

Ms Lizzie Blandthorn MP  
Chair  
Scrutiny of Acts and Regulations Committee  
Parliament of Victoria

**By email: [sarc@parliament.vic.gov.au](mailto:sarc@parliament.vic.gov.au)**

5 November 2015

Dear Chair

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

Thank you for the opportunity to make a submission concerning the Public Health and Wellbeing (Safe Access Zones) Bill 2015.

The Human Rights Law Centre strongly supports the bill.

**Gap in legal protection of women accessing abortions**

For the last five years we have acted for the Fertility Control Clinic in its efforts to stop anti-abortionists harassing and intimidating staff and patients as they attend the clinic. The clinic has experienced daily harassment for over two decades.

In 2014 the clinic brought a Supreme Court action seeking to compel the Melbourne City Council to exercise its powers under the *Public Health and Wellbeing Act 2008 (Vic)* to remedy the nuisance out the front of the clinic. The clinic put expert psychiatric evidence before the court about the daily harassment and intimidation of people attending the clinic and the psychological effects on staff of the anti-abortionists. The evidence was uncontested.

In August 2015 the Fertility Clinic lost its bid in the Supreme Court, despite the court finding that the anti-abortionists' behaviour may well constitute a nuisance. The disappointing court decision highlights the urgent need for law reform to protect the rights of women to safely and privately see their doctor.

**Balancing human rights of patients, staff and anti-abortionists**

The Human Rights Law Centre strongly supports the rights to freedom of opinion and expression, including the rights of anti-abortionists to hold and express those views. However those rights are not

absolute and must be balanced against the rights of women to safely and privately access health care, and their rights to non-discrimination.

We believe the bill strikes an appropriate balance between the competing sets of rights in the circumstances.

Similar access zones are in place in Canada and the United States. In those jurisdictions courts have found that sensible access zones can be a lawful restriction on free speech and protest rights. I **attach** a table that summarises the findings in the Canadian and US cases.

We also note that Tasmania created access zones in similar terms to the bill when they decriminalised abortion in 2013.

We would be happy to provide the Committee any further information or assistance.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Emily Howie'.

**Emily Howie**

Director of Advocacy and Research

TABLE: Court decisions on legality of access zones in USA and Canada

Jurisdiction	Law	Type and size of access zone	Prohibited action	Relevant cases
Colorado, USA	Colorado Rev. Stat. s 18-9-122(3) (1999)	Floating no approach zone of area within <b>100 ft</b> of a health care facility, in which it was unlawful to go within 8 ft of a non-consenting individual for purpose of prohibited action	knowingly approaching someone "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling"	<b>Upheld</b> by US Supreme Court in <i>Hill v. Colorado</i> (2000)
Massachusetts, USA	Reproductive Health Care Facilities Act (2000)	Floating no approach zone of area within <b>18ft</b> of reproductive health care facilities in which it's unlawful to go within 6ft of a person for purpose of prohibited activity	knowingly approaching someone "for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling", knowingly obstructing, detaining, hindering or blocking someone's entry or exit	<b>Upheld</b> by United States Court of Appeals for the First Circuit in <i>McGuire v. Reilly</i> (2002)
British Columbia, Canada	Access to Abortion Services Act (RSBC 1996)	Fixed buffer zone up to <b>50m</b> in which certain activity is prohibited	"sidewalk interference", protest, beset, interfere with service provider or patient, intimidate	<b>Upheld</b> by British Columbia Court of Appeal <i>R. v. Watson, R. v. Spratt</i> (2008)
Massachusetts, USA	Amended Reproductive Health Care Facilities Act (2007)	Fixed buffer zone made it a crime to stand on a public road or sidewalk within <b>35ft</b> of a reproductive health care facility	knowingly entering or remaining in the zone. With exceptions for those entering or leaving the clinic, clinic staff, emergency services and members of the public passing through zone to another destination	<b>Struck down</b> by US Supreme Court in <i>McCullen v Coakley</i> (2014)
City of Pittsburgh, USA	S 623.04 Pittsburgh Code of Ordinances	Fixed buffer zone in an area <b>15 feet</b> from any entrance to a hospital or health care facility in which it is unlawful to engage in prohibited action	knowingly congregating, patrolling, picketing or demonstrating	<b>Upheld</b> by United States District Court for the Western District of Pennsylvania in <i>Bruni v City of Pittsburgh</i> (March 2015)