PUBLIC HEALTH AMENDMENT (SAFE ACCESS ZONES) BILL 2021

Introduction and First Reading

Bill introduced, on motion by **Mr R.H. Cook (Minister for Health)**, and read a first time.

Explanatory memorandum presented by the minister.

Second Reading

MR R.H. COOK (Kwinana — Minister for Health) [12.21 pm]: I move —

> That the bill be now read a second time.

The Public Health Amendment (Safe Access Zones) Bill 2021 aims to deal with ongoing instances of women being confronted by protesters when accessing abortion services in Western Australia. These confrontations cause anxiety and distress for both patients and staff.

Except for a few minor changes, the bill before us is identical to the bill that was debated and passed by this house late last year. However, due to the prorogation of Parliament, the bill needs to be reintroduced. Today, we are fulfilling the McGowan government's commitment to reintroduce the bill as early as possible in 2021, and we will ensure that it be made law.

Two years ago, during April and May 2019, a significant public consultation process was undertaken in which the Department of Health sought community feedback on the value of introducing safe access zone legislation in Western Australia and on key considerations in the design of a new legislative framework. We received an extraordinary level of community and industry engagement, with 4 000 responses from individuals and organisations, including support from the Australian Medical Association, the Public Health Association of Australia, and the Royal Australian and New Zealand College of Obstetricians and Gynaecologists. Seventy per cent of respondents supported the introduction of new legislation to provide safe access zones. Approximately 50 submissions provided reports from patients and staff regarding interactions with demonstrators outside abortion clinics. Of these submissions, the majority described the experience as traumatic, stressful, overwhelming, awful, horrible, painful, hard, scary and hurtful.

Since the legalisation of abortion in WA, protesters have regularly gathered outside termination clinics. Over the past five years, the following behaviours have been observed by patients and staff outside the Marie Stopes Midland clinic: patients and staff being asked whether they were having an abortion; being approached and followed; being confronted with banners displaying emotive language and disturbing imagery; having their cars obstructed and car windows tapped on; being forcefully provided with pamphlets and brochures; and being provided with bags containing baby items and rosary beads. All these things were done in an attempt to deter women from accessing the clinic and discourage staff from working there.

The consultation process illustrated that our existing laws are unsatisfactory and that women and staff are not adequately protected from harassment. Protests and gatherings outside abortion clinics are currently being managed by the Western Australia Police Force through the permit system under the Public Order in Streets Act 1984 and existing criminal and civil courses of action. The Western Australia Police Force issues up to 40 permits a year for the express purposes of procession to prayer vigil and peaceful prayer vigil for locations in front of the two main private abortion clinics in WA. These permits are issued to one person on behalf of a group. Although conditions may apply to these permits, there is currently no offence for breaching the conditions. Breaches are dealt with by police officers as they see fit when they attend.

It is evident from the reports of private abortion providers in WA and the number of personal accounts in submissions that there have been a number of harrowing incidents. WA's existing laws do not adequately address the full range of behaviours engaged in by people who demonstrate at or near premises at which abortions are provided. This may be explained by the nature of the demonstrations outside these premises and the unique effect on the target audience. The vulnerable nature of the audience means that they are likely to be particularly affected by the presence and behaviour of demonstrators.

In February 2020, the Department of Health, in its final report following the consultation process, recommended tailoring a specific regulatory approach to address the problem—that is, to create safe access zones around abortion services, a measure that is consistent with the approach taken around the country. All Australian jurisdictions have already introduced safe access zone legislation, except for WA. It is time to bring WA into line with the rest of the country.

Research from around the nation supports safe access zones as a way to protect the privacy and dignity of both staff and patients and protect them from harassment, obstruction and intimidation. The Castan Centre for Human Rights Law at Monash University, the University of Queensland Pro Bono Centre, the South Australian Law Reform Institute and many other organisations have all recommended that governments progress similar legislation.

The bill before us today, which adds new provisions to the Public Health Act 2016, has been modelled on the equivalent legislation in Victoria, which withstood a challenge in the High Court in Clubb v Edwards. The High Court decided that safe access zones do not impermissibly infringe the implied freedom of political communication and that such legislation is constitutionally valid. In addition, reports from clinics indicate that the Victorian model works in achieving the objectives of the legislation in facilitating a safe environment for women to access abortion services.

I now turn to the provisions of the bill. The bill stipulates safe access zones around premises at which abortions are provided, which may include abortion clinics, public and private hospitals and outpatient services such as general practitioners. However, it will not cover pharmacies that supply drugs that may induce an abortion. To date, there has been no evidence of regular protests outside pharmacies that provide this medication. The zones will ensure that anyone who wants to access abortion services, including employees working in those premises, can do so in a safe and private manner.

The bill will create a new offence of engaging in prohibited behaviour within a safe access zone, which would mean the area within 150 metres outside the boundary of the premises at which abortions are provided, including the area within the boundary of those premises. The offence will specify the circumstances in which a person is considered to have engaged in prohibited behaviour, including intimidating or obstructing another person accessing premises at which abortions are provided; communicating by any means in relation to abortion in a manner that is able to be seen or heard by another person accessing premises at which abortions are provided and is reasonably likely to cause distress or anxiety; impeding a footpath, road or vehicle, without reasonable excuse, in relation to abortion; recording by any means, without reasonable excuse, another person accessing premises at which abortions are provided without the person's consent; and any other behaviour prescribed by the regulations.

There is an exception for communication that applies to all employees and contractors who provide services to the premises. This will ensure that employees and contractors who may need to communicate with a patient or other staff about abortion inside the safe access zone will not be committing an offence. Some elements of the offence will also not capture law enforcement officers acting reasonably in the performance of their duties; journalists reporting on a matter of public interest outside abortion clinics; security or construction services working at or near the premises; staff engaged in lawful industrial action; and other similar situations for which a "reasonable excuse" is evident.

The bill will also prohibit someone from publishing or distributing a recording of another person accessing or leaving premises at which abortions are provided if the recording contains particulars that are likely to lead to the identification of that other person as someone who accessed those premises. The prohibition against publishing or distributing recordings extends to recordings taken from outside the safe access zone. The prohibition applies only to recordings made or published without the person's consent, and also provides for an exception of reasonable excuse. The intention of the prohibition is to protect the privacy of those accessing premises at which abortions are provided and to protect them from the intimidatory conduct of taking photos, videos or other recordings with the explicit or implicit threat of publicly exposing individuals who access lawful abortion clinics or provide those health services. The Western Australia Police Force will be the agency responsible for enforcing the new offences and for prosecuting any breaches, using their ordinary powers.

A review clause has been included in the bill that will require the Minister for Health to assess the operation and effectiveness of the amendments five years after they come into force. I would like to clarify what should be obvious to everyone: this bill is not about legalising abortions. That issue was discussed and resolved by this Parliament more than 22 years ago, in 1998. The scope of the bill before us involves only one aspect: ensuring safe and private access to legal abortion clinics.

I will finish by stressing that the proposed safe access zones do not prohibit protests in relation to abortions. The bill only creates a safe buffer to move protesters away from the immediate vicinity of premises that provide abortion services. Anyone who wishes to will still be able to protest 150 metres outside the boundary of the premises, subject to the usual protest permit requirements. By creating such a buffer, we will prevent most harm to patients or staff, as well as largely avoid the current need for police officers to respond only after inappropriate conduct has occurred.

The McGowan government believes that the right to safety, privacy, dignity and respect for women accessing health care, especially during what is a very difficult time, should be protected by this Parliament. I commend the bill to the house.

Debate adjourned, on motion by **Mr P.J. Rundle**.