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Research Note on Exclusion Zones in Australia

Contents

Executive summary

Protests at abortion clinics in Melbourne

Exclusion zones in Australia

— Tasmania

— ACT

— NSW

— Victoria

Freedom of expression and political communication in Victoria

International experiences

Media

Public Health and Wellbeing Amendment (Safe Access) Bill 2015

Introduced: 18 August 2015

2nd Reading: 19 August 2015

House: Legislative Council

Commencement: Earlier day of the day of Proclamation or 1 December 2015.

Links to key documents including the Bill, Explanatory Memorandum, Statement of Compatibility and Second Reading Speech can be found on the Library's [New Bills Information Links page for this Bill](#).

For further information on the progress of this Bill please visit the [Victorian Legislation website](#).

Executive summary

This Research Note provides information on exclusion zones in response to the **Public Health and Wellbeing Amendment (Safe Access) Bill 2015**, introduced by Australian Sex Party MLC Fiona Patten on 18 August 2015. This includes commentary on zones to protect access to abortion clinics, sometimes known as 'access zones', 'bubble zones' and 'buffer zones'. Specifically, this Research Note:

- provides a brief background on protests at abortion clinics in Melbourne;
- analyses the proposed Victorian exclusion zones against other proposals for exclusion zones in Australia, including in Tasmania, New South Wales and the Australian Capital Territory;
- discusses the human rights and constitutional implications of limiting freedom of expression and political communication; and
- briefly presents the experiences of abortion clinic exclusion zones in other jurisdictions, including Canada and the United States.

Protests at abortion clinics in Melbourne

The **Fertility Control Clinic** was set up in East Melbourne 1972 by abortion campaigner Dr Bertram Wainer, and was the first of its kind in Australia.¹ It provides abortion services as well as treatment for miscarriages, vasectomies, contraception advice and general sexual health services. Staff at the clinic have frequently complained that protesters endanger their personal comfort and safety.² The number of protesters outside the clinic ranges from three to 12 persons most days, with the group expanding to 50-100 persons once a month.³ In 2001, a security guard was murdered at the East Melbourne clinic by a gunman not affiliated with any of the other protesters.⁴

The **Helpers of God's Precious Infants** are an international anti-abortion organisation. In Melbourne, they protest six mornings a week outside the Fertility Control Clinic on Wellington Parade, East Melbourne and maintain a presence at clinics in Carlton, Richmond and St Albans at least one day a week.⁵ During parliamentary sitting weeks, they demonstrate at the rear entrance to the Victorian Parliament.⁶ They have maintained a presence outside the East Melbourne clinic for over 20 years.⁷ They have stated that their activities are aimed at 'encouragement and assistance' and that they 'always act within the law and we never incite or instigate violence'.⁸

Fertility Control Clinic v Melbourne City Council

In March 2014, the Fertility Control Clinic sought a writ of mandamus⁹ against the Melbourne City Council for failing to do anything about the nuisance caused by the protesters. The Supreme Court of Victoria's judgment was handed down on 26 August 2015. The court heard that the actions of the protesters include:

- approaching women apparently coming to the Clinic, imposing their presence even when clearly unwelcome;
- harassing women entering or leaving the Clinic, engaging in arguments with the women and passers-by;
- attempting to block women's entry to the Clinic;
- blocking the footpath outside the Clinic;
- entering the laneway that runs along the side of the Clinic to follow patients or stand and pray, sing and shout outside the Clinic's consulting rooms;
- jostling and striking people passing the area and entering the Clinic;
- making offensive, frightening and misleading statements to patients and staff;
- engaging in loud singing, praying and shouting, clearly audible in the Clinic;
- intimidating and harassing patients of the Clinic, with the effect of deterring patients from attending the Clinic; and
- causing significant injury to the personal comfort of staff members, patients and others.¹⁰

Justice McDonald considered that, 'prima facie, such conduct is a private nuisance by reason of impeding the Clinic's enjoyment of its property and a public nuisance by reason of impeding the

¹ Fertility Control Clinic (2013) 'History', FCC website.

² A. Schetzer (2015) 'Anti-abortion protesters deemed a nuisance', *The Age*, 4 May 2015.

³ *Fertility Control Clinic v Melbourne City Council* [2015] VSC 424 [15].

⁴ P. Anderson (2014) 'Deluded pro-life crusader Peter James Knight kills guard, but wanted more dead after he brought his gun and hatred to an abortion clinic in Melbourne', *Herald Sun*, 11 March.

⁵ Helpers of God's Precious Infants (date unknown) 'Prayer sites – Australia', Helpers of God's Precious Infants website; See also A. Cooper & A. Carey (2015) 'East Melbourne abortion clinic lawyers demand end to pro-life "nuisance"', *The Age*, 3 June.

⁶ See P. Johnson (2013) 'Ongoing protest at Victorian Parliament', Right to Life Australia website, 11 January.

⁷ J. Vuk (2014) 'Rank and vile, that's the charge of the life brigade', *The Age*, 17 March.

⁸ Victorian Law Reform Commission (2008) *Law of Abortion*, final report, VLRC, March, p. 139, [8.262].

⁹ A writ of mandamus is a court order that commands an entity to either perform, or refrain from performing, a particular act. Here, the writ was being sought to require the Melbourne City Council to resolve the nuisance.

¹⁰ *Fertility Control Clinic v Melbourne City Council* [2015] VSC 424 [15].

Clinic's enjoyment of its property and a public nuisance by reason of the elements of annoyance, inconvenience or hurt to members of the public'.¹¹

Under s 60 of the *Public Health and Wellbeing Act 2008* (Vic), a Council has 'a duty to remedy as far as is reasonably possible all nuisances existing in its municipal district'. However, under s 58(1) such nuisances must be, or must be liable to be, 'dangerous to health or offensive'. Justice McDonald found that it was within the Council's jurisdiction to 'erroneously conclude that the conduct [of the protesters] was neither offensive nor dangerous to health'.¹²

Exclusion zones in Australia

Tasmania is the only Australian jurisdiction which has specific exclusion zones around abortion clinics. Similar zones have also been proposed in the ACT, NSW and now Victoria. The provisions in each jurisdiction are described below, with a focus on the definition of prohibited behaviour and the operation of the zone. Some commentary regarding the operation of the right to freedom of expression and the implied freedom of political communication in conjunction with these limitations on certain behaviour is also provided.

Tasmania

Tasmania introduced 'Access Zones' around abortion clinics at the same time it decriminalised abortion, under the *Reproductive Health (Access to Terminations) Act 2013* (Tas).¹³ Under s 9 of the Act, access zones are defined as 'an area within a radius of 150 metres from premises at which terminations are provided'. Persons cannot engage in 'prohibited behaviour' in these Access Zones, at the risk of a fine of 75 penalty units¹⁴ and/or 12 months imprisonment. Prohibited behaviour under s 9 includes:

- (a) besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding a person;
- (b) any protests relating to terminations that can be seen or heard by a person attempting to access premises providing terminations;
- (c) footpath interference in relation to terminations;
- (d) intentionally recording a patient attempting to access the clinic; or
- (e) any other prescribed behaviour.¹⁵

There is an exception to the prohibited behaviour of intentionally recording a person where that behaviour is reasonable conduct of a law enforcement officer acting in the course of their duties (s 9(3)).

Australian Capital Territory

ACT Greens MLA Shane Rattenbury presented an *Exposure Draft* to the ACT Legislative Assembly on 6 August 2015, outlining amendments to the *Health Act 1993* (ACT) to provide for prohibited behaviour within protected areas.¹⁶ Under proposed s 86, protected areas around approved medical facilities must be declared by the Minister, and the Minister must be satisfied that the area is

¹¹ *ibid.*, [31].

¹² *ibid.*, [32].

¹³ See R. Sifris (2015) 'Tasmania's *Reproductive Health (Access to Terminations) Act 2013*: an analysis of conscientious objection to abortion and the "obligation to refer"', *Journal of Law & Medicine*, 22, pp. 900–914.

¹⁴ Tasmanian penalty units are indexed annually. In 2015–16, a penalty unit is \$154, with the current penalty for engaging in prohibited behaviour within an access zone amounting to \$11,550. See, Department of Justice (Tas) (2015) '*Value of Indexed Amounts in Legislation*', Tasmanian Department of Justice website.

¹⁵ See also Department of Health and Human Services (Tas) (2014) *Pregnancy Termination: Access Zones*, Hobart, Tasmanian Government, February.

¹⁶ S. Rattenbury (Minister for Justice) (2015) '*Health (Patient Privacy) Amendment Bill 2015—exposure draft: Papers and statement by member*', *Debates*, Australian Capital Territory, Legislative Assembly, 6 August, p. 2417.

‘sufficient to ensure the privacy and unimpeded access for anyone entering, trying to enter or leaving an approved medical facility’, while also being ‘no bigger than reasonably necessary to achieve that outcome’. Civil Liberties Australia have noted that they prefer this approach where the Minister is required to set an exclusion zone, but that the size of the zone is not prescribed in legislation and can be tailored to each clinic, as it is capable of excluding private property from the zone and strengthens arguments that the zone is ‘appropriate and adapted to the circumstances’.¹⁷ Further, these zones only apply during ‘protected periods’ which include the hours of 8am to 6pm each day of operation, and ‘any other period declared by the Minister’ (proposed section 85(2)).

Prohibited behaviour within the exposure draft has an intent element whereby ‘harassment, hindering, intimidation, interference with, threatening or obstruction of another person’ or ‘an act that can be seen or heard by a person’ in the protected area during the protected period is prohibited where it is intended to stop that person entering the facility, or ‘having or providing an abortion’ in the facility (proposed s 85(1) definition). Protests in relation to the provision of abortions and visual recording of people entering, trying to enter, or leaving approved facilities are also forms of prohibited behaviour during the protected period. Engaging in prohibited behaviour within a protected area is punishable by 25 penalty units¹⁸ (proposed s 87(1)). The publication of data captured as part of the prohibited behaviour of recording a person accessing a facility is punishable by a maximum fine of 50 penalty units¹⁹ (proposed s 87(2)), with an exception for law enforcement officers acting reasonably in the exercise of their functions (proposed s 87(3)).

The Exposure Draft is open for [public comment](#) until 11 September 2015.²⁰

New South Wales

NSW Greens MLC Dr Mehreen Faruqi sought leave to introduce the Abortion Law Reform (Miscellaneous Acts Amendment) Bill as a Private Member’s Bill in May 2015, but the motion has been postponed three times since then and is currently due for consideration on 29 October 2015.²¹ The Bill seeks to decriminalise abortion in NSW, and introduce exclusion zones to ‘make it an offence to protest, harass, intimidate or film without consent a person accessing abortion services within a 150 metre radius of an abortion clinic’.²² Polling by Essential Research in NSW in July 2015 indicated that 54 per cent of respondents thought it should be illegal to protest outside a medical clinic that provides abortions, while 30 per cent thought it should be legal.²³

Victoria

The Australian Sex Party’s [Public Health and Wellbeing Amendment \(Safe Access\) Bill 2015](#) seeks to insert a new ‘Part 9A—Safe access to reproductive health services’ into the [Public Health and Wellbeing Act 2008](#).

The new Part introduces two new offences: engaging in prohibited behaviour in a safe access zone and publishing or distributing a recording of a person accessing or attempting to access reproductive

¹⁷ T. Vines (2015) ‘[Improving abortion exclusion zone laws](#)’, Civil Liberties Australia website, 12 August.

¹⁸ As of 1 July 2015, a penalty unit in the ACT is equal to \$150, making this offence punishable by a maximum fine of \$3,750; See [Legislation Act 2001](#) (ACT), s 133.

¹⁹ Currently \$7,500

²⁰ See ACT Parliamentary Counsel (2015) ‘[Consultation Period: 20 July 2015 to 11 September 2015](#)’, ACT Legislation website.

²¹ See NSW Legislative Council (2015) [Legislative Council Notice Paper No. 20—Tuesday 8 September 2015](#), Parliament of NSW, p. 1457.

²² Greens NSW (2015) [Make it Happen: the Greens NSW Plan to Reform Abortion Laws and Stand up for Women’s Reproductive Rights](#), media release, Greens NSW, 8 March.

²³ Essential Media Communications (2015) ‘[Right to Protest](#)’, Essential Vision website, 7 July; See also, M. Faruqi (2015) [Greens MP Reiterates Call for Protest Exclusion Zones Outside Abortion Clinics Following New Polling](#), media release, NSW Greens, 8 July.

health service premises (both punishable by 500 penalty units²⁴ or up to 12 months imprisonment) (proposed ss185B and 185C).

According to the explanatory memorandum:

The penalty provisions are designed to reflect the serious, discriminatory nature of such behaviour. The deterrence impact should be viewed in light of previous violent encounters around such clinics ... The penalties reflect the importance of avoiding such escalation, and providing clarity around the rights to safe access to such services, and privacy in so doing.²⁵

New definitions are inserted by s 185A of the proposed Part 9A. 'Safe access zone' is defined as 'an area within a radius of 150 metres from premises at which reproductive health services are provided'. Reproductive health services include services 'relating to advice, medication and treatment in respect of reproductive health, including the prevention and termination of pregnancy'. Prohibited behaviour **within these zones** includes:

- (a) besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding a person;
- (b) communicating in relation to reproductive health services in a way that could be seen or heard by a person accessing (or attempting to access) reproductive health service premises;
- (c) interfering with or impeding a footpath; or
- (d) intentionally recording a person accessing (or attempting to access) reproductive health service premises without their consent; or
- (e) any other prescribed behaviour.

Under proposed s 185B(2), intentionally recording a person accessing reproductive health service premises, without their consent, is prohibited behaviour within a safe access zone, unless the person doing the recording is a police officer performing official duties, is an employee or contractor of the reproductive health service, or another prescribed person. It is a separate offence to then distribute such recordings (proposed s 185C), and a police officer can seize any recordings or material related to either of the new offences if they have reasonable grounds to believe that it 'was used, or is about to be used, in relation to the offence or likely offence' (proposed s 185D).

Freedom of expression and political communication in Victoria

Victoria has a *Charter of Human Rights and Responsibilities Act 2006* which sets out certain rights that legislators must take into account, including the right to freedom of expression (s 15). Further, the High Court has determined that an implied freedom of political communication is provided for in the *Australian Constitution*, and this can apply to state legislation.²⁶ The implications of these two freedoms in relation to exclusion zones are discussed below.

Victorian Charter and freedom of expression

It is noted in the *Statement of Compatibility* to the Australian Sex Party's Bill that the proposed offence of engaging in prohibited behaviour within a safe access zone may limit the freedom of expression provided for in s 15(2) of the Charter of Human Rights and Responsibilities.²⁷ However, this limitation could be considered as falling within s 15(3) of the Charter, which allows for limitations on freedom of expression where they are reasonably necessary to 'respect the rights and reputation

²⁴ 500 penalty units currently equals \$75,835 (penalty units are indexed for inflation every financial year); See Department of Treasury and Finance (2015) 'Indexation of fees and penalties', DTF website.

²⁵ Explanatory Memorandum, *Public Health and Wellbeing Amendment (Safe Access) Bill 2015*, p. 3.

²⁶ See *Coleman v Power* (2004) 220 CLR 1.

²⁷ F. Patten (2015) 'Statement of compatibility: *Public Health and Wellbeing Amendment (Safe Access) Bill 2015*', *Debates*, Victoria, Legislative Council, 19 August, p. 2544.

of other persons' (such as their right to privacy under s 13) or 'for the protection of national security, public order, public health or public morality'.²⁸ Further, under s 7 of the Charter, rights 'may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom', and taking into account: the nature of the right; importance of the limitation; extent and nature of the limitation; relationship between the limitation and its purpose; and the availability of any less restrictive means reasonably able to achieve the same purpose.

Other exclusion zones in Victoria

It is worth noting that there are many precedents for limitations on public behaviour in Victoria. For example, the *Parliamentary Precincts Act 2001* (Vic), includes provisions allowing authorised officers to give a person a direction to leave or not enter the parliamentary precincts for up to seven days 'if the authorised officer believes on reasonable grounds that the direction is necessary for the good order and security of the Parliamentary precincts' (s 16). This has the effect of excluding the top steps of the front entrance to Parliament from public protests.²⁹

There are a number of provisions restricting behaviour in State forests. The *Sustainable Forests (Timber) and Wildlife Amendment Act 2014* amended the *Sustainable Forests (Timber) Act 2004* to provide for 'timber harvesting safety zones' under Part 7A of the Act, which commenced on 28 May 2014. According to the second reading speech, the new zones were introduced in order to: 'deter unlawful protest activities that are unsafe and disrupt timber harvesting operations'.³⁰ The safety zones apply to timber harvesting coupes and the state forest within 150 metres of the boundary of that coupe, and are notified at the site and on the VicForests website.³¹ In addition, exclusion orders can be issued by the courts prohibiting an offender from entering a timber harvesting safety zone or an area of state forest for a period of up to 12 months.³² In conjunction with these zones, the Secretary of the Department retains the right to declare areas of State forest to be 'public safety zones' under the *Safety on Public Land Act 2004*, where unauthorised persons cannot carry out any activity in contravention of the public safety zone declaration (punishable by 20 penalty units).

Implied freedom of political communication

The implied freedom of political communication was first set out by the High Court in *Lange v Australian Broadcasting Corporation*.³³ Here, it was found that given the system of government set out in the *Constitution*, there is an implied freedom of political communication 'limited to what is necessary for the effective operation of that system of representative and responsible government'.³⁴

Whether restricting communication in relation to reproductive health services is a violation of the implied freedom to political communication in the *Constitution* depends on the type of political debate actually protected by that freedom. The High Court has not conclusively decided on this. In *Coleman v Power*, the majority preferred 'a civil, accessible and rational discourse'³⁵ which allowed for restrictions aimed at preventing breaches of the peace or violent behaviour.³⁶ In the more recent case of *Monis* (on which the High Court was split), Chief Justice French accepted 'unreasonable,

²⁸ *ibid.*; The right to freedom of expression and these associated exceptions are also contained in Article 19 of the *International Covenant on Civil and Political Rights* (United Nations), to which Australia is a signatory.

²⁹ See H. Taylor (2011) *Accessing Abortion: improving the safety of access to abortion services in Victoria*, Parliamentary Intern Report, June, p. 18.

³⁰ P. Walsh (Minister for Agriculture) (2013) 'Second reading: Sustainable Forests (Timber) and Wildlife Amendment Bill 2013', *Debates*, Victoria, Legislative Assembly, 31 October, p. 3797.

³¹ VicForests (2015) 'Timber Harvesting Safety Zones', VicForest website.

³² For further information, see: Department of Economic Development, Jobs, Transport and Resources (2015) 'Maintaining public safety', Victorian Government website.

³³ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520.

³⁴ *ibid.*, p. 561.

³⁵ E. Jones (2014) 'Implementing protest-free zones around abortion clinics in Australia', *Sydney Law Review*, 36, p. 174.

³⁶ *Coleman v Power* (2004) 220 CLR 1, p. 2.

strident, hurtful and highly offensive communications’ as part of the political debate.³⁷ Here, Justice Heydon lamented that the inclusions of such ‘sadistic, wantonly cruel and deeply wounding blows’ within the definition of political communication indicated that the implied freedom may in the future be considered by the Court as a ‘noble and idealistic enterprise, which has failed, is failing and will go on failing’.³⁸ A challenge to abortion clinic exclusion zones would be required in the High Court ‘to mediate these conflicting positions and to shed further light upon the type of debate that the implied freedom of communication serves to protect’.³⁹

Nonetheless, the High Court has ruled that limits can be placed on political communication. If it is determined that access zone laws place a burden on political communication, it could still be found that the purpose of providing safe access to reproductive health services is a legitimate purpose ‘compatible with the maintenance of the constitutionally prescribed system of representative and responsible government’,⁴⁰ and that limiting restrictions to within a 150 metre radius of such services (as proposed by the Bill) is ‘appropriate and adapted to achieving that legitimate object or end’.⁴¹ Further, a burden on political communication could be justified if access zones are considered as ‘necessary for the attainment of some overriding public purpose’, such as public order and safe access to health services.⁴² For example, the High Court has previously found Victorian legislation to be valid when it restricted the political communication of duck protesters because the law was targeted at public safety, and only applied to a small geographic area during a specific and limited time (i.e., hunting zones during duck hunting season).⁴³

However, the relatively severe penalties associated with the new offences in the Victorian Bill may lead to a restrictive reading of such provisions.⁴⁴ It has been argued that the general prohibition of protests in the access zones in the Tasmanian legislation could be struck out if interpreted by the High Court.⁴⁵ In the place of this prohibition on protests, the Victorian Bill prohibits ‘communication in relation to health services’, which could be interpreted even more broadly than the Tasmanian provisions, and carries a significantly more severe penalty than that in the Tasmanian legislation.⁴⁶ Further, the more tailored and limited access zones proposed in the ACT legislation demonstrate that there are ‘less restrictive’ and ‘reasonably practicable’ options available, which may also lend weight to the reasoning that the measures in the Victorian Bill are not ‘appropriate and adapted’.⁴⁷

International experiences

Canada

The province of British Columbia in Canada has had exclusion zone laws in place since 1996 under its [Access to Abortion Services Act](#). Under this Act, access zones around specific facilities are determined by the Lieutenant Governor in Council by regulation and encompass the land 50 metres from the boundaries of the parcel of land on which a specified facility is located. Persons must not engage in certain activities in access zones including: engaging in sidewalk interference; protesting, besetting, physically interfering or attempting to interfere with a service provider; and intimidating or

³⁷ *Monis v The Queen* (2013) 249 CLR 92, p. 131 [67]; See Jones, op. cit., p. 174; In this case, the potential political communication involved letters Mr Monis was sending to relatives of Australian soldiers killed in active service, found to be offensive under s 471.12 of the *Criminal Code* (Cth).

³⁸ *Monis v The Queen* (2013) 249 CLR 92, pp. 180 [241], [251].

³⁹ Jones, op. cit., p. 174.

⁴⁰ *Lange v Australian Broadcasting Corporation* (1997) 189 CLR 520, p. 567; *Coleman v Power* (2004) 220 CLR 1, p. 51 [95].

⁴¹ *ibid.*

⁴² *Levy v Victoria* (1997) 189 CLR 579, p. 619; *Coleman v Power* (2004) 220 CLR 1, p. 102.

⁴³ *Levy v Victoria* (1997) 189 CLR 579, p. 619–620.

⁴⁴ *Coleman v Power* (2004) 220 CLR 1, pp. 53–4, 56, 66.

⁴⁵ Jones, op. cit., p. 183; M. Stokes (2013) ‘[Tasmanian ban on abortion clinic protests may not be constitutionally valid](#)’, *The Conversation*, 25 November.

⁴⁶ Prohibiting communication in relation to reproductive health services in the safe access zone may also be problematic as it could apply to communication by the reproductive health service provider.

⁴⁷ See A. Stone (2013) ‘[Tasmania’s abortion protest law is probably constitutionally valid](#)’, *The Conversation*, 29 November.

attempting to intimidate a service provider. Graphic recording and harassment is also prohibited in the access zone. Local governments such as Calgary, Alberta and Toronto, Ontario have also enacted access zone provisions around specific clinics, while other clinics have sought individual injunctions against protest groups.⁴⁸ The Canadian *Charter of Rights and Freedoms* has similar provisions protecting freedom of expression as those in Victoria, and it was held as early as 1996 that access zones around abortion clinics were a reasonable impairment on that rights as ‘freedom of expression may be impaired geographically, by time and by manner’.⁴⁹

United States of America

The United States has a violent history of protests against abortion.⁵⁰ Under the *Freedom of Access to Clinic Entrances Act*⁵¹ certain activities are prohibited in the USA including intentionally injuring, intimidating or interfering with persons obtaining or providing reproductive health services; intentionally injuring, intimidating or interfering with persons lawfully exercising their right of religious freedom at a place of religious worship; and, intentionally damaging or destroying a property because it provides reproductive health services or is a place of religious worship.⁵² A first offence under this Act is punishable by a fine and/or 12 months imprisonment, and subsequent offences are punishable by a fine and/or three years imprisonment. These offences do not constitute an exclusion zone as there is no specific area that protesters cannot enter, but injunctive relief prohibiting a person from attending a clinic can be sought after a first offence.⁵³ A number of States in the US have also enacted ‘buffer zone’ laws around abortion clinics in addition to the Federal offences, although a *2014 Supreme Court ruling* has found such zones to be a violation of the US Constitutional right to free speech.⁵⁴

Others

Since the early 1990s in France, it has been an offence under the Public Health code to prevent or attempt to prevent a termination of pregnancy or preliminary acts, punishable by two years’ imprisonment and a fine of 30,000 euros. This includes by disrupting access to the termination facilities, the free movement of persons within these facilities, or the working conditions of staff; and/or by employing moral or psychological pressure, threats or any act or intimidation on either staff, women accessing the services, or people accompanying them.⁵⁵ In South Africa, it is an offence to prevent the lawful termination of a pregnancy or to obstruct access to a facility for the termination of a pregnancy, but it is not illegal to protest.⁵⁶ Recently, there have also been calls in the UK for buffer zones to restrict the recording of people accessing abortion clinics.⁵⁷

⁴⁸ For the efficacy of these options see F. Wu & J. Arthur (2010) *A Survey of Anti-Choice Protesting Activity at Canadian Abortion Clinics*, Abortion Rights Coalition of Canada, October.

⁴⁹ *R v Lewis* (unreported, Sup Ct, BC, 1996, No CC960120) p. 100; See R. E. Dean & S. Allanson (2004) ‘*Abortion in Australia: access versus protest*’, *Journal of Law & Medicine*, 11, p. 513; *The Constitution Act 1982* (Can), Part 1, cl 1 and 2.

⁵⁰ See B.A. Robinson (2009) *Violence and Harassment at U.S. Abortion Clinics*, Ontario Consultants on Religious Tolerance.

⁵¹ 18 USC § 248 (1994).

⁵² See National Abortion Federation (USA) (2006) *Freedom of Access to Clinic Entrances (FACE) Act*, NAF.

⁵³ *ibid.*

⁵⁴ *McCullen v Coakley* 523 U.S. ___ (2014); See L. Bassett (2014) ‘*Abortion clinic buffer zones crumble around the country*’, *Huffington Post*, 7 July.

⁵⁵ See ‘*Abortion Law France*’, Women on Waves; United Nations (date unknown) ‘*Population Policy Data Bank: Abortion Policy: France*’, United Nations.

⁵⁶ See *Choice on Termination of Pregnancy Act 1996*.

⁵⁷ T. McTague (2014) ‘*Labour calls for US-style ‘buffer zones’ around abortion clinics to stop protesters hassling patients*’, *Daily Mail*, 9 December.

Media

- [Abortion protest buffer zones to get green light](#) / R. Willingham & B. Preiss, *The Age*, 31 Aug 2015
- [Victorian Attorney-General signals support for protest buffer zone around abortion clinics](#) / *ABC News*, 31 Aug 2015
- [No help for women](#) / S. Deery & A. Jefferson, *Herald Sun*, 27 Aug 2015
- [Protesters free to demonstrate outside Melbourne Fertility Clinic](#) / *The Age*, 26 Aug 2015
- [Melbourne city council cleared of failing to protect women from anti-abortion protesters](#) / M. Davey, *The Guardian*, 26 Aug 2015
- [Sex Party abortion safety bid](#) / A. White, *Herald Sun*, 20 Aug 2015
- [‘It goes too far’: Human Rights Commissioner doesn’t support buffer zones for protesters at abortion clinics](#) / *3AW*, 30 Aug 2015
- [Sex Party calls for buffer zones around abortion clinics](#) / B. Preiss, *The Age*, 19 Aug 2015
- [Vic law change for abortion centres](#) / *AAP Newswire*, 19 Aug 2015
- [Abortion clinic buffer zone bill to protect women from abuse, Sex Party MP Fiona Patten says](#) / A. Savage, *ABC News*, 19 Aug 2015
- [Do exclusion zones at abortion clinics protect patients or stifle free speech?](#) / *The Drum*, 19 Aug 2015
- [This is one area where women deserve privacy](#) / P. Mourik, *Herald Sun*, 4 Jul 2015
- [Victorian sex party leader may table bill to stop anti-abortion protests at clinics](#) / M. Davey, *The Guardian*, 5 Jun 2015
- [Melbourne council questioned over ‘failure’ to deal with anti-abortion protesters](#) / M. Davey, *The Guardian*, 4 Jun 2015
- [Women delay treatment at abortion clinic because of harassment, court told](#) / M. Davey, *The Guardian*, 3 Jun 2015
- [Melbourne abortion clinic says council must stop harassment by protesters](#) / M. Davey, *The Guardian*, 3 Jun 2015
- [Abortion clinic exclusion zone time has come](#) / W. Tuohy, *Herald Sun*, 9 Feb 2015
- [City of Melbourne being sued over anti-abortion protests](#) / *ABC News*, 12 Mar 2014

Exclusion zones in other jurisdictions

- [Yvette Cooper calls for protest-free buffers around abortion clinics](#) / F. Perraudin, *The Guardian*, 10 Aug 2015
- [Bill aims to boost zones](#) / E. Somerville, *Albury Wodonga News Weekly*, 29 Jul 2015
- [Minister will listen to community on ACT abortion clinic exclusion zones](#) / M. Gorrey, *Canberra Times*, 22 Jul 2015
- [Shane Rattenbury opens a new battle front on abortion clinic protests](#) / *The Canberra Times*, 21 Jul 2015
- [Shane Rattenbury prepares to ban anti-abortion protests outside Canberra’s abortion clinic](#) / K. Lawson, *The Canberra Times*, 20 Jul 2015
- [Right to Life rejects "ratbag" plan to ban vigils outside Canberra abortion clinic](#) / K. Lawson, *Canberra Times*, 20 Jul 2015
- [Exclusion laws being developed to stop protests outside ACT abortion clinics](#) / *ABC News*, 20 Jul 2015
- [Greens MP Reiterates Call for Protest Exclusion Zones Outside Abortion Clinics Following New Polling](#) / media release, NSW Greens, 8 Jul 2015
- [Forum to push for abortion clinic exclusion zone](#) / N. McNay, *The Border Mail*, 3 Jan 2015
- [Tasmania’s abortion protest law is probably constitutionally valid](#) / A. Stone, *The Conversation*, 29 Nov 2013
- [Tasmanian ban on abortion clinic may not be constitutionally valid](#) / M. Stokes, *The Conversation*, 25 Nov 2013
- [Supreme Court: Abortion ‘Buffer Zones’ violate freedom of speech](#) / H. Sweetland Edwards, *Time.com*, 28 June 2014

[Broadcast News](#)

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