</b> [s 185B(1)]</p> <p><b>Premises at which abortions are provided</b> [s185B(1)]</p> <p><b>Prohibited behaviour</b> [s 185B(1)]</p> <p><b>Publish</b> [s 1856B(1)]</p> <p><b>Safe access zone</b> [s 185B(1)]</p>

	<i>Health Act 1993 (ACT)</i>	Other jurisdictions	
<b>Mechanism for establishing the safe access zone</b>	The Minister must declare an area around an approved medical facility to be a protected area [s 86(1)]	<i>Public Health Act 2010 (NSW)</i>	Not applicable – the zone is defined by the Act [s 98A]
	The Minister must be satisfied that the area declared is: <ul style="list-style-type: none"> <li>▪ not less than 50 metres at any point from the approved medical facility;</li> <li>▪ sufficient to ensure the privacy and unimpeded access for anyone entering, trying to enter or leaving an approved medical facility; but</li> <li>▪ no bigger than necessary to ensure that outcome [s 86(2)]</li> </ul>	<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i>	Not applicable – the zone is defined by the Act [s 4]
		<i>Termination of Pregnancy Act 2018 (Qld)</i>	Not applicable – the zone is defined by the Act [s 14]
	The declaration is a disallowable instrument [s 86(3)]	<i>Reproductive Health (Access to Terminations) Act 2013 (Tas)</i>	Not applicable – the zone is defined by the Act [s 9(1)]
		<i>Public Health and Wellbeing Act 2008 (Vic)</i>	Not applicable – the zone is defined by the Act [s 185B(1)]

	<i>Health Act 1993 (ACT)</i>	<i>Public Health Act 2010 (NSW)</i>	<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i>	<i>Termination of Pregnancy Act 2018 (Qld)</i>	<i>Reproductive Health (Access to Terminations) Act 2013 (Tas)</i>	<i>Public Health and Wellbeing Act 2008 (Vic)</i>
<b>Scope of the safe access zone</b>	At least 50 metres [s 86(2)]	Defined to mean: <ul style="list-style-type: none"> <li>▪ the premises of a reproductive health clinic at which abortions are provided; and</li> <li>▪ 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 [s 98A]</li> </ul>	Defined to mean the area: <ul style="list-style-type: none"> <li>▪ within the boundary of premises for performing terminations; and</li> <li>▪ within 150 metres outside the boundary [s 4]</li> </ul>	A place is in the safe access zone for termination services premises if the place is: <ul style="list-style-type: none"> <li>▪ in the premises; or</li> <li>▪ not more than the prescribed distance from an entrance to the premises [s 14(1)]</li> </ul> The prescribed distance is 150 metres [s 14(2)] <p>A distance can be prescribed for stated termination services premises by regulation [s 14(3)] but only if the Minister is satisfied that, having regard to the location of the premises, a prescribed distance of 150 metres is insufficient or greater than is necessary to achieve the purposes of the Act [s 14(4)]</p>	Defined to be an area within a radius of 150 metres from premises at which terminations are provided [s 9(1)]	Defined to mean an area within a radius of 150 metres from premises at which abortions are provided [s 185B(1)]

	<b>Prohibited behaviour</b>
<i>Health Act 1993 (ACT)</i>	<p>A person commits an offence if the person:</p> <ul style="list-style-type: none"> <li>▪ is in a protected area; and</li> <li>▪ engages in prohibited behaviour [s 87(1)]</li> </ul> <p><b>Prohibited behaviour</b> is defined to mean:</p> <ul style="list-style-type: none"> <li>▪ 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 entering the facility or having or providing an abortion at the facility;</li> <li>▪ an act that can be seen or heard by anyone in the protected period, and is intended to stop the person from entering the approved facility or having an abortion in the approved facility; or</li> <li>▪ a protest, by any means, in the protected period in relation to the provision of abortions in the approved medical facility [s 85(1)]</li> </ul> <p><b>Protected period</b> is defined to be between 7 am and 6 pm on each day the facility is open or any other period declared by the Minister [s 85(2)]</p>
<i>Public Health Act 2010 (NSW)</i>	<p>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 [s 98C(2)]</p> <p>A person who is in a safe access zone must not, without reasonable excuse, obstruct or block a footpath or road leading to any reproductive health clinic at which abortions are provided [s 98C(3)]</p> <p><b>Interfere with</b> is defined to include harass, intimidate, beset, threaten, hinder, obstruct or impede by any means [s 98C(1)]</p> <p>A person who is in a safe access zone must not make a communication that relates to abortions, by any means, in a manner:</p> <ul style="list-style-type: none"> <li>▪ 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</li> <li>▪ that is reasonably likely to cause distress or anxiety to any such person [s 98D(1)]</li> </ul> <p>The offence in section 98D(1) does not apply to an employee or other person who provides services at the reproductive health clinic [s 98D(2)]</p>

	<b>Prohibited behaviour</b>
<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i>	<p>A person commits an offence if:</p> <ul style="list-style-type: none"> <li>▪ the person intentionally engages in prohibited conduct; and</li> <li>▪ the prohibited conduct occurs in a safe access zone and the person is reckless in relation to that circumstance [s 14(1)]</li> </ul> <p><b>Prohibited conduct</b> is defined to mean:</p> <ul style="list-style-type: none"> <li>▪ 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 the premises; and</li> <li>▪ 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 [s 14(3) and (4)]</li> </ul> <p>The offence in section 14(1) does not apply if:</p> <ul style="list-style-type: none"> <li>▪ the person is a police officer acting in the duties of law enforcement; or</li> <li>▪ the person is employed at premises for performing terminations [s 14(2)]</li> </ul>
<i>Termination of Pregnancy Act 2018 (Qld)</i>	<p>A person must not engage in prohibited conduct in the safe access zone for termination services premises [s 15(3)]</p> <p><b>Prohibited conduct</b> is defined to mean conduct that:</p> <ul style="list-style-type: none"> <li>▪ relates to terminations or could reasonably be perceived as relating to terminations;</li> <li>▪ would be visible or audible to another person in, or entering or leaving, the premises,</li> <li>▪ would be reasonably likely to deter a person mentioned above from entering or leaving the premises, or requesting or undergoing a termination, or performing or assisting in the performance of a termination [s 15(1)]</li> </ul> <p>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) [s 15(2)]</p> <p>The offence in section 15(3) does not apply to a person employed to provide a service at the termination services premises [s 15(4)]</p>

	<b>Prohibited behaviour</b>
<p><i>Reproductive Health (Access to Terminations) Act 2013 (Tas)</i></p>	<p>A person must not engage in prohibited behaviour within an access zone [s 9(2)]</p> <p><b>Prohibited behaviour</b> is defined to mean:</p> <ul style="list-style-type: none"> <li>▪ in relation to a person, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person;</li> <li>▪ 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;</li> <li>▪ footpath interference in relation to terminations;</li> <li>▪ intentionally recording, by any means, a person accessing or attempting to access premises at which terminations are provided without that person's consent; or</li> <li>▪ any other prescribed behaviour [s 9(1)]</li> </ul> <p>The offence of intentionally recording in section 9(2) does not apply to police officers acting in the reasonable course of their duties [s 9(3)]</p>
<p><i>Public Health and Wellbeing Act 2008 (Vic)</i></p>	<p>A person must not engage in prohibited behaviour within a safe access zone [s 185D]</p> <p><b>Prohibited behaviour</b> is defined to mean:</p> <ul style="list-style-type: none"> <li>▪ 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;</li> <li>▪ 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;</li> <li>▪ interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided;</li> <li>▪ 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</li> <li>▪ any other prescribed behaviour [s 185B(1)]</li> </ul> <p>Note that the definition of prohibited behaviour in respect of communication does not apply to an employee or other person who provides services at premises at which abortion services are provided [s 185B(2)]</p>

	Other offences
<i>Health Act 1993 (ACT)</i>	<p>A person commits an offence if:</p> <ul style="list-style-type: none"> <li>▪ the person publishes captured visual data of a person (the <b>recorded person</b>) entering or leaving, or trying to enter or leave, an approved medical facility; and</li> <li>▪ the person does so with the intention of stopping a person from having or providing an abortion; and</li> <li>▪ the recorded person did not consent to the publication [s 87(2)]</li> </ul>
<i>Public Health Act 2010 (NSW)</i>	<p>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 [s 98E(1)]</p> <p>A person must not publish or distribute a recording of another person without that other person's consent if the recording was made while that other person was in a safe access zone, and contains particulars likely to lead to the identification of that other person [s 98E(2)]. Section 98E does not apply to:</p> <ul style="list-style-type: none"> <li>▪ the operation of a security camera for security reasons;</li> <li>▪ a person employed or contracted to provide services at the reproductive health clinic;</li> <li>▪ a person otherwise acting for or on behalf of a person operating a reproductive health clinic;</li> <li>▪ a police officer acting in the course of the officer's duties; and</li> <li>▪ a person who has another reasonable excuse [s 98E(3)]</li> </ul>
<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i>	<p>A person commits an offence if:</p> <ul style="list-style-type: none"> <li>▪ the person intentionally publishes a recording of another person who is in a safe access zone;</li> <li>▪ the recording was made without the other person's consent;</li> <li>▪ the recording shows that the other person was entering or leaving, or attempting to enter or leave, premises for performing terminations; and</li> <li>▪ the person is reckless in relation to the circumstances mentioned above [s 15(1)]</li> </ul> <p>The offence in section 15(1) does not apply if the recording is published to a person who is authorised under a law to receive the information in the recording [s 15(2)]</p> <p>It is a defence to a prosecution for an offence against section 15(1) if the defendant had a reasonable excuse [s 15(3)]</p>

	Other offences
<p><i>Termination of Pregnancy Act 2018 (Qld)</i></p>	<p>A person must not, without reasonable excuse, make a restricted recording of another person without the other person's consent [s 16(2)]</p> <p>A person must not, without reasonable excuse, publish or distribute a restricted recording of another person without the other person's consent [s 16(3)]</p> <p><b>Restricted recording</b> is defined to mean a recording that:</p> <ul style="list-style-type: none"> <li>▪ is an audio or visual recording of a person while the person is in, or entering or leaving, termination services premises; and</li> <li>▪ contains information that identifies, or is likely to lead to the identification of, the person [s 16(1)]</li> </ul> <p><b>Visual recording</b> is defined to include a photograph [s 16(5)]</p> <p><b>Distribute</b> and <b>publish</b> are defined [s 16(5)]</p>
<p><i>Reproductive Health (Access to Terminations) Act 2013 (Tas)</i></p>	<p>A person must 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 [s 9(4)]</p>
<p><i>Public Health and Wellbeing Act 2008 (Vic)</i></p>	<p>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:</p> <ul style="list-style-type: none"> <li>▪ that other person; and</li> <li>▪ that other person as a person accessing premises at which abortions are provided [s 185E]</li> </ul>

	<b>Other miscellaneous matters</b>
<i>Health Act 1993 (ACT)</i>	Not applicable
<i>Public Health Act 2010 (NSW)</i>	<p>The Act sets out the objects of this Part [s 98B]</p> <p>The Act does not apply so as to prohibit:</p> <ul style="list-style-type: none"> <li>▪ conduct occurring in a church, or other building, that is ordinarily used for religious worship, or within the curtilage of such a church or building;</li> <li>▪ conduct occurring in the forecourt of, or on the footpath or road outside, Parliament House; or</li> <li>▪ the carrying out of any survey or opinion poll by or with the authority of a candidate, or the distribution of any handbill or leaflet by or with the authority of a candidate, during the course of a Commonwealth, State or local government election, referendum or plebiscite [s 98F(1)]</li> </ul>
<i>Termination of Pregnancy Law Reform Act 2017 (NT)</i>	Power for police to seize materials [s 16]
<i>Termination of Pregnancy Act 2018 (Qld)</i>	<p>The Act sets out the objects of the Act [ss3 and 11]</p> <p>Evidentiary provisions [s 17]</p> <p>Power to make regulations [s 18]</p>
<i>Reproductive Health (Access to Terminations) Act 2013 (Tas)</i>	<p>Various powers for police to exercise in respect of alleged offences [ss 9(5)-(9), and 11]</p> <p>Power to make regulations [s 12]</p> <p>The regulations can prescribe something as an 'infringement offence', in which case an infringement notice can be issued against the offence [s11]</p> <p>Also provisions regarding proceedings and who can initiate proceedings [s 10]</p>
<i>Public Health and Wellbeing Act 2008 (Vic)</i>	<p>The Act provides the purpose of the Act and principles that apply to the interpretation of the Act [ss 185A and 185C]</p> <p>Various powers for police to exercise in respect of alleged offences [ss 185F – 185H].</p>

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