

PUBLIC HEALTH AMENDMENT (SAFE ACCESS ZONES) BILL 2020

EXPLANATORY MEMORANDUM

The Public Health Amendment (Safe Access Zones) Bill 2020 (the Bill) amends the *Public Health Act 2016* to create safe access zones around premises at which abortions are provided. These zones will ensure that those who want to access abortion services can do so in a safe and private manner. The Bill also prohibits publication and distribution of certain recordings to protect the privacy and dignity of those who access abortion services.

CLAUSE NOTES

Clause 1 **Short title**

This clause provides that the Act will be called the *Public Health Amendment (Safe Access Zones) Act 2020*.

Clause 2 **Commencement**

This clause provides for the commencement of the Act, with sections 1 and 2 of the Act come into operation on the day on which the Act receives the Royal Assent; and the rest of the Act on the day after the Act receives Royal Assent.

Clause 3 **Act amended**

This clause provides that the Act amends the *Public Health Act 2016*.

Clause 4 **Part 12C inserted**

This clause inserts a new Part into the Act. The title of the new Part is “Part 12C — Safe access to premises at which abortions are provided”.

New section 202N sets out the purpose of Part 12C. The purpose of the Part is —

- (a) to provide for safe access zones around premises at which abortions are provided so as to protect the safety and wellbeing, and respect the privacy and dignity of both persons accessing the services provided at the premises, and employees and other persons accessing the premises in the course of their duties and responsibilities; and
- (b) to prohibit publication and distribution of certain recordings.

New section 202O provides definitions of some of the terms used in Part 12C. These include —

Distribute, which includes communicate, exhibit, send, supply, offer or transmit, make available for access, enter into an agreement or arrangement to do any of the foregoing, and attempt to distribute.

Publish, which means to disseminate to the public or a section of the public by any means, including in a book, newspaper, magazine or other written publication, by radio broadcast, television, a website, an online facility or other electronic means.

Recording, which includes a photograph and digital image.

Safe access zone, which means an area within 150 metres outside the boundary of premises at which abortions are provided, including the area within the boundary of that premises — noting that **premises at which abortions are provided** does not include a pharmacy.

New section 202P creates an offence to engage in prohibited behaviour within a safe access zone.

Subsection (1) prohibits a person from engaging in prohibited behaviour within a safe access zone. The penalty for breach of this provision is a maximum fine of \$12,000 or imprisonment for a term not exceeding 1 year.

Subsection (2) specifies the circumstances in which a person is considered to have engaged in 'prohibited behaviour':

- (a) a person who besets, harasses, intimidates, interferes with, threatens, hinders, obstructs or impedes another person accessing, attempting to access or leaving premises at which abortions are provided.
- (b) subject to subsection (3), a person who communicates by any means in relation to abortion in a manner that is able to be seen or heard by another person accessing, attempting to access or leaving premises at which abortions are provided, and is reasonably likely to cause distress or anxiety.

Note: It is not intended that only communication that has actually been seen or heard by a person accessing attempting to access or leave the premises would be caught under this paragraph.

- (c) a person who interferes with or impedes a footpath, road or vehicle, without reasonable excuse, in relation to abortion.
- (d) a person who makes a recording by any means, without reasonable excuse, of another person accessing, attempting to access or leaving premises at which abortions are provided, without the other person's consent.
- (e) a person who engages in any other behaviour prescribed by the regulations for the purposes of this paragraph.

Examples of a reasonable excuse, for the purposes of (c) and (d):

Example 1 is where the behaviour is engaged in by a law enforcement officer acting reasonably in the performance of his or her duties.

Example 2 is where the behaviour is engaged in by a person employed or contracted to provide services at or near the premises, such as security or construction services, acting reasonably in the provision of those services.

Example 3 is where behaviour such as impeding a footpath outside a hospital is engaged in by persons involved in lawful industrial action.

Example 4 is where a journalist is reporting on a matter of public interest for publication in a news medium.

Subsection (3) provides that subsection (2)(b) does not apply to an employee or other person who provides services at premises at which abortions are provided. For example, communication between two staff members of an abortion clinic about their work taking place while they are walking towards the premises, should not be considered 'prohibited behaviour'.

New section 202Q creates an offence in relation to publishing or distributing certain recordings. A person must not, without the consent of another person or without reasonable excuse, publish or distribute a recording of the other person accessing, attempting to access 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; and that other person as a person accessing premises at which abortions are provided. The Penalty for breach of this provision is a maximum fine of \$12,000 or imprisonment for a term not exceeding 1 year.

Note: It is not relevant for the purposes of this offence whether or not the recording was made by a person within a safe access zone.

Examples

Example 1: Posting a visual recording of a person accessing a large public hospital which provides abortions on a social media website without the person's consent may not be an offence if the recording itself or material accompanying the recording (such as text or a voice over) does not make any link between the person and abortion services.

Example 2: Posting a visual recording of a person who is identified as a person accessing an abortion clinic without the person's consent may not be an offence if the person's identity is unlikely to be able to be ascertained, for example if the person's face is obscured.

Clause 5 Sections 306B and 306C inserted

This clause inserts two new provisions into the Act:

New section 306B requires the Minister for Health to review the operation and effectiveness of the amendments made in this Act and prepare a report based on the review. The review must be carried out 5 years after the commencement of section 4. The report must be tabled in Parliament.

New section 306C sets out the process for the Minister to table a report, referred to in existing sections 306 and 306A of the *Public Health Act 2016* and in new section 306B, in Parliament where a House of Parliament is not sitting. In such a case, the Minister must send the relevant report to the Clerk of the House and the report is taken to have been laid before the House.