



MONASH University
Castan Centre for Human Rights Law

**Submission to the
Queensland Parliament
Health, Communities, Disability Services
and
Domestic and Family Violence
Prevention Committee
Inquiry concerning the
Termination of Pregnancy Bill 2018**

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We are grateful to the committee for the opportunity to comment on the *Termination of Pregnancy Bill 2018*. We congratulate the Queensland Parliament for introducing this important bill and accepting the recommendations of the review of the Queensland Law Reform Commission (QLRC), including its underlying principles.

After providing some general observations, our submission will comment on the Bill's safe access zone provisions with reference to empirical research we have undertaken into the operation and effectiveness of safe access zone legislation in Australia.

GENERAL OBSERVATIONS

The state's current laws concerning termination of pregnancy are outdated, uncertain and inconsistent with international human rights standards. They have created the fear - and very real threat - of prosecution with concomitant limitations on access to services which have had a disproportionate effect on the most vulnerable and disadvantaged women.

The criminalisation of health services required only by women is stigmatising and discriminatory and has operated as a significant barrier to the realisation of human rights. Access to abortion has been understood by United Nations human rights bodies to be a core component of the right to health¹ and the failure to establish conditions that enable a woman to control her own fertility, including denial of access to abortion, has been found to breach a range of international norms. These include the rights to privacy, equality and non-discrimination, security of person, equality of access to health care and the right to be free from torture or cruel, inhuman or degrading treatment.² The United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) has furthermore characterised the criminalisation of abortion as a form of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.³

¹ CEDAW Committee, General Recommendation 24: Article 12 of the Convention (Women and Health), A/54/38/Rev 1 (1999) para 11; UN Committee on Economic, Social and Cultural Rights, *General Comment No 22: On the Right to Sexual and Reproductive Health*, UN Doc E/C.12/GC/22 (2 May 2016) para 1; Human Rights Committee, Concluding Observations on Poland, 82nd session, UN Doc CCPR/CO/82/POL (December 2 2004) para 8; CEDAW Committee, Concluding Observations on Ireland, UN Doc CEDAW/A/60/38 (July 22 2005) para 297; CEDAW Committee, Concluding Observations on Argentina, UN Doc A/52/38 Rev.1 (23 July 1997) para 319.

² *Llantoy Huamán v Peru*, HRC, Communication No 1153/2003, UN Doc CCPR/C/85/D/1153/2003 (22 November 2005); *LMR v Argentina*, HRC, Communication No 1608/2007, UN Doc CCPR/C/101/D/1608/2007 (28 April 2011); *Mellet v Ireland*, HRC, Communication No 2324/2013, UN Doc CCPR/C/116/D/2324/2013 (9 June 2016); *Whelan v Ireland*, HRC, Communication No 2425/2014, UN Doc CCPR/C/119/D/2425/2014 (11 July 2017); Manfred Nowak, 'Report of the Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment', UN Doc A/HRC/7/3 (15 January 2008); Special Rapporteur on Violence against Women, its Causes and Consequences, 'Preliminary Report Submitted by the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, in Accordance with Commission on Human Rights Resolution 1999/44, Addendum, Policies and Practices that Impact Women's Reproductive Rights and Contribute to, Cause or Constitute Violence Against Women' (UN Doc. E/CN.4/1999/68/Add.4, 21 January 1999); Juan Mendez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/31/57, 5 January 2016) paras 42-44.

³ CEDAW Committee, General Recommendation 35 on Gender-Based Violence against Women, Updating General Recommendation No 19, 14 July 2017, para 18.

It is critical that termination of pregnancy be treated as a health issue and not a criminal justice issue. We commend the Queensland Parliament for endorsing this principle.

The bill represents an important step towards the advancement of women's autonomy and health. It promises to clarify Queensland's law with respect to termination of pregnancy and align it more closely with norms of international human rights. We nevertheless wish to express our concerns about one aspect of the draft provisions concerning safe access zones, namely with respect to prohibited behaviour in Clause 15, and to recommend an amendment which would enhance the effectiveness of the legislation.

SAFE ACCESS ZONES

Part 4 of the bill deals with safe access zones around termination services premises. Clause 15 of the bill defines prohibited conduct within safe access zones to include conduct that relates (or could reasonably be perceived to relate) to terminations, that would be visible or audible to another person in entering or leaving premises at which abortions are provided and would be *reasonably likely to deter the person* from the following: entering or leaving the premises, requesting or undergoing a termination or performing (or assisting in the performance of) a termination. A person's actions may amount to prohibited conduct irrespective of whether another person saw, heard or was deterred by the conduct; and whether it constitutes prohibited conduct is ultimately a question of fact to be determined in the circumstances of each case.

The requirement that prohibited conduct must be reasonably likely to deter in the circumstances set out is not a feature of safe access zone legislation operating in other Australian jurisdictions. In Tasmania, specified conduct is strictly prohibited.⁴ In Victoria and New South Wales, certain conduct (such as besetting, harassing and intimidating) is strictly prohibited,⁵ and communication in relation to abortions which can be seen or heard by persons accessing or leaving premises is subject to the requirement that such conduct is *reasonably likely to cause anxiety or distress*.⁶

In the Australian Capital Territory, certain conduct is strictly prohibited; and prohibited conduct extends to an act that can be seen and heard and is *intended to stop* a person from entering an approved medical facility; or having or providing an abortion in the approved medical facility. Legislation enacted in the Northern Territory also prohibits specified conduct, including acts that can be seen or heard in the vicinity of premises at which abortions are provided, that *may result in deterring* a person from entering or leaving the premises; or performing or receiving a termination at the premises.⁷

The requirement in Clause 15 of the Bill that prohibited conduct be *reasonably likely* to deter is more onerous than the requirements necessary to establish prohibited behaviour in safe access zone legislation operating in Australia. We believe that this requirement creates an inappropriately high threshold and could undermine the purpose of the legislation, enabling the continuation of conduct which has serious and broad-ranging negative consequences.

This view is underpinned by empirical research we have conducted into the impact of anti-abortion protest and the effectiveness of safe access zones. Our research illuminates the

⁴ *Reproductive Health (Access to Terminations) Act 2013 (Tas)* s 9.

⁵ *Public Health and Wellbeing Act 2008 (Vic)* s 185B; *Public Health Act 2010 (NSW)* s 98C.

⁶ *Public Health and Wellbeing Act 2008 (Vic)* s 185B; *Public Health Act 2010 (NSW)* s 98D.

⁷ *Termination of Pregnancy Law Reform Act 2017 (NT)*, s 14(4).

importance of safe access zone legislation which is enforceable and which operates to prevent and punish acts which cause significant harm.

Our research

In the past 18 months, we have undertaken empirical research into the experience and impact of anti-abortion protest outside Australian clinics and the effectiveness of safe access zone legislation.⁸ We have spoken with twenty health professionals working in clinics and professionals engaged in legal or policy areas of direct relevance to women's reproductive health. Our interviewees included seven doctors, one clinical psychologist, one social worker, one health service coordinator, one clinic manager, one nurse practitioner and midwife, two nurses and six professionals engaged in legal or policy areas of direct relevance to women's reproductive health.⁹

Interview participants were selected on the basis of their ability to comment on the impact of anti-abortion protest outside clinics and the effectiveness of the legal frameworks established to address the protest action. Interviewees were asked a series of questions about the activities of anti-abortion protesters, the impact of these activities and how the experience of accessing premises has changed since legislative reforms commenced.

Our interviews revealed that protesters outside clinics have engaged in a range of unsolicited and unwelcome activities. These include following, chasing and jostling patients and staff approaching clinics. Protesters would invoke violent rhetoric, calling staff murderers, accusing them of spilling the blood of innocent children, imploring women not to 'kill your baby' and telling children accompanying patients that their mother will kill their baby sibling.¹⁰ They would not desist from these interventions when it was made clear that they were unwelcome.¹¹ Protesters were particularly active outside some Victorian clinics, including the Fertility Control Clinic and Dr Marie Maroondah.

Some protesters would position themselves in order to obstruct patients from exiting cars or accessing clinics or clinic car parks and impede access along footpaths outside clinics.¹² Some would carry pigs' organs in prams or around their necks¹³ while others carried posters and sandwich boards which bore confronting images of dismembered fetuses,¹⁴ and 'big graphic photos of fetuses in buckets or fetuses' skulls'¹⁵ which clinic staff believed were not what they purported to be. Their literature was also particularly graphic and contained medically inaccurate and misleading information;¹⁶ warning that abortion results in infertility, failed relationships, mental illness and cancer.¹⁷

⁸ The research received prior approval from the Human Research Ethics Committee at Monash University on the basis that it meets the requirements of Australia's National Statement on Ethical Conduct in Human Research.

⁹ Our interviews have to date been conducted in Victoria and Tasmania. Fourteen of the interviews were conducted face-to-face and six were conducted via telephone or mobile technology.

¹⁰ Interview with centre manager, Dr Marie Maroondah (26 October 2017); Interview with Susie Allanson, clinical psychologist, Fertility Control Clinic (22 March 2017).

¹¹ Interview with Dr Susie Allanson (n 10), Interview with anonymous clinic staff member (12 April 2017).

¹² Interview with Dr Susie Allanson (n 10).

¹³ Interview with a nurse practitioner and midwife (27 March 2017).

¹⁴ Interview with general practitioner working in sexual health (2 May 2017).

¹⁵ Interview with a social worker (20 March 2017).

¹⁶ Interview with a social worker (ibid); Interview with Susie Allanson (n 10); Interview with Susan Fahey, Chief Executive Office, Women's Legal Service, Tasmania (3 November 2017).

¹⁷ Interview with Susie Allanson (n 10).

We learnt from our interviews that anti-abortion protest outside clinics has broad-ranging impacts on patients, staff and others who are subjected to the protester's activities. These impacts are outlined below.

Anxiety, distress and stigmatisation

The protesters were observed by interviewees to have no insight into the distress they caused to women seeking abortions, staff and others.¹⁸ Their presence and activities created an undercurrent of fear. While some women were relatively unaffected by their conduct, others were extremely traumatised, angry and distressed.¹⁹ We were told of days 'when everyone coming in was crying.'²⁰

The protest created a sense of moral condemnation. The preponderance of male protesters was seen to contribute to a perception among some patients that the whole of society is judging them.²¹ Very young women and those with a history of sexual or physical violence are particularly vulnerable to shaming, humiliation and stigmatisation.²² Subjecting women and girls to such 'humiliating and judgmental attitudes' in the context of accessing abortion has been characterised by the United Nations Special Rapporteur on Torture as a form of torture or ill-treatment.²³

Impact on health and wellbeing

This shaming, stigmatisation and distress created by anti-abortion protest outside clinics has undermined the health and wellbeing of patients, staff and others. Dr Susie Allanson, who worked as the clinical psychologist at Melbourne's Fertility Control Clinic for more than two decades, told us that high anxiety levels may increase the physical pain experienced by women during or following an examination or surgery.²⁴ Allanson stressed the importance of a supportive environment for patient well-being and the deleterious impact of an unsupportive or discriminatory environment. Allanson's views were echoed by a social worker, who observed that evidence-based research has consistently found that the impact of an abortion should not be traumatic, long lasting and negative but there are risk factors which contribute to negative consequences and these include stigma, misinformation, shame and guilt, all of which are associated with the protesters' activities.²⁵ While some patients recover quickly, others remain traumatised, angry and at heightened risk of ongoing psychological problems.²⁶

Research on the health effects of stigmatising abortion has found that women who felt stigmatised by abortion were more likely to feel a need to keep it a secret from family and friends. Secrecy was related positively to suppressing thoughts of the abortion, and negatively to disclosing abortion-related emotions to others. Greater thought suppression was associated with experiencing more intrusive thoughts of abortion. Both suppression and intrusive thoughts,

¹⁸ Interview with Susie Allanson (n 10).

¹⁹ Interview with general practitioner working in sexual health (n 14).

²⁰ Interview with anonymous clinic staff member (n 11); Interview with Dr Susie Allanson (n 10).

²¹ Interview with general practitioner working in sexual health (n 14).

²² Interview with Susie Allanson (n 10); Interview with general practitioner working in sexual health (ibid).

²³ Juan Mendez, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (A/HRC/31/57, 5 January 2016) para 44

²⁴ Interview with Susie Allanson (n 10).

²⁵ Interview with a social worker (n 15);

²⁶ Interview with a social worker (n 15); Interview with general practitioner working in sexual health (n 14).

in turn, were positively related to increases in psychological distress over time²⁷ and give rise to increased risk of numerous health problems.²⁸

Privacy

The protesters interfered in women's private, medical decision-making in circumstances where some were already fearful and anxious. Some protesters would humiliate and intimidate women by taking video recordings and photographs of persons entering and leaving clinics²⁹, sometimes resulting in their public shaming online³⁰ or in their local community.³¹

Women seeking abortions have been placed in the invidious position of being unable to seek redress for the actions of protesters without further incursions into their privacy. Because of the secrecy and stigma around abortion and the emotional intensity of patients' experiences, women seeking abortion were not in a position to issue legal proceedings or complain to regulatory bodies or the media about the protesters' actions. We were told that abortions are 'the least likely health experience where people are feeling energised to complain.'³² The medical director of a community health centre indicated that making a complaint was tantamount to 'advertis[ing] yourself as going in for an abortion' which is 'really hard.'³³ Women's inability to seek redress for the protesters' actions without further incursions into their privacy enabled protests to continue with impunity. Where safe access zones are now in place, they have operated to protect privacy and end impunity.

Safety

Fears about personal safety have been a corollary of anti-abortion protest outside clinics. Clinic staff spoke of a pervasive concern about unpredictable behaviour and a sense of imminent confrontation and physical threat. Protesters would often provoke a hostile response from patients or their companions and physical altercations would sometimes ensue.³⁴ Staff would pretend that protesters were 'not there' and avoid verbal exchanges which they considered may 'aggravate them more and... make them become more aggressive'.³⁵

Protesters in some regional areas were known to target health professionals by exposing them as 'murderers' in their local community, throwing red paint or pigs' blood at their houses and threatening to send 'plants' purporting to be patients to consultations.³⁶ The experience of the Fertility Control Clinic demonstrates the extent to which the presence of protesters outside clinics has undermined public safety. Due to the fear and distress created by protesters' continued presence, security guards were employed to escort patients and staff into the clinic.

²⁷ Brenda Major and Richard H Gramzow, 'Abortion as Stigma: Cognitive and Emotional Implications of Concealment' (1999) 77(4) *Journal of Personality and Social Psychology* 735. See also David A Grimes et al, 'Unsafe Abortion: The Preventable Pandemic' (2006) 368 *The Lancet* 1908, 1914 on the link between stigma related to abortion and negative health consequences.

²⁸ Brenda Major and Laurie T O'Brien, 'The Social Psychology of Stigma' (2005) 56 *Annual Review of Psychology* 393.

²⁹ Interview with medical director of a regional health service (Victoria, 15 May 2017).

³⁰ Interview with Susan Fahey (n 16), Interview with Chief Executive Officer, community health centre (3 November 2017).

³¹ Interview with Medical Director of a regional health service (n 28).

³² Interview with social worker (n 15).

³³ Interview with medical director of a community health centre (3 May 2017).

³⁴ Interview with Susie Allanson (n 10).

³⁵ Interview with anonymous clinic staff member (n 11), Interview with Susie Allanson (n 10).

³⁶ Interview with a nurse practitioner and midwife (n 13).

Verbal abuse and threats, including death threats, were directed at guards by protesters,³⁷ who were sometimes joined by people with a serious criminal history who were under police surveillance.³⁸ A guard resigned after a protester directed a face-to-face death threat to her and another staff member³⁹ and on 16 July 2001, security guard Steve Rogers was murdered by a man who had previously stood with protesters outside the clinic.⁴⁰

We believe that the safety of patients, staff and others cannot be safeguarded when protesters maintain a presence outside clinics.

Discrimination, harassment and gender-based violence

Anti-abortion protest outside clinics is a form of targeted discrimination against women, violating women's right to equality and freedom from discrimination which is a fundamental principle of international human rights law.⁴¹ Article 1 of the Convention on the Elimination of all forms of Discrimination against women defines discrimination against women as encompassing any distinction made on the basis of sex which has the effect or purpose of impairing or nullifying the enjoyment or exercise of human rights or fundamental freedoms on a basis of equality with men. The targeted harassment of women seeking abortions has undermined women's equal enjoyment of fundamental rights, including the right to privacy,⁴² the right to the highest attainable standard of health⁴³, the right to security of person,⁴⁴ freedom from cruel, inhuman or degrading treatment,⁴⁵ women's equal rights to decide freely and responsibly on the number and spacing of their children⁴⁶ and equality of access to health care services, including those related to family planning.⁴⁷

The protesters' activities were furthermore likened by our interviewees to another serious form of discrimination; racial vilification or hate speech.⁴⁸ The targeted harassment of women was described by one regional practitioner as 'the equivalent of someone targeting a Muslim person because they're anti-Muslim'⁴⁹ and the failure to address protest action (where safe access zones are not in place) described by another in the following terms:

I think it's really saying that it's okay to look the other way when someone else's rights are being infringed upon. I see it as akin to looking away when a racial slur is occurring, or someone with a disability is being undermined. I think it's looking away when you can see that harm is being done to someone. ... And I think that where protests are

³⁷ Susie Allanson, *Murder on His Mind: The Untold Story of Australia's Abortion Clinic Murder* (Melbourne: Wilkinson Publishing, 2006) pp11–12.

³⁸ Interview with Susie Allanson (n 10).

³⁹ Susie Allanson, *Murder on his mind: The untold story of Australia's abortion clinic murder* (Melbourne: Wilkinson Publishing, 2006) p 11.

⁴⁰ *R v Knight* [2002] VSC 498 (19 November 2002) [16] (Teague J).

⁴¹ See for example article 3 of the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

⁴² Article 17 of the International Covenant on Civil and Political Rights.

⁴³ Article 12 of International Covenant on Economic, Social and Cultural Rights.

⁴⁴ Article 9(1) of the International Covenant on Civil and Political Rights.

⁴⁵ Article 7 ICCPR and article 16 of the Convention on the Elimination of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴⁶ Article 16(1)(e) of the Convention on the Elimination of all forms of Discrimination against Women.

⁴⁷ Art 12(1) of the Convention on the Elimination of all forms of Discrimination against Women.

⁴⁸ Interview with Dr Susie Allanson (n10); Interview with staff specialist working in reproductive health (1 May 2017).

⁴⁹ Interview with a nurse practitioner and midwife (n 13).

allowed, it's really saying that the parliament and the law makers think it's acceptable for people to be berated for what is essentially a decision that they're making for the welfare of themselves and their families. I think it's really a big negative, I think, for human rights.⁵⁰

Protest action has marginalised women and undermined their autonomy and decision-making capacity. It has been seen as a 'silencing of women's voices, minimising of what's actually important to women'⁵¹ and described by a health practitioner in the following terms:

It's an acceptance that the rights are lesser and that the voice is lesser, and the equality is not there; it's an acceptance that there's this disparity in equality. That you can tolerate this. It is gender specific. It's targeted at gender but it's okay. ...⁵²

The actions of the protesters fall within the purview of yet another form of gender-based discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men; violence against women.⁵³ Violence against women encompasses acts and threats that inflict physical or psychological harm within the general community⁵⁴ which are directed at women or affect women disproportionately.⁵⁵ The United Nations Special Rapporteur on Violence against Women, its Causes and Consequences has furthermore called on states to eliminate coercion and violence which presented a 'serious obstacle to safe abortions'.⁵⁶

The mistreatment of women and girls seeking reproductive health information, goods and services has been recognised by the CEDAW Committee to constitute gender-based violence which may amount to cruel, inhuman or degrading treatment.⁵⁷ The Committee examined conduct which is substantially identical to protests which have occurred in Australia in its most recent inquiry into grave and systematic violations under the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women. The committee found that police in Northern Ireland have been 'frequently alerted' to anti-abortion protests but would 'rarely intervene' with the consequence that women have been harassed by protesters 'emboldened by' impunity for 'assaults perpetrated against women seeking abortion'.⁵⁸

⁵⁰ Interview with general practitioner working in sexual health (n 14).

⁵¹ Interview with Dr Susie Allanson (n 10).

⁵² Interview with a nurse practitioner and midwife (n 13).

⁵³ CEDAW Committee, General Recommendation 19: Violence against Women, 11th Session 1992 [6]; see also Declaration on the Elimination of Violence against Women, General Assembly, A/RES/48/104, 20 December 1993, [1]

⁵⁴ CEDAW Committee, General Recommendation 19: Violence against Women, 11th Session 1992 at [6]; see also Declaration on the Elimination of Violence against Women, General Assembly, A/RES/48/104, 20 December 1993, articles 1 and 2.

⁵⁵ CEDAW Committee, General Recommendation 19: Violence against Women, 11th Session 1992 at [6]; see also Declaration on the Elimination of Violence against Women, General Assembly, A/RES/48/104, 20 December 1993, [6]

⁵⁶ Preliminary Report Submitted by the Special Rapporteur on Violence against Women, its Causes and Consequences, Ms. Radhika Coomaraswamy, in Accordance with Commission on Human Rights Resolution 1999/44, Addendum, Policies and Practices that Impact Women's Reproductive Rights and Contribute to, Cause or Constitute Violence Against Women (n 100) paras 66, 88.

⁵⁷ CEDAW Committee, General Recommendation 35 on Gender-Based Violence against Women, Updating General Recommendation No 19, 14 July 2017.

⁵⁸ CEDAW Committee, Report of the Inquiry Concerning the United Kingdom of Great Britain and Northern Ireland under Article 8 of the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women, CEDAW/C/OP.8/GBR/1, 23 February 2018 at paras 19, 20 and 70.

Access and deterrence

Our research has revealed that protest outside clinics *can* have a deterrent effect on patients or staff. There is little doubt that anti-abortion protest outside clinics is intended to deter women from having abortions and staff from providing abortion services. There is furthermore little doubt that the protesters' conduct causes significant harm. What is altogether more questionable is whether the type of conduct we have examined, which is still permitted under current law in Queensland, is reasonably likely to deter persons in accordance with Clause 15.

With respect to staff and patients *entering and leaving* premises, the protesters' presence was undoubtedly off-putting and we learnt of a range of measures adopted to avoid contact with the protesters. Some staff would arrive at work before the protesters, use clinic back doors and taking detours on their way home in order to prevent protesters from locating their homes. In clinics which had alternative entry points, patients would be instructed to use these to enter and leave the premises. Where contact with protesters could not be avoided, the most common avoidance tactic we heard about was attempting to ignore the protesters and not talk to them.

With respect to patients *requesting or undergoing treatment*, we were told that some patients would delay treatment and fail to attend follow-up appointments⁵⁹ in order to eschew contact with protesters. Delaying treatment in circumstances where timeliness is critical can change the treatment options available and increase the risk of complications. We were told of women in regional Victoria who were 'very traumatised by the prospect of having to negotiate their way through protesters ... and more inclined to delay the initial contact with the service, knowing what they're going to be up against when they eventually get into the service which... [is] sometimes booked out two or three weeks in advance.'⁶⁰

Nevertheless, women who have made the decision to request or undergo a termination are *extremely unlikely* to be deterred from doing so by the unwelcome interventions of strangers. We believe that a preponderance of women are likely to enter clinic premises and carry through their decision.

The activities of protesters have also been associated with barriers to access emanating from service disruption in some regional areas. For example, the abortion service operated by Bendigo Health, which services Victoria's expansive Loddon Mallee region, was closed from January 2012 until August 2013 because no local doctors were willing to perform the service. Media reporting has suggested that the unwillingness to staff the clinic stemmed in part from the conduct of protesters who were extremely active and confrontational, and would threaten to target doctors personally and shame them publicly⁶¹ but was also attributable to the apprehension that working in abortion services would undermine their employment prospects; rendering them unable to obtain consultancy work within the Catholic hospital system which has a large presence in the region.⁶²

⁵⁹ Ibid; Interview with medical director of a regional health service (n 29).

⁶⁰ Interview with health coordinator of a regional health service (1 May 2017).

⁶¹ Bendigo Weekly, *GPs could help staff abortion clinic* 25 January 2013 at <http://www.bendigoweekly.com.au/news/gps-could-help-staff-abortion-clinic>

⁶² Jill Stark, *Abortions not performed in Bendigo for more than a year*, 17 March 2013 at <http://www.theage.com.au/victoria/abortions-not-performed-in-bendigo-for-more-than-a-year-20130316-2g7kq.html>;

We consider that few individual acts of protest would be reasonably likely to deter a health professional from *performing, or assisting in the performance* of a termination. While a number of the health professionals we interviewed expressed safety fears associated with protesters' unpredictable behaviour (which had largely dissipated as a result of the distancing afforded by safe access zones), no staff member expressed the view that the protest activity had deterred them from doing their job. One health practitioner observed that 'I'm not going to let them stop me doing what I think is a very important job' and 'my approach to them has been to completely and utterly ignore them, by just going ahead and doing what I think is right anyway, making the serviceavailable to everybody.'⁶³

To the extent that protest might deter practitioners, we believe that a decision to stop providing termination services would be most likely to flow from the cumulative effect of sustained protest activity rather than individual acts of protest. An exception may arise in the context of overtly violent acts of protest, including personal threats of violence and the targeting of health professionals. As mentioned above, a security guard resigned from Melbourne's Fertility Control Clinic following a death threat made by a protester.⁶⁴ Some staff subsequently ceased working at the clinic following the murder of security guard Steve Rogers in 2001.⁶⁵

Amending the Bill

We accordingly believe that the requirement that prohibited conduct be *reasonably likely to deter* is too high a threshold and would be likely to reduce the effectiveness of this important legislation. Conduct which violates women's fundamental rights and causes significant harm is unlikely to be prevented by the draft law in its current form.

In Victoria, Tasmania and the Australian Capital Territory, individuals have sought to test the parameters of safe access zone legislation. It is predictable that the same will occur in Queensland when the bill is passed. When this occurs, establishing the deterrence requirement is likely to prove unduly difficult.

For example, a recent piece in *BuzzFeed News* features video footage of a protester approaching a patient as she enters a Brisbane clinic.⁶⁶ The protester declares 'God hates the hands that shed his blood' and ignores the clearly traumatised patient's pleas to be left alone. Under the safe access zone regime contemplated by the bill, such conduct would fall outside the purview of prohibited conduct.

Dianne Dempsey, *Abortion clinic back in Bendigo*, Bendigo Weekly, 16 August 2013 at

<http://www.bendigoweekly.com/news/abortion-clinic-back-in-bendigo>:

See also *St John says doctors still have choice*, 16 March 2013 at <http://www.bendigoweekly.com.au/news/st-john-says-doctors-still-have-choice>.

⁶³ Interview with staff specialist working in reproductive health (n 48).

⁶⁴ Susie Allanson, *Murder on His Mind: The Untold Story of Australia's Abortion Clinic Murder* (Melbourne: Wilkinson Publishing, 2006).

⁶⁵ Susie Allanson, *Murder on His Mind: The Untold Story of Australia's Abortion Clinic Murder* (Melbourne: Wilkinson Publishing, 2006).

⁶⁶ Gina Rushton, 'This Footage Shows A Woman Begging Religious Picketers To Leave Her Alone As She Enters An Abortion Clinic', *BuzzFeed News*, 13 June 2018 at https://www.buzzfeed.com/ginarushton/safe-access-zones-queensland-brisbane-protestor?utm_term=.grMMPNebw#.kq5LolaQz

Our research has revealed that ant-abortion protest outside clinics causes a range of serious harms. In jurisdictions in which safe access zones have been introduced, they are in large part operating to protect patients, staff and others and avert these harms. We believe that, in conjunction with the bill's other provisions, safe access zones will play an important role in aligning Queensland's abortion law with international human rights obligations. We are concerned that the requirement that prohibited conduct must be reasonably likely to deter would undermine the purpose of the legislation and enable the continuation of conduct which causes serious harm.

Clause 11 of the bill provides that the purpose of safe access zones is to protect the safety and well-being, and respect the privacy and dignity of persons accessing services and those employed to provide services at premises at which termination services are provided. We believe that the legislation would be strengthened if the offences it creates were more closely aligned with this legislative purpose. This alignment could be readily achieved by the removal of the deterrence requirement and adoption of the approach taken in section 185B of the *Public Health and Wellbeing Act 2008 (Vic)* and sections 98C and 98D of the *Public Health Act 2010 (NSW)*.

Conclusion

The *Termination of Pregnancy Bill 2018* represents an important step towards the advancement of women's rights and the clarification of the law with respect to termination of pregnancy. We commend the Queensland Parliament for introducing the legislation.

We believe that it is critically important that the legislation meets its objectives and prevents conduct which causes serious harm in the context of access to abortion. Safe access zones will play an important role in aligning Queensland's abortion law with international human rights obligations, in conjunction with the bill's other provisions and its crucial recognition that abortion is a health issue and not an issue of criminal justice.

Our research into anti-abortion protest and safe access zones supports the bill's inclusion of safe access zones and highlights the importance of the bill's safe access zone provisions. These provisions must be enforceable and must operate to prevent and punish acts which cause significant harm.

Safe access zones play a crucial role in preventing the targeted intimidation and harassment of individuals outside clinics which has caused serious harm. We are concerned that the high threshold for establishing prohibited conduct set by Clause 15 will result in the continuation of all but the most extreme forms of anti-abortion protest outside clinics, thereby tolerating the continuation of conduct which breaches women's rights and falls within the ambit of gender-based violence. We accordingly recommend the removal of Clause 15's requirement that prohibited conduct within safe access zones be *reasonably likely to deter* patients and staff and the re-framing of prohibited conduct in accordance with the approach taken in section 185B of the *Public Health and Wellbeing Act 2008 (Vic)* and sections 98C and 98D of the *Public Health Act 2010 (NSW)*. This amendment would serve to protect patients and staff in accordance with the important objectives of the Bill.