

# International Comparison of Abortion Safe Access Zones Legislation: Literature Review

12 February 2024

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## Introduction

The [Abortion Services \(Safe Access Zones\) \(Scotland\) Bill](#) was introduced on 5 October 2023. Similar legislation (which creates, or provides for the creation of, a protective area around premises where abortion services are provided) already exists in a number of other jurisdictions. I will refer to these laws collectively as “safe access zone legislation”. However, the name of the protective area varies across the jurisdictions and a variety of terms are used in the literature. Alternatives to “safe access zone” include “buffer zone”, “access zone”, “safe area”, “protected area”, “medical safety zone”, and “exclusion zone”. This research offers an overview of existing safe access zone legislation, in order to provide members of the Health, Social Care and Sport Committee with an insight into the international picture. It is hoped this will inform the Committee’s scrutiny of the Abortion Services (Safe Access Zones) (Scotland) Bill.

The report is organised by geographical area: England and Wales; Northern Ireland; New Zealand; the Isle of Man; Australia; Canada; the United States of America; and the Republic of Ireland. Within Australia, Canada, and the United States of America, there is a variety of safe access zone legislation. All eight Australian states and territories have safe access zone legislation, six Canadian provinces have safe access zone legislation, and four states in the United States of America have safe access zone legislation. In relation to each safe access zone law, this report will address:

- details of the provisions contained within the legislation.
- the context informing the introduction of the legislation.
- any challenges encountered during or after the passage of the legislation.
- the impact of the legislation.

It does not address in any detail the *nature* of general clinic protest, nor the *effects* of general clinic protest on those who use and provide abortion services, except to the extent that these matters are relevant to the points set out directly above.

I have included less detail about the United States of America because it stands out as being very different from the other jurisdictions considered in this report and indeed Scotland. Safe access zone legislation is typically passed in response to ‘general clinic protest’, ie. the situation where those who are opposed to abortion express their opposition through various means outside premises where abortions are provided ([Cohen and Connon 2015](#), p6). In terms of context informing the passage of safe access zone legislation in the United States of America, however, this is a climate of severe anti-abortion violence. This is reflected in the law, as safe access zones are just one of a number of legal measures intended to protect access to abortion services and those who provide, or facilitate the provision of, abortion services. Further, the safe access zones themselves are framed narrowly so as to allow non-violent protest activities to continue in proximity to premises where abortion services are provided. Although [Spain](#) also has safe access zone legislation, this jurisdiction has been excluded from this research because it has a civil, rather than common law, legal system. In addition, the relevant law is not available in English.

This research has been conducted using secondary research methods, specifically doctrinal analysis (of relevant legislation and case law) and a literature review

(principally of Parliamentary reports but also academic literature). Safe access zone legislation remains a live issue, so while every effort has been made to ensure that this report is current up to the 12 February 2024, there may imminently be further developments. In particular, Committee members may wish to look out for the publication of government guidance in England and Wales and the passage of the Irish Bill through the Oireachtas

## England and Wales

### Details of the provisions contained within the legislation

#### [Section 9 of the Public Order Act 2023](#)

Offence of interference with access to or provision of abortion services

*Section 9 is contained within legislation that was intended to address issues with protest more generally. However, the Parliamentary debates indicate that many of those who supported the establishment of safe access zones through legislation regarded general clinic protest as being of a different nature to typical protest.*

<b>Size of the safe access zone</b>	150 metres from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic. (No scope for extension or reduction.)
<b>Activities prohibited within the safe access zone</b>	<p>Any act done with the intent of, or reckless as to whether it has the effect of (a) influencing any person's decision to access, provide or facilitate the provision of abortion services at an abortion clinic, (b) obstructing or impeding any person accessing, providing, or facilitating the provision of abortion services at an abortion clinic, or (c) causing harassment, alarm or distress to any person in connection with a decision to access, provide, or facilitate the provision of abortion services at an abortion clinic.</p> <p>Exceptions for: things done in the course of providing, or facilitating the provision of, abortion services in an abortion clinic; things done in the course of providing medical care within a regulated healthcare facility; persons accompanying, with consent, persons accessing, providing or facilitating the provision of, abortion services; and incidental coverage by a camera of persons accessing, or attempting to access, an abortion clinic.</p>
<b>Penalty for the offence</b>	Liable on summary conviction to an unlimited fine.

Note: section 9 establishes safe access zones automatically for 'abortion clinics' – places approved by the Secretary of State for the purpose of section 1 of the [Abortion Act 1967](#) and hospitals identified in a notification to the Chief Medical

Officer under the Abortion Act 1967 in the current or previous calendar year and published identifying them as such.

## **Context informing the introduction of the legislation**

### **Public space protection orders**

The [Antisocial Behaviour, Crime and Policing Act 2014](#) allows a local authority to make a public space protection order (PSPO) in response to a specific instance of anti-social behaviour for an initial maximum period of three years. A small number of abortion clinics in England (including BPAS Birmingham South, BPAS Bournemouth, MSI Manchester, BPAS Richmond, and MSI West London) currently have a PSPO in place. PSPOs are similar to safe access zone legislation to the extent that protest activities are prohibited within a specified area outside an abortion clinic. In contrast to national legislation which implements safe access zones outside **all** abortion clinics automatically, like the Public Order Act 2023, however, PSPOs are implemented on a case by case basis and only temporarily. The perceived weaknesses of PSPOs as a means to address general clinic protest were often mentioned in the Parliamentary debates on the Public Order Bill by those who supported the establishment of safe access zones through legislation. Anti-abortion protestors have been [convicted](#) and/or [arrested](#) for breaching PSPOs.

### **Abortion clinic protest review**

In November 2017, the then Home Secretary (Amber Rudd) ordered a review by the Home Office of general clinic protest in order to determine the scale and nature of the protests and to consider whether any measures should be implemented in response to general clinic protest. In his [statement on the outcome of the review](#) in September 2018, the then Home Secretary (Sajid Javid) gave three reasons why it had been concluded that introducing safe access zone legislation would not be a proportionate response: (1) protests take place outside only a small number of clinics, (2) the majority of protest activities are ‘passive’, and (3) existing civil and criminal legislation can restrict protest activities which cause harm. MPs and Lords who opposed the establishment of safe access zones through legislation often mentioned this review and its findings during the Parliamentary debates.

### **Previous attempts to establish safe access zones**

There had been two previous attempts to establish safe access zones through legislation. The [Demonstrations \(Abortion Clinics\) HC Bill \(2019-2021\) 145](#) failed to complete its passage through Parliament before the end of the session and a [proposed amendment](#) to the Police, Crime, Sentencing and Courts HC Bill (2019-2021) 268 was not voted on.

### **Number of pregnant persons affected by general clinic protest**

According to [data provided by the British Pregnancy Advisory Service](#), 50 premises in England and Wales which provide abortion services experienced general clinic protest to some extent between 2018 and 2023. In the House of Commons, [Dr Rupa Huq MP acknowledged that](#), ‘[i]t does not happen at every clinic all the time, but it could happen at any clinic. That is what we should look at’ (col 220). In the Parliamentary debates, those who supported the introduction of safe access zones generally emphasised the number of women affected by general clinic protest, as

opposed to incidences of general clinic protest. Indeed, throughout the passage of the Bill, it was repeated that more than 100,000 women in England and Wales every year have abortions at clinics that are targeted by anti-abortion protestors. It was also noted that more abortion clinics were being targeted for the first time, suggesting an increase in general clinic protest.

## Challenges encountered during or after the passage of the legislation

### During the passage of the legislation

Parliamentary debates indicate that a significant challenge was framing the relevant clause in such a way that was proportionate (or, in other words, strikes an appropriate balance between the rights of those who wish to protest and clinic users/staff) and therefore compatible with the European Convention on Human Rights. The Parliamentary debates also indicate opposition by some MPs and Lords to establishing safe access zones through legislation. Common concerns/critiques related to: the singling out of abortion/abortion clinics; the existence of alternative laws which could be used to address general clinic protest; the scale, nature and consequences of the protests; and the scope of the clause.

### After the passage of the legislation

The Public Order Bill received Royal Assent on 2 May 2023, but at the time of writing this report, section 9 (which establishes safe access zones) is not yet in force. The British Pregnancy Advisory Service [reported](#) that 15 clinics had experienced general clinic protest in the first five months after the Bill became law – including an incident where ‘30 people stood outside a clinic targeting women attending’. In December 2023, the government opened a public [consultation](#) on draft non-statutory guidance on safe access zones produced by the Home Office. It was accused of ‘[watering down](#)’ the protections in the legislation itself – for example, by seeming to exempt silent prayer despite an amendment seeking to do exactly that having been rejected by MPs on 7 March 2023. The consultation closed on 22 January 2024 and publication of the guidance and commencement of section 9 is anticipated in due course. The ‘...disappointing lack of any indication from the government as to when the legislation will come into force’ was relevant to the [decision of Ealing Council](#) to extend the PSPO at the MSI West London clinic on 7 February 2024 (p13).

### Legal challenges

At the time of writing this report, section 9 of the Public Order Act 2023 has not been challenged in the courts. However, the compatibility of PSPOs with the European Convention on Human Rights has been challenged (unsuccessfully) in [Dulgheriu & Orthova v Ealing LBC \[2019\] EWCA Civ 1490](#) and [Livia Tossici-Bolt v Bournemouth, Christchurch and Poole Council \[2023\] EWHC 3229 \(Admin\)](#).

## Impact of the legislation

Section 9 of the Public Order Act 2023 is not yet in force, so it is not possible to analyse the efficacy of the legislation. However, with regard to the efficacy of PSPOs (once in place), a [report](#) produced for Ealing Council’s cabinet on the impact and effectiveness of the MSI West London clinic PSPO was very positive:

...since its introduction in 2018 the Order has been complied with for the most part and it has been successful in tackling the activities found to be having a detrimental effect on women accessing the Clinic, Clinic staff and others in the locality. The Order was never intended to completely stop abortion related protest or prayer from occurring; it was designed to prevent the activities found to be having a detrimental effect from occurring within a very precise and clearly defined area where their impact was most acute. Since being in place it has almost entirely achieved that purpose. The on-going near daily use of the designated area by the Pro-Life groups, the sporadic protests / vigils at Perceval House and the regular presence of groups involved in protest / prayer at the threshold of the area covered by the Order, all indicate a continued interest in the location by the Pro-Life groups who had previously been congregating at the entrance to the Clinic. The breaches committed by self-styled Pro-Life campaigners have also point to the likely recurrence of the behaviours targeted by the Order. It is reasonable to conclude from the continued presence of protestors and campaigners at these sites that, were the order to expire, they will return to the area outside the Clinic and continue the activities previously engaged in at this location. (See p12)

## **Key points in the passage of the legislation**

### **Second Reading - House of Commons - 23 May 2022**

At this stage, the Public Order Bill did not establish safe access zones around premises where abortion services are provided. However, Dr Rupa Huq MP gave 'advance warning' that she intended to amend the Bill on this way (col 110). This received initial support from Yvette Cooper MP, Dame Diana Johnson MP, Wera Hobhouse MP, and Caroline Lucas MP.

### **Committee Stage - House of Commons - 21 June 2022**

Dr Rupa Huq introduced an amendment to the Public Order Bill that would establish safe access zones (referred to as 'buffer zones' at this point) around premises where abortions are provided. However, the clause was withdrawn and not voted on because Dr Rupa Huq wanted to 'improve' it before it was put to a vote (221).

### **Report Stage - House of Commons - 18 October 2022**

Stella Creasy MP introduced an amendment to the Public Order Bill that would establish safe access zones (referred to as 'buffer zones' at this point) around premises where abortion services are provided. Stella Creasy MP acknowledged that the amendment she proposed may need 'further refinement' by the House of Lords to respond to concerns raised in the course of the debate (cols 603-604). The amendment was passed (297-110) and added to the Bill. The Bill was read a third time and passed later the same day.

### **Second Reading - House of Lords - 1 November 2022**

Lord Sharpe confirmed that the government was committed to the establishment of safe access zones around premises where abortion services are provided but noted that it could not accept the relevant clause in its current form due to concerns relating to proportionality and compatibility with the European Convention on Human Rights. Lord Sharpe also confirmed that the Home Office was continuing to work on



the precise formulation of the clause and invited interested Lords to support this work in order to 'deliver a workable solution' (col 204).

### [Committee Stage - House of Lords - 22 November 2022](#)

24 amendments were proposed to the relevant clause ([available here](#)) and debated. However, Lord Sharpe explained that it remained the government's view that the clause was not compatible with the European Convention on Human Rights. He again invited interested Lords to meet with him to 'discuss the next steps for the clause' and asked the Lords 'not to press their amendments' (col 1331). One proposed amendment was withdrawn and the others were not moved. The clause was agreed.

### [Report Stage - House of Lords - 30 January 2023](#)

Five amendments were proposed to the relevant clause ([available here](#)) and debated. One amendment was withdrawn, two amendments were not moved, one amendment was disagreed, and one amendment was agreed. The agreed amendment replaced the relevant clause as introduced by Stella Creasy MP. It was intended to address concerns relating to proportionality and compatibility with the European Convention on Human Rights (col 534).

### [Third Reading - House of Lords - 21 February 2023](#)

Five 'clarifying' amendments were proposed to the updated clause by Baroness Sugg ([available here](#)) (col 1553). All amendments were agreed. The Public Order Bill was passed and returned to the House of Commons.

### [House of Commons consideration of Lords amendments - 7 March 2023](#)

Andrew Lewer MP proposed [two further amendments](#). However, the [Lords Amendment](#) was agreed to by the House of Commons without either of these further amendments.

## Northern Ireland

### Details of the provisions contained within the legislation

#### [Abortion Services \(Safe Access Zones\) Act \(Northern Ireland\) 2023](#)

<b>Size of the safe access zone</b>	100 metres from each entrance to, or exit from, the protected premises.  This can be extended up to 250 metres where the operator is of the opinion that 100 metres would not be adequate to afford safe access to the protected premises and it gives notice to the Department of Health that it wishes the safe access zone to be extended by a specific distance.
<b>Activities prohibited within the safe</b>	Any act done with the intent of, or reckless as to whether it has the effect of (a) influencing a protected person, whether directly or indirectly, (b) preventing or impeding access by a protected person, or (c) causing harassment, alarm or distress to a protected person.

**access  
zone**

Recording a protected person without that person's consent and with the intent of, or reckless as to whether it has the effect of (a) influencing a protected person, whether directly or indirectly, (b) preventing or impeding access by a protected person, or (c) causing harassment, alarm or distress to a protected person.

*Note: a 'protected person' is a person attending protected premises for the purposes of (a) accessing the treatment, information, advice or counselling provided there, (b) accompanying a person described in (a) at the request of that person, or (c) working in, or providing services to, the protected premises.*

**Penalty for the offence** Punishable on summary conviction by a fine not exceeding level 2 (£500) on the standard scale.

Note: safe access zones do not apply automatically to all premises where abortion services are provided, though there is no formal application/review process. The operator of premises where treatment, information, advice, or counselling related to abortion is carried out must **notify** the Department of Health that it wants the premises to be protected. The safe access zone will then remain in place until notice is withdrawn. Consequently, the statute requires that the Department of Health maintains and publishes a list of premises with safe access zones, and the size of each zone. The Department of Health is also required to ensure (so far as its powers extend) that operators of protected premises take appropriate steps to make the public aware of the existence and size of the safe access zones. Currently, [eight premises](#) have safe access zones in place (5x 100m, 2x 130m and 1x 150m).

## Context informing the introduction of the legislation

### CEDAW report

In 2018, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) found that several aspects of the law on abortion in Northern Ireland at the time violated women's rights. As part of its [report](#), the Committee made a number of recommendations to change the law. One of these recommendations was to 'protect women from harassment by anti-abortion protestors by investigating complaints and prosecuting and punishing perpetrators' (para 86(g)). At the time, the law prohibited abortion in most circumstances and there was very limited abortion provision. However, the Committee found that women's access to abortion was 'further impeded' by the 'presence and actions of anti-abortion protestors' outside facilities that did provide abortion services (para 19). The Committee also noted that '[a]lthough the police are frequently alerted ... they rarely intervene' (para 19). The CEDAW report was cited in the Assembly debates by those who supported the establishment of safe access zones.

### The 2020 regulations

In its [consultation response](#) in March 2020, the United Kingdom government declined to provide for safe access zones in The Abortion (Northern Ireland) (No.2) Regulations 2020 '...on the basis that services should be given time to embed so that service providers can assess any response required based on evidence and the



Northern Ireland experience' (p36). However, it said it would 'keep the matter under review' (p36).

### **Frequency of protests**

In [oral evidence](#) to the Committee for Health on 9 December 2021, Dr Siobhan Kirk (Belfast Health and Social Care Trust) noted that all trusts but the South Eastern Trust had experienced general clinic protest since April 2020, when the trusts began providing early medical abortion. Dr Kirk also noted that '...most clinics experience at least weekly protests'. This claim was also made in the [written submission](#) from the Belfast Health and Social Care Trust. Also giving [oral evidence](#) to the Committee for Health on 9 December 2021, Colin McMullen (Belfast Health and Social Care Trust) gave the example of a clinic located on College Street that provided abortion services once a week: between March and December 2021, staff formally recorded 41 protest incidents on its incident management system, and McMullen said that he believed the true number of incidents was higher than that.

## **Challenges encountered during or after the passage of the legislation**

### **Opposition**

[Written submissions](#) received by the Committee for Health highlight opposition to the Abortion Services (Safe Access Zones) Bill from both individuals and organisations. Of the 6,421 written submissions from individuals, only 13 supported the Bill. The vast majority of the submissions that stated opposition to the Bill used template wording, and the [report by the Committee for Health](#) noted that '[m]any of the submissions that stated opposition to the Bill from both organisations and individual expressed their opposition to abortion provision in its entirety, on the grounds of religious belief and moral conviction' (para 25). Assembly debates also include opposition by members. Common concerns/critiques related to: the existence of alternative laws which could be used to address general clinic protest; the scale, nature and consequences of the protests; the scope of the provisions; the financial impact for the Department of Health; and the compatibility of the Bill with the European Convention on Human Rights.

### **Legal challenge**

[\*Reference by the Attorney General for Northern Ireland - Abortion Services \(Safe Access Zones\) \(Northern Ireland\) Bill \[2022\] UKSC 32\*](#)

Once the Abortion Services (Safe Access Zones) Bill had been passed by the Assembly, but before the Secretary of State was able to submit the Bill for Royal Assent, it was referred to the Supreme Court of the United Kingdom (UKSC) by the Attorney General for Northern Ireland. She asked the UKSC to consider whether [clause 5\(2\)\(a\) of the Abortion Services \(Safe Access Zones\) Bill](#) was a proportionate interference with the rights of those who wish to express their opposition to abortion services in Northern Ireland – in particular, the rights to freedom of thought, conscience and religion, freedom of expression, and freedom of assembly under Articles 9, 10 and 11 of the European Convention on Human Rights. Clause 5(2)(a) of the Abortion Services (Safe Access Zones) Bill would make it an offence to do an act within a safe access zone with the intention of, or being reckless as to whether it has the effect of, directly or indirectly influencing a protected person.

Proportionality is a key concept in the law on the European Convention on Human Rights –essentially, it requires that rights are not interfered with unnecessarily and that a fair balance is struck between competing rights. Crucially, clause 5(2)(a) of the Abortion Services (Safe Access Zones) Bill would fall outside the legislative competence of the Assembly if the clause was not proportionate (by virtue of [section 6\(2\) of the Northern Ireland Act 1998](#)). An important aspect of the Attorney General’s role is to scrutinise all Bills to ensure that they are within the legislative competence of the Assembly, and she was able to go straight to the UKSC with this question due to a process established by [section 11 of the Northern Ireland Act 1998](#).

In a unanimous [judgment handed down on the 7 December 2022](#), the UKSC acknowledged that clause 5(2)(a) of the Abortion Services (Safe Access Zones) Bill would restrict the exercise of protestors’ rights, but it ultimately concluded that the offence was proportionate. The clause was therefore compatible with the European Convention on Human Rights, and within the legislative competence of the Assembly. Consequently, on the 6 February 2023, the Abortion Services (Safe Access Zones) (Northern Ireland) Bill became law.

The judgment indicates that the UKSC’s principal concern was that women might be prevented from accessing safe legal abortion services; the UKSC did not need to rely on any suggestion that the protests were distressing women or harming them psychologically. The reasoning of the UKSC is summarised below, but a more detailed explanation can be found [here](#).

**Element of the proportionality test**

**Reasoning of the UKSC**

Are the aims sufficiently important to justify the interference with protestors’ rights?

The aims identified were twofold: (1) enabling women to access abortion services ‘in an atmosphere of privacy and dignity, without shaming or disorder, or intrusions upon their privacy’ and (2) enabling staff ‘to access their place of work in acceptable circumstances’ (para 117). The UKSC found that these aims were ‘of such obvious importance as to constitute a compelling justification for legislative intervention’ (para 117).

Is there a rational connection between the restriction imposed by the relevant clause and the aims?

The UKSC found that there was a rational connection because the restriction was a response to the concern that women might be driven to unsafe illegal abortion if their access to safe legal abortion was impeded by general clinic protest, and because similar restrictions have been imposed in other jurisdictions. See para 118.

Could any less intrusive measures have been used to

The UKSC rejected the Attorney General’s argument that clauses 5(2)(b) and 5(2)(c) would have been sufficient to achieve the aims without the need for clause 5(2)(a). The

achieve the same aims?

UKSC held that influencing or attempting to influence protected persons is a way of preventing women from accessing abortion services and that omitting clause 5(2)(a) might undermine the efficacy of clauses 5(2)(b) and 5(2)(c).

The UKSC also rejected the Attorney General's argument that there ought to be a defence of reasonable excuse, on the grounds that such a defence might be exploited and consequently give rise to uncertainty, cost, and delay. See paras 119-123.

Does the restriction strike a fair balance between the rights of those who wish to protest and the rights of women seeking to access abortion services?

In balancing the competing considerations, the UKSC drew on a number of factors to explain why the rights of women seeking access to abortion services should be prioritised: the vulnerability of those seeking access to abortion services; that those entering/leaving the clinic/hospital cannot avoid the protests; that the Bill did not prevent protestors exercising their rights outside of the safe access zone; the flexibility with regard to the size of the safe access zone; that the Bill gave effect to the judgement of a democratic legislative body that existing laws were insufficient; that the Bill was intended to implement the recommendation by CEDAW; and the appropriateness of the remedy. The UKSC also rejected the Attorney General's argument that only violent protest should be prohibited, on the ground that non-violent acts are capable of deterring women from accessing abortion services. Ultimately, the fact that protestors choose to protest outside clinics/hospitals because they want to target protected persons did not convince the UKSC that protestors must be allowed to protest there. See paras 124-155.

### ***Wider implications of the UKSC's decision***

By the time the English and Welsh Public Order Bill reached the [Report Stage at the House of Lords](#), the decision in *Reference by the Attorney General for Northern Ireland* had been handed down by the UKSC. At this stage, the relevant clause in the Bill (as introduced by Stella Creasy MP) was replaced with an updated version that had been tabled by Baroness Sugg. When Baroness Sugg explained her proposed amendment, she noted that it had been introduced 'in light of the Supreme Court judgment ... regarding a comparable law in Northern Ireland and the need to ensure compliance with the Human Rights Act 1998' (cols 532-534). The UKSC's decision was also mentioned a number of times elsewhere in the debate, by those who supported, *and* those who opposed, the introduction of safe access zones through legislation.

## **Impact of the legislation**

Section 8 of the Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 requires that the Department of Health 'publish an annual report, setting out whether,

in the opinion of the Department, each safe access zone has been effective in protecting the safety and dignity of protected persons'. These reports may be a useful tool for analysing the efficacy of the legislation in the future, but no report has yet been published because the first safe access zones were established very recently in September 2023.

In December 2023, the [BBC reported](#) that the police were investigating potential breaches of the law by protestors in 34 incidents – the majority of which were alleged to have occurred at one particular site (Causeway Hospital in Coleraine). The BBC report noted that this has led to calls for the safe access zones to be extended up to the statutory maximum of 250 metres.

## **Key points in the passage of the legislation**

### **First Stage – 13 September 2021**

The Abortion Services (Safe Access Zones) Bill was introduced by Clare Bailey MLA.

### **Second Stage – 12 October 2021**

The Bill's sponsor noted that members' concerns about clarity and workability could be addressed at the Consideration and Further Consideration Stages. The Second Stage was agreed, and the Bill was referred to the Committee for Health.

### **Committee Stage – 27 January 2022**

The Committee Stage was extended 'to ensure that there was sufficient opportunity to take oral evidence and carry out robust scrutiny of the Bill' (para 10). The Committee for Health considered the [Bill as initially drafted](#) on a clause by clause basis, and it agreed: committee amendments to clauses 1 and 2; to support new clauses proposed by the Bill's sponsor that would replace clauses 5 and 8; to support amendments to clauses 6 and 11 that were proposed by the Bill's sponsor; and to support the intention of the Bill's sponsor to oppose the question that clause 9 stand part of the Bill.

### **Consideration Stage – 2 March 2022**

The Assembly debated and voted on a number of proposed amendments to the Bill and opposition to clauses in the Bill. An annotated list is available [here](#). The majority of the proposed changes were tabled by its sponsor, and they seem to have been intended to ensure clarity. Some of the changes proposed by the Bill's sponsor had not been considered by the Committee for Health because they were drafted later with the Office of the Legislative Counsel and the Department of Health. All of the changes proposed by the Bill's sponsor were successful. One of the proposed amendments was tabled by the Chair for the Committee for Health, but this was not called. The other proposed changes to the Bill were tabled by Jim Allister MLA or Paula Bradshaw MLA. These proposed changes had not been considered by the Committee for Health. Neither of Bradshaw's proposed amendments were moved and Allister was generally unsuccessful in changing the Bill, except where he joined the Bill's sponsor in opposing clauses.

### Further Consideration Stage – 14 March 2022

The Assembly debated and voted on a smaller number of further proposed amendments to the Bill. An annotated list is available [here](#). Four of these amendments were tabled by the Bill's sponsor, and the majority of these proposed amendments were minor technical changes. All four proposed amendments were made. One proposed amendment tabled by Jim Allister MLA attempted to insert a defence of reasonable excuse into the Bill, but this was negated.

### Final Stage – 24 March 2022

The Abortion Services (Safe Access Zones) Bill was passed by the Assembly.

## **New Zealand**

### **Details of the provisions contained within the legislation**

[Sections 13A to 13C of the Contraception, Sterilisation, and Abortion Act 1977](#), as amended by [section 5 of the Contraception, Sterilisation, and Abortion \(Safe Areas\) Amendment Act 2022](#).

<b>Size of the safe area</b>	Up to 150 metres around any premises where abortion services are provided – determined on a case by case basis.
<b>Activities prohibited within the safe area</b>	Obstructing a person in a safe area who is approaching, entering, or leaving any building in which abortion services are provided. Making a visual recording of another person in a safe area in a manner that is likely to cause emotional distress to a person accessing, providing, or assisting with providing, abortion services. Doing any of the following in a safe area in a manner that could be easily seen or heard by another person (A) who may be accessing, providing, or assisting with providing, abortion services: (1) advising or persuading A to refrain from accessing or providing abortion services (unless the advice or persuasion is by a person who is, with the consent of A, accompanying A); (2) informing A about matters related to the provision of abortion services, other than during the course of providing those services or assisting with provision of those services (unless the information is provided by a person who is, with the consent of A, accompanying A); or (3) engaging in protest about matters relating to the provision of abortion services.
<b>Penalty for the offence</b>	Liable on conviction to a fine not exceeding 1,000 NZD.

Note: safe areas are not automatically created around any premises. Rather, providers have to [apply](#) to the Ministry of Health during periodic application rounds. Applications for providers to request a safe area are currently open. Where applications are successful, safe areas will be created through regulations – a process that can take up to nine months (depending on Parliamentary schedules). Safe area regulations are made by the Governor-General by Order in Council on the recommendation of the Minister of Health (after consultation with the Minister of



Justice). The Minister of Health may recommend the creation of safe area regulations if he/she is satisfied that (1) a safe area is **desirable** to address any risk to the safety and wellbeing of, or to respect the privacy and dignity of, persons seeking to access abortion services/advice/information or persons providing, or assisting with the provision of, abortion services/advice/information and (2) prescribing a safe area can be **demonstrably justified** in a free and democratic society as a reasonable limitation on people's rights and freedoms. Safe area regulations are reviewed every five years by the Director-General (in consultation with the Secretary for Justice) to ensure the safe areas continue to be desirable and demonstrably justifiable. The safe area regulations may be continued, amended, or revoked as a result of the review. Currently, [11 premises](#) have safe areas in place – accounting for approximately [one-third of abortion providers](#). Although not explicitly required by the legislation, the [Ministry of Health website](#) states that '[p]roviders are expected to support the enforcement of a Safe Area around their premises by putting in place appropriate preventative measures ... this may include signage to indicate the boundary of the Safe Area...'. Further, the location of safe areas is made publicly available through [various online sources](#).

## Context informing the introduction of the legislation

### Law Commission Report

After the new Labour-led coalition government was established in 2017, the then Minister of Justice (Andrew Little MP) asked the New Zealand Law Commission (NZLC) to advise on alternative legislative approaches that would treat abortion as a health (rather than criminal) issue. In its [ministerial briefing paper](#), the NZLC identified safe access zones as an area for further consideration (p14). The NZLC did not suggest introducing safe access zones at the time because it '...found insufficient evidence to conclude that reform is necessary...' (p14; p175-p178) but it noted that the government could consider such a reform '...if demonstration activity were to intensify in the future' (p178).

### Abortion Law Reform

In 2020, the legal framework for abortion was reformed by the [Abortion Legislation Act 2020](#). The reforms included decriminalising abortions performed by qualified health practitioners and women who procure their own abortions. During the [First Reading](#) of the Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Bill, the MP in charge of the Bill (Louisa Wall MP) explained that New Zealand needed safe areas around premises which provide abortion services because 'the game had changed' – abortion was now a health issue rather than a criminal one, and patients (and health practitioners) have rights which are being undermined as a result of general clinic protest.

The [Abortion Legislation Bill, as introduced](#), would have provided a regulation-making power to establish safe areas around premises where abortion services are provided. However, these provisions were removed during the [Committee of the whole House](#). David Seymour MP (leader of the ACT New Zealand political party), who [proposed the removal of the relevant provisions](#), grounded his opposition to the provisions in the primacy of freedom of expression.



## Ongoing issue of general clinic protest

The Health Committee received [evidence on abortion clinics' experience of general clinic protest from the Abortion Providers Group Aotearoa New Zealand](#) (APGANZ) which represents abortion healthcare providers. This was cited by supporters of the Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Bill during Parliamentary debates. The APGANZ surveyed abortion clinics in 2020 and of the 13 clinics that responded, 8 clinics reported that they had experienced protest within the past three years. 6 of these clinics reported experiencing protest on a weekly basis. A repeat survey in April 2021 had only received responses from 8 clinics at the time of the APGANZ's submission. Of these 8 clinics, 4 clinics reported that they were experiencing protests. One clinic that had not previously experienced general clinic protest reported twice weekly protests, and escalating protest was reported by another clinic. APGANZ noted that some of its members had experienced protests over many years (since the 1980s).

## Challenges encountered during or after the passage of the legislation

### Attorney General's concerns

As part of the legislative process, the Attorney General examines all Bills to check for consistency with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990. If any provisions of the Bill appear to be inconsistent with any of these rights and freedoms, the Attorney General must inform Parliament of this ([section 7 of the New Zealand Bill of Rights Act 1990](#)). The [Attorney General concluded](#) that [section 13A\(3\)\(b\) of the Contraception, Sterilisation, and Abortion \(Safe Areas\) Amendment Bill, as introduced](#), was inconsistent with freedom of expression ([section 14 of the New Zealand Bill of Rights Act 1990](#)) due to the breadth of communication which would have been criminalised within a safe area ('communicating with...a person in a manner that an ordinary reasonable person would know would cause emotional distress to a protected person'). The Health Committee considered how to amend the Bill to ensure that it was consistent with freedom of expression. [It recommended](#) replacing section 13A, as introduced, with a [new section](#) that more specifically defined the behaviour that would be prohibited in safe areas. The Attorney General [confirmed](#) that, while the revised draft Bill would limit freedom of expression within safe areas, the limitation was demonstrably justified in a free and democratic society (under [section 5 of the New Zealand Bill of Rights Act 1990](#)). The Attorney General explicitly noted that an individual engaging in silent prayer would not be criminalised under the revised draft Bill, because such an act could not be regarded as 'engaging in protest'. The [Parliamentary debates](#) (particularly from the Second Reading and Third Reading) indicate that this revision to the Bill, and the Attorney General's endorsement of it, was significant in addressing many MPs concerns about the Bill as introduced.

### Submissions to the Health Committee

The [report](#) by the Health Committee notes that the Committee received [written submissions](#) from 890 groups and individuals, but it does not provide any figures regarding how many of these submissions supported/opposed the Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Bill. In the [Second Reading](#) debate, it was noted by Ginny Andersen MP that 'a significant amount of

submissions' were opposing abortion in general, rather than commenting on the proposed creation of safe areas. Also in the Second Reading debate, Jan Logie MP noted that '[m]any submitters in support of the legislation wanted automatic safe areas...'. The Health Committee considered such an approach, but ultimately concluded: '[w]e understand that a blanket approach is less likely to comply with [the New Zealand Bill of Rights Act 1990], and believe that a case by case approach would be simpler' (p7). However, the Health Committee noted that the application process should be 'relatively simple without delays for providers', and that applications should be processed 'promptly' (p7-p8). It nevertheless declined to recommend the inclusion of a prescribed time-frame for the application process in the legislation because the time it takes to process an application may vary case to case and because it wanted to ensure that each application was analysed 'carefully' (p8).

### **Delay in establishing the first safe areas**

The Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Bill received Royal Assent on 17 March 2022, but the first safe areas were not established until 25 August 2023. During this time, some of those who supported the establishment of safe areas around premises which provide abortion expressed concern and criticism about the legislation itself and/or the length of time it was taking to establish safe areas (see [here](#) and [here](#), for example).

## **Impact of the legislation**

The most recent annual [report](#) on the provision of abortion services in New Zealand by the Ministry of Health (published in October 2023) does not comment on the efficacy of the safe areas with regard to reducing incidences of protest, but it does note that 11 safe areas were in place at the time of the report. I have been unable to find any published academic research regarding the efficacy of safe areas in New Zealand – probably because safe areas have only recently been established outside premises (the first five safe areas were established in August 2023 and the next six safe areas were established in October 2023).

## **Isle of Man**

### **Details of the provisions contained within the legislation**

#### [Sections 18 to 27 of the Abortion Reform Act 2019](#)

#### **Size of the access zone**

Up to 100 metres around: premises where terminations are performed or counselling is provided; the surgery of a medical practitioner providing abortion services; and the homes of persons providing abortion services or counselling. Determined on a case by case basis.

The legislation allows the Department of Health and Social Care to amend by Order the maximum size of access zones specified in the legislation.

**Activities prohibited within the access zone**

Prohibited after having been warned not to do so by a constable: engaging in pavement interference (defence available for persons providing/seeking/receiving abortion services/counselling); protesting about abortion services or counselling with the intention of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling; observing (continuously or repeatedly) any premises in or from which abortion services or counselling are provided, for the purpose of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling; placing oneself close to, and importuning (a) a person providing abortion services or counselling for the purpose of dissuading that person from doing so, or (b) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling; and harassing or intimidating (a) a person providing abortion services or counselling for the purpose of dissuading that person from doing so, or (b) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling. Note: constables performing their duties are exempted.

Also prohibited after having been warned not to do so by a constable: graphically recording a person providing abortion services, or a patient, for the purpose of dissuading any person from providing or using abortion services; repeatedly approaching, accompanying, or following someone, or engaging in threatening conduct directed at someone, for the purpose of dissuading them from providing or using abortion services; and repeatedly communicating with someone without that person's consent for the purpose of dissuading them from providing or using abortion services. (These are additional offences.)

*Note: 'pavement interference' means the activity of a person on a public highway who seeks, by any means, to: (1) advise or persuade a patient to refrain from availing herself of abortion services or receiving counselling; (2) dissuade a person providing abortion services or counselling from doing so; or (3) inform, by any means, a patient about issues related to abortion services. 'Protest' means the carrying out of any act of disapproval with respect to issues relating to abortion services.*

**Penalty for the offence**

12 months' custody or a level 5 fine (maximum 10,000 IMP). The legislation also allows the Attorney General to apply to the High Court for an injunction to restrain someone from contravening the relevant part of the legislation, whether or not the contravention constitutes an offence.

Note: access zones are not automatically created around any premises. Rather, the Department of Health and Social Care **may** establish an access zone (1) by Order for any national health service hospital (for the purpose of facilitating access to

abortion services) and (2) by notice *on request* for: other premises providing abortion services/counselling; surgeries of medical practitioners providing abortions; and the homes of persons providing abortion services/counselling. The legislation requires the Department of Health and Social Care to ‘draw the attention of the public of the existence and extent of access zones’ by means of notices and other forms of communication. Under the legislation, the Department of Health and Social Care may also vary or revoke an Order/notice that establishes an access zone if the access zone is no longer necessary, or its extent ought to be varied. In May 2019, the Isle of Man Parliament approved an Order that would create a 100 metre [access zone around Noble’s Hospital](#) (one of two hospitals on the Isle of Man). The access zone came into operation on 24 May 2019 – the same day wider abortion law reform came into effect.

## Context informing the introduction of the legislation

### Public Consultation

In January 2017, Dr Alex Allinson MHK was [granted permission](#) to introduce into the House of Keys a Bill that would reform abortion law on the Isle of Man. There was then a [public consultation](#) on the draft Abortion Law Reform Bill between 7 August and 18 September 2017. At this stage, the Bill made no provision for safe areas, but the consultation document asked: ‘should there be legal protection to prevent demonstrations or protests outside any facility which provides abortion advice or treatments on the Isle of Man?’ [85.15%](#) of the 3,644 responses to the consultation answered ‘yes’ (p11). In his [response](#) to the public consultation, Dr Alex Allinson MHK acknowledged the ‘widespread support’ for such legal protection, but noted ‘legal advice’ which suggested that existing laws could deal with general clinic protest ‘if it became a problem in the future’. When Ralph Peake MHK [introduced an amendment](#) to the Abortion Law Reform Bill that would make provision for access zones, he cited the consultation response as evidence of the need for this legal protection and he rejected any suggestion that existing laws could adequately deal with general clinic protest.

### Abort67

In his [response](#) to the public consultation on the draft Abortion Law Reform Bill (see above), Dr Alex Allinson MHK recognised that ‘[t]he recent visit to the island of the group Abort67 has ... generated discussion of the need for more formal public safeguards’. Abort67 was a project of the anti-abortion organisation Centre for Bio-Ethical Reform UK between 2012 and 2019. Abort67 held demonstrations incorporating large graphic images of foetuses, purportedly to “educate” the public about the realities of abortion. Abort67 first visited the Isle of Man in December 2017 to oppose the proposed reforms to the abortion law there. The group held a number of demonstrations on the island, [including outside Noble’s Hospital](#). It is clear from the [Second Reading](#) and the [Consideration of Clauses](#) stages in the House of Keys that some Members of the House of Keys who previously thought legislative provision for safe areas was unnecessary changed their minds as a result of the Abort67 demonstrations on the island – including Dr Alex Allinson MHK (who introduced the Abortion Law Reform Bill) and Ralph Peake MHK (who proposed the amendments to the Abortion Law Reform Bill which would introduce provision for safe areas). During the Consideration of Clauses stage, Chris Robertshaw MHK suggested that the Abort67 demonstrations were intended to dissuade Parliament

from reforming abortion law on the Isle of Man and were therefore ‘a point in time’ that would be unlikely to be repeated once things ‘settle back down again’ (120-125). However, several other Members of the House of Keys were concerned that the Isle of Man would experience more protests once abortion was more widely available, as in other countries (including the UK).

## **Challenges encountered during or after the passage of the legislation**

### **Getting the wording right/compatibility with the ECHR**

A number of concerns regarding the scope, clarity and workability of Ralph Peak MHK’s initial amendment proposal were raised by MHKs during one of the Consideration of Clauses debates on [13 March 2018](#). The legislative drafter, Howard Connell, acknowledged the general support in the House of Keys for some form of legislative protection and suggested that the concerns could be addressed by re-writing the amendment. Consequently, Ralph Peak MHK withdrew the initial proposal and submitted a revised version at the next sitting on [27 March 2018](#). After the proposed amendment was re-written, further changes to the wording of the relevant clauses were made. A particular point of contention was whether the Department of Health and Social Care ‘must’ (a duty) or ‘may’ (a power) establish access zones. The amendment, as re-introduced by Ralph Peak MHK, initially imposed a *duty* on the Department of Health and Social Care to establish an access zone by Order for any national health service hospital where abortion services may be provided and by notice on request for: other premises providing abortion services/counselling; surgeries of medical practitioners providing abortions; and the homes of persons providing abortion services/counselling. Attempts by Alfred Cannan MHK to replace ‘must’ with ‘may’ in all but the case of national health service hospitals (due to his concerns about compliance with the European Convention on Human Rights) were [unsuccessful at the Consideration of Clauses debate on 24 April 2018](#). However, the Attorney General later proposed replacing *all* references to ‘must’ in the relevant clauses with ‘may’, and the [Legislative Council voted in favour of this](#). The Attorney General noted that, in general, a power is ‘safer’ than a duty in terms of compliance with human rights obligations under the European Convention on Human Rights because the Department of Health and Social Care would be required to act reasonably and proportionately when exercising the power. In other words, it would allow the Department of Health and Social Care to take into account competing considerations on a case by case basis.

## **Impact of the legislation**

Evidence regarding the efficacy of the access zones provisions appears to be lacking, currently. In July 2020, Dr Alex Allinson MHK asked the Social Affairs Policy Review Committee to review how the Abortion Reform Act 2019 (in general) was working. In March 2021, the Committee invited submissions from individuals and organisations. The Committee’s subsequent [report](#), published in June 2021, did not comment on the efficacy of the access zones. Dr Alex Allinson MHK noted this in his [comments made in the Isle of Man Parliament](#), and called for greater post-legislative scrutiny by the Isle of Man Parliament:

...the Hon. Member, Mr Peake spent a huge amount of time crafting the Safe Access Zone part of this legislation, one of the first in the British Isles. I know that one has been established round Noble's Hospital, but I would like to know whether that works, whether we need to change that, whether it has been effective, whether there have been any challenges to that. This Report does not say that, but that would be really useful for us to move forward. (6225)

## Australia

Each Australian state/territory has its own abortion laws. **All** Australian states/territories make provision for safe access zones (known as 'access zones' in Tasmania, 'protected areas' in the Australian Capital Territory, and 'health access zones' in South Australia).

### Details of the provisions contained within the legislation

Safe access zones are automatically created around premises providing abortion services in all states/territories, except the Australian Capital Territory. In the Australian Capital Territory, the Minister for Health may declare that an area around a facility is a protected area – for example, the [MSI Australia clinic in Canberra](#) has a 50 metre protected area. The Australian Capital Territory legislation is also the only Australian state/territory which explicitly specifies/limits the operation of the protected area (the 'protected period'): between 7am and 6pm on days the facility is open.

#### Size of the safe access zones

##### **150 metres in all states/territories, except the Australian Capital Territory.**

- In the Australian Capital Territory, protected areas must be a minimum of 50 metres. A protected area could be a larger size that is sufficient to ensure privacy and unimpeded access to the facility, but it can be no larger than is necessary to ensure that outcome. The size of a protected area is determined on a case by case basis.
- In Queensland, a smaller **or** greater distance may be prescribed by regulation for a particular premises if the Minister is satisfied that 150 metres is insufficient, or greater than necessary, to protect the safety and wellbeing of, and respect the privacy and dignity of, (1) persons accessing terminations services, (2) persons who are employed to provide abortion services, and (3) persons who otherwise need to access the premises in the course of their duties/responsibilities.

#### Activities prohibited within the safe access zones

In Queensland, **any** conduct that relates to terminations (or could reasonably be perceived as relating to terminations) that would be visible to someone entering/leaving the premises and would be reasonably likely to deter someone from: entering/leaving the premises; requesting/undergoing a termination; or performing/assisting with the performance of a termination, is prohibited within the safe access zone – whether or not another person sees/hears the conduct or is in fact deterred. Also, there is a separate offence for recording persons in or near the



premises. Legislation in the other Australian states/territories specifies the prohibited conduct...

### **Harassing/intimidating/threatening etc or obstructing a person**

- Tasmania – any person.
- Australian Capital Territory – if it is intended to stop the person entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/administering an abortifacient in the facility.
- Victoria – a person accessing, attempting to access, or leaving the premises.
- Northern Territory – where the conduct may result in deterring the person from entering/leaving the premises or performing/receiving a termination at the premises.
- New South Wales – a person accessing, leaving, or attempting to access or leave, the clinic.
- South Australia – with regard to obstruction: a person approaching, entering, or leaving the premises.
- Western Australia – a person accessing, attempting to access, or leaving the premises.

### **Recording a person**

- Tasmania – intentionally recording a person accessing, or attempting to access, the premises without that person's consent (some exceptions).
- Australian Capital Territory – capturing visual data (moving or still images) of a person if it is intended to stop the person entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/administering an abortifacient in the facility.
- Victoria – intentionally recording a person accessing, attempting to access, or leaving the premises without that person's consent and without reasonable excuse.
- Northern Territory – recording a person without that person's consent and without reasonable excuse, where this may result in deterring the person from entering/leaving the premises or performing/receiving a termination at the premises.
- New South Wales – intentionally capturing visual data (moving or still images) of another person who is within the safe access zone without that person's consent and without reasonable excuse.
- South Australia – recording images of a person approaching, entering, or leaving the premises (some exceptions, including where the recorded person gives permission to be recorded).
- Western Australia – recording (a photograph or digital image) another person accessing, attempting to access, or leaving the premises without that person's consent and without reasonable excuse.

### **Protest (not defined) in relation to abortion**

- Tasmania – where the protest can be seen or heard by a person accessing, or attempting to access, the premises.
- Australian Capital Territory – protest by any means in relation to a person entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/ administering an abortifacient in the facility.
- South Australia – specifies that a person is not prohibited from engaging in lawful protest in relation to a matter other than abortion.

### **Communication relating to abortion that is likely to cause distress or anxiety**

- Victoria – communication by any means in relation to abortion in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving the premises and that is reasonably likely to cause distress or anxiety (abortion service providers who work at the premises are excluded).
- New South Wales – communication by any means that relates to abortions in a manner that is able to be seen or heard by a person accessing, leaving, or attempting to access or leave, the clinic, or inside the clinic, and that is reasonably likely to cause distress or anxiety to such a person (clinic staff are excluded).
- South Australia – communication by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving the premises and that is reasonably likely to cause distress or anxiety (there are some exceptions, including where the person gives permission for the communication).
- Western Australia – communication by any means in relation to abortion in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving the premises and that is reasonably likely to cause distress or anxiety (there is an exception for staff providing abortion services within the premises).

In Tasmania, 'footpath interference' in relation to terminations is prohibited.

### **Obstructing a footpath, road, or vehicle**

- Victoria – interfering with or impeding a footpath, road, or vehicle in relation to premises at which abortions are provided (without reasonable excuse).
- New South Wales – obstructing or blocking a footpath or road leading to any reproductive health clinic at which abortions are provided (without reasonable excuse).
- Western Australia – interfering with or impeding a footpath, road, or vehicle in relation to abortion (without reasonable excuse).

### **Miscellaneous**

- Tasmania – any other prescribed behaviour.
- Australian Capital Territory – any act that can be seen or heard by anyone during the protected period and that is intended to stop a person from entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/administering an abortifacient in the facility.
- Victoria – any other prescribed behaviour.
- Northern Territory – any act that can be seen or heard by a person in the vicinity of the premises that may result in deterring the person or another person from entering/leaving the premises or performing/receiving a termination at the premises.
- Western Australia – any other behaviour prescribed by the regulations.

Notes regarding the Northern Territory: a person only commits an offence if she/she *intentionally* engages in prohibited conduct within the safe access zone and he/she is *reckless* in relation to that circumstance; police officers and those employed to perform terminations at the premises cannot commit the offence, providing their conduct is reasonable in the circumstances; and it is immaterial (for an offence to be

committed) whether a person was entering/leaving or attempting to enter/leave the premises.

## Penalty for the offence

### All states/territories allow a fine to be imposed, though the amount varies.

- Tasmania – up to 75 penalty units (currently 14,625 AUD).
- Australian Capital Territory – up to 25 penalty units (currently 4,000 AUD).
- Victoria – 120 penalty units (currently 23,077.20 AUD).
- Northern Territory – up to 100 penalty units (currently 17,600 AUD).
- New South Wales – 50 penalty units for a first offence (currently 5,500 AUD); 100 penalty units for a subsequent offence (currently 11,000 AUD).
- Queensland – 20 penalty units (currently 3,096 AUD).
- South Australia – up to 10,000 AUD.
- Western Australia – 12,000 AUD.

*Note: the value of a [penalty unit](#) varies between the states and territories, and this is updated regularly.*

### Most states/territories provide for a period of imprisonment ...

*...as an alternative to a fine (Victoria, Northern Territory, Queensland, and South Australia).*

*...as an alternative or in addition to a fine (Tasmania and New South Wales).*

*...in addition to a fine (Western Australia).*

The typical duration specified is 12 months (Northern Territory, New South Wales – *for a subsequent offence*, South Australia, and Western Australia) or a **maximum** of 12 months (Tasmania, Victoria, and Queensland). However, a *first time offence* attracts 6 months' imprisonment in New South Wales.

The Australian Capital Territory is the only state/territory that does not provide for a period of imprisonment.

## Context informing the introduction of the legislation

### Tasmania

In 2013, the Tasmanian government introduced the Reproductive Health (Access to Terminations) Bill to improve access to abortion for women in Tasmania as part of a broader strategy to improve the sexual and reproductive health of all Tasmanians ([12 June 2013](#)). This Bill was intended to reform abortion law in general and it included provisions for safe access zones. The [Government Administrative Committee](#) found that such provisions were 'justified' because 'women and staff have been subject to harassment, physical violence, vilification and intimidation when attending premises at which terminations are provided' (p81). Many of the witnesses cited in the Committee's report drew on incidents/experiences of general clinic protest in states/territories other than Tasmania (including Victoria). However, Susan Fahey – representing the Women's Legal Centre Tasmania – noted that there had been anti-abortion protests in relation to the introduction of the Reproductive Health (Access to Terminations) Bill outside the Health Minister's office and she

reasoned, ‘I do not think it is a long stretch to say that could happen to a clinic here’ (p78).

### **Australian Capital Territory**

When Shane Rattenbury [tabled the Health \(Patient Privacy\) Amendment Bill 2015](#), he explained that it was a response to ‘a longstanding issue affecting women’s access to safe and legal health services’ – namely, the regular protests outside the ACT Health Building, where abortions were provided (2417-2418). Rattenbury noted that the gatherings were typically ‘small’ and that the ‘style’ of protests ‘varied’ (2417-2418). However, it was an ‘escalation’ involving the attendance of the archbishop at a protest which triggered the introduction of the Bill ‘in order to avoid any such future escalations’ (2418).

### **Victoria**

[Fertility Control Clinic v Melbourne City Council \[2015\] VSC 424](#)

At the Supreme Court of Victoria in 2015, the East Melbourne Fertility Control Clinic argued that Melbourne City Council had breached its duty to remedy (as far as is reasonably possible) all nuisance existing in its municipal district. The clinic had written to the Council alleging nuisance by protestors outside the clinic [15]. The clinic explained that it had experienced general clinic protest every day for over 20 years. It said that there were regularly 50 to 100 protestors, but more often between 3 and 12 protestors. It also noted the behaviour of protestors, some of which was quite extreme – for example, jostling and striking people, blocking entry to the clinic, and shouting. In [2001](#), a security guard had been shot dead by an anti-abortion protestor who had entered the clinic. The Council did not dispute that the alleged behaviour had taken place, but it found that most of the behaviour did not amount to nuisance (as defined by the relevant legislation) [16]. Therefore, the Council recommended that the clinic should seek to settle its dispute with the protestors privately, by individuals making complaints to the police [17]-[18]. The Supreme Court of Victoria noted that the Council had made some mistakes in its decision-making [39], but ultimately concluded that the Council had not breached its duty [4]. When [Jill Hennessy MP introduced the government-sponsored Bill](#) that would eventually introduce safe access zones into law in Victoria, she mentioned both the extreme behaviour at the East Melbourne clinic and the decision of the Supreme Court of Victoria (which she said ‘highlighted the limited options currently available under the law’).

### **Northern Territory**

In 2016, the Department of Health published a [discussion paper](#) that made a number of recommendations for reforming abortion law in the Northern Territory. They included making provisions for safe access zones (p9). The Department’s objective was to modernise abortion law in the Northern Territory and to bring it in line with interstate legislation (p1). Of the 50 respondents who addressed this recommendation in their [responses to the discussion paper](#), 39 respondents were supportive.

### **New South Wales**

Penny Sharpe MP [explained](#) that she introduced the Private Members’ Bill that would eventually introduce safe access zones into law in New South Wales in response to particularly egregious general clinic protest outside two clinics (Albury

and Surry Hills), which the law at the time had been unable to satisfactorily address. There were numerous reports about the severity of the protests at these two clinics in both the [Parliamentary debates](#) of Sharpe's Bill and in the [media](#).

### **Queensland**

The Queensland Law Reform Commission (QLRC) considered reform of Queensland abortion law in general and, in its 2018 [report](#), it recommended the inclusion of provisions for safe access zones in the Termination of Pregnancy Bill. The QLRC noted that there was 'a history of ongoing [protest] activities' in Queensland (p182). Moreover, the QLRC thought this was likely to continue into the future once the new law made abortion more available in Queensland (p182). The QLRC also noted the inadequacy of existing law in dealing with general clinic protest (p183) and that the introduction of safe access zones would be 'consistent with other Australian jurisdictions that have recently reformed their termination of pregnancy laws' (p184).

### **South Australia**

The South Australian Law Reform Institute (SALRI) reviewed South Australian abortion law in general and, in a [report](#) published in 2019, it recommended the introduction of safe access zones in South Australia. The SALRI expressed concern that South Australian abortion clinics 'will become the focus for protest or national campaigns' if it were the only state/territory without safe access zones (p430). At the time, Western Australia had already begun the process of introducing safe access zones. It was further noted that, '[t]he absence of safe access zones in South Australia allows, and almost invites, anti-abortion campaigns' (p430).

### **Western Australia**

The Department of Health (DOH) recommended the introduction of safe access zone legislation in a [report](#) published in 2020. The DOH acknowledged that general clinic protest had been ongoing in Western Australia since abortion was legalised in 1998 and that it was now a 'regular occurrence' (p7). The two private abortion clinics in Western Australia (Marie Stopes WA and Nanyara Medical Group), where the majority of abortions are carried out, seemed to be the most affected (p20; p6). The DOH also acknowledged that existing laws did not 'adequately address the full range of behaviours' engaged in as part of the protests (p24), and that 'every other jurisdiction has introduced safe access zone legislation' apart from South Australia and Western Australia (p21). Further, the DOH highlighted the 'very strong support' for the introduction of safe access zones legislation from 70% of respondents to its public consultation (p25).

## **Challenges encountered during or after the passage of the legislation**

### **Constitutional Validity**

Perhaps the main challenge to safe access zone legislation in Australia both during and after its passage has concerned its constitutional validity – in particular, its compatibility with the implied freedom of political communication. This implied freedom bears some resemblance to Article 10 of the European Convention on Human Rights (the right to freedom of expression), but it is a restriction on legislative

power (rather than a personal right), and it concerns communication about government and politics only. A statute that burdens the implied freedom of political communication will nevertheless be valid if (1) the purpose of the law is legitimate and (2) the law is reasonably appropriate and adapted to advance that purpose in a manner that is compatible with the maintenance of the constitutionally prescribed system of representative government.

In 2019, the constitutional validity of the Tasmanian and Victorian statutes was addressed by the High Court of Australia in [Clubb v Edwards; Preston v Avery \[2019\] HCA 11](#). Kathleen Clubb was convicted of communicating in relation to abortions in a way that was likely to cause anxiety or distress after she approached a couple who were entering the East Melbourne Fertility Control Clinic and attempted to hand them a pamphlet. At the High Court of Australia, she argued that section 185D of the Public Health and Wellbeing Act 2008 (VIC), which makes it an offence in Victoria to engage in prohibited behaviour within a safe access zone, read with the definition of 'prohibited behaviour', impermissibly burdened the implied constitutional freedom of political communication. Graham Preston was convicted of protesting in relation to terminations that could be seen or heard by a person accessing, or attempting to access, the premises after he stood on the street within sight of the Hobart Specialist Gynaecology Centre with placards depicting a representation of a fetus and statements referring to international human rights which he believed the fetus to have. At the High Court of Australia, he argued that section 9(2) of the Reproductive Health (Access to Terminations) Act 2013 (TAS), which makes it an offence in Tasmania to engage in prohibited behaviour with an access zone, read with the definition of 'prohibited behaviour', impermissibly burdened the implied constitutional freedom of political communication.

The Court held that both statutes burden the implied freedom of political communication [41]-[43]; [118]-[119]. However, the Court held that both statutes had legitimate purposes: to protect the safety, well-being, privacy, and dignity of those accessing lawful medical services, as well as staff and others associated with those services [47];[122]. In both appeals, the Court held that there was a rational connection between the law and its purpose [75]-[85];[124] and that there was no obvious and compelling less burdensome alternative [86]-[95];[125]-[126]. Lastly, the Court held in both appeals that the balance struck between the importance of the purpose and the extent of the restriction on the implied freedom of political communication was adequate because the burden is 'slight' – it is geographically restricted (to within the zones) and does not discriminate between 'pro-abortion' and 'anti-abortion' communication/sources of protest [96]-[101];[127]-[128]. Therefore, both appeals were dismissed, and the constitutional validity of the Tasmanian and Victorian safe access laws was upheld.

## Impact of the legislation

Ronli Sifris and Tania Penovic – lecturers in Law at Monash University, Australia – have conducted qualitative empirical research (semi-structured interviews with professionals working in abortion clinics and health policy) into the efficacy of safe access zones in Australia.

- Writing in the [Monash Law Review](#) in 2018, Sifris and Penovic discuss semi-structured interviews with 12 professionals from Victoria. They note that all the



interviewees 'took the view that the zones were operating to distance protestors from clinics and prevent them from targeting individuals', and they conclude that 'generally speaking, the safe access zones [in Victoria] are achieving their objectives of protecting the right of patients and staff to privacy, facilitating safe access to health services without fear and reducing misinformation and stigma' (p328). Sifris and Penovic note that 'protestors have maintained their presence outside the radius of safe access zones around some Victorian clinics including the East Melbourne Fertility Control Clinic (p328).

- Writing in the [Cambridge International Law Journal](#) in 2018, Sifris and Penovic discuss semi-structured interviews with 19 professionals from both Victoria and Tasmania. They observe that '[i]nterviewees considered that safe access zones were operating to protect the rights of patients and staff to privacy, facilitating safe access to health services without fear and reducing misinformation and stigma' – in particular, '[a]ll interviewees considered that by distancing protesters from clinics, the legislation was preventing the targeting of individuals and concomitant harassment and intimidation' (p261-p262). Sifris and Penovic conclude that safe access zones in Victoria and Tasmania are 'achieving their objectives of facilitating a safe environment for women to access the full range of reproductive health services, free of intimidation, harassment or invasions of privacy' (p262).
- Writing in the [University of New South Wales Law Journal](#) in 2020, Sifris, Penovic and Henckels discuss semi-structured interviews with 40 professionals from across Australia (Victoria, Tasmania, the Northern Territory, Queensland, Western Australia, New South Wales, the Australian Capital Territory and South Australia) conducted by Sifris and Penovic between March 2017 and December 2019. They observe that interviewees 'consistently observed that [safe access zones] are effective in shielding women' from the conduct of anti-abortion protestors and they conclude that safe access zones 'are achieving their objective of protecting women's dignity, privacy, safety and wellbeing' (p1086).

The positive impact of safe access zones in Australia has also been noted anecdotally elsewhere, both in the media and policy documents – some examples are included below:

- 'This legislation has protected safe abortion access for our staff and clients. Prior to the legislative change, anti-choice picketers did on occasion harass and intimidate clinic staff or their clients. Clinic staff would walk in pairs to and from their cars. The front area of the MSI Canberra Clinic was built to enable high security against picketers, but this is no longer required.' [Marie Stopes Australia \(2020\)](#), p23.
- 'I have the privilege of working in Marie Stopes clinics across the country. There is a marked difference between places that have safe access zones and those that don't. Since the zones were implemented in Victoria in 2016, the experience of entering our Maroondah clinic has changed. Where once staff and patients were yelled at and had graphic images thrust at them that are designed to misinform and manipulate, they are now able to attend the clinic in peace.' [Dr Philip Goldstone](#), writing in the Sydney Morning Herald in 2017.

## Timeline

● **2013** – Tasmania

[Section 9 of the Reproductive Health \(Access to Terminations\) Act 2013](#)

**2015** – Australian Capital Territory

[Sections 85 to 87 of the Health Act 1993](#) as amended by the [Health \(Patient Privacy\) Amendment Act 2015](#)

**2015** – Victoria

[Sections s185A to s185H of the Public Health and Wellbeing Act 2008](#) as amended by the [Public Health and Wellbeing Amendment \(Safe Access Zones\) Act 2015](#)

**2017** – Northern Territory

[Sections 14 to 16 of the Termination of Pregnancy Law Reform Act 2017](#)

**2018** – New South Wales

[Sections 98A to 98F of the Public Health Act 2010](#) as amended by the [Public Health Amendment \(Safe Access to Reproductive Health Clinics\) Act 2018](#)

**2018** – Queensland

[Sections 11 to 16 of the Termination of Pregnancy Act 2018](#)

**2020** – South Australia

[Sections 48B to 48F of the Health Care Act 2008](#) as amended by the [Health Care \(Safe Access\) Amendment Act 2020](#)

**2021** – Western Australia

[Sections 202N to 202Q of the Public Health Act 2016](#) as amended by the [Public Health Amendment \(Safe Access Zones\) Act 2021](#)

## Canada

In 1988, the [Supreme Court of Canada](#) held that abortion provisions in the Criminal Code (which made it a criminal offence to perform an abortion for a woman who did not have a certificate from a therapeutic abortion committee of an accredited/approved hospital) were unconstitutional. The Canadian Parliament could have passed a new law regulating abortion that would not offend the Canadian Charter of Rights and Freedoms, but it never did. Therefore, abortion is regarded by Canadian law in the same way as any other medical treatment, and it falls under provincial/territorial jurisdiction. Six Canadian provinces currently have some form of access zone legislation: British Columbia, Newfoundland and Labrador, Quebec, Ontario, Alberta, and Nova Scotia.

In addition to this, at a Federal level, the Criminal Code was [amended in 2021](#) to make it a criminal offence to (1) intimidate a person in order to impede them from obtaining health services or performing their duties as a health professional and to

(2) obstruct or interfere with a person's lawful access to a place at which health services are provided. This Federal legislation was passed in response to anti-vaccine protests during the height of the Covid-19 pandemic, but it applies to all healthcare facilities (including those providing abortion services). This goes some way to addressing the lack of access zone legislation in some provinces/territories.

Although there is no provincial access zone legislation in New Brunswick, the Chaleur Regional Hospital in Bathurst has had a permanent injunction against a group of anti-abortion protestors, prohibiting them from protesting anywhere on the hospital grounds, [since 2017](#). Justice Leger, who granted the injunction, is reported to have said that the protests put the safety of patients and employees at risk. According to [research](#) by academics at the University of New Brunswick, there were also regular protests outside Clinic 554 in Fredericton, though these seemed to have ceased by 2021, and the clinic has since closed.

## Details of the provisions contained within the legislation

### Creation of the access zones

#### British Columbia & Newfoundland and Labrador

- Access zones are created automatically for the residences and offices of doctors who provide abortions services.
- The Lieutenant Governor may establish, by regulation, an access zone for a specific facility.
  - There are currently [five access zones outside facilities](#) providing abortion services in British Columbia.
  - There are currently access zones for [two facilities](#) providing abortion services in Newfoundland and Labrador.
- The Lieutenant Governor may also establish, by regulation, access zones for the residences of a specific service provider (someone other than a doctor who provides, or facilitates the provision of, abortion services) or class of service providers.
  - In Newfoundland and Labrador, access zones have been created for [the residence of every staff member of the Athena Health Centre](#) (which runs the two protected facilities).

#### Quebec

Access zones are created automatically for all facilities/premises providing voluntary termination of pregnancy services.

#### Ontario

- Abortion clinics (ie. a place other than a hospital which has the primary purpose of providing abortion services) have access zones automatically. There are currently [eight such clinics](#) in Ontario that are protected in this way.
- Any other place where abortions are provided (eg. hospitals, healthcare centres or pharmacies) can request that the Attorney General creates an access zone by regulation.

- Access zones are also created automatically for the residence of each protected service provider (ie. a person who works at a clinic, or a regulated healthcare professional who provides, or assists in the provision of, abortion services).
- A protected service provider can also request that the Attorney General creates an access zone by regulation for their office, regardless of whether or not they provide abortion services at that location.

### **Alberta & Nova Scotia**

- An access zone is established for every facility (ie. place where abortions are provided) or class of facility specified by the Lieutenant Governor (Alberta) / Governor in Council (Nova Scotia) in the regulations.
  - The Lieutenant Governor/Governor in Council must be of the opinion that activities referred to in the Act are being engaged in and that these activities adversely affect access to, or the provision of, abortion services.
  - Currently, [two clinics](#) in Alberta have access zones.
  - [No regulations](#) seem to have been made by the Governor in Council in Nova Scotia.
- The Lieutenant Governor (Alberta) / Governor in Council (Nova Scotia) may, by regulation, establish an access zone for the residence of a physician or other person who provides, or facilitates the provision of, abortion services (“service providers”), or for the residences of a class of physicians/service providers.
  - The Lieutenant Governor/Governor in Council must be of the opinion that activities referred to in the Act are being engaged in and that these activities adversely affect access to, or the provision of, abortion services.
- The Lieutenant Governor (Alberta) / Governor in Council (Nova Scotia) may also, by regulation, establish an access zone for the office of a physician who provides abortion services, or for the offices of a class of physicians.
  - The Lieutenant Governor/Governor in Council must be of the opinion that activities referred to in the Act are being engaged in and that these activities adversely affect access to, or the provision of, abortion services.

### **Size of the access zones**

#### **British Columbia & Newfoundland and Labrador**

- Facilities in which abortion services are provided: not exceeding 50 metres – decided on a case by case basis.
- Residences of doctors and service providers: 160 metres.
  - In Newfoundland and Labrador, the Lieutenant Governor may decrease the size of the access zone (by regulation) for a specific residence.
- Doctors’ offices: 10 metres, but the Lieutenant Governor may extend this (by regulation) up to a maximum of 20 metres.

## **Quebec**

50 metres.

## **Ontario**

- Abortion clinics: 50 metres, but the zone can be decreased or increased (up to 150 metres) by regulation.
- Other places where abortions are provided and the offices of service providers: up to 150 metres – determined on a case by case basis.
- Residences of protected service providers: 150 metres, but the zone can be decreased by regulation.

## **Alberta & Nova Scotia**

- Facilities: 50 metres, but this may be decreased or increased (up to 150 metres) in respect of a particular facility or class of facilities through regulations made by the Lieutenant Governor (Alberta) / Governor in Council (Nova Scotia).
- Residences: not exceeding 160 metres – decided on a case by case basis.
- Offices: not exceeding 20 metres – decided on a case by case basis.

## **Activities prohibited within the access zones**

### **British Columbia & Newfoundland and Labrador**

- Advising or persuading, or attempting to advise or persuade, a person to refrain from making use of abortion services (by any means) ('sidewalk interference').
- Informing, or attempting to inform, a person concerning issues related to abortion services (by any means) ('sidewalk interference').
- Any act of disapproval, or attempted act of disapproval, with respect to issues related to abortion services (by any means) ('protest').
- Continuously or repeatedly observing a service provider, doctor who provides abortion services, patient, or building in which abortion services are provided, or where a doctor/service provider resides.
- Physical interference with, or an attempt to interfere with, a service provider, a doctor who provides abortion services, or a patient.
- Intimidating, or attempting to intimidate, a service provider, a doctor who provides abortion services, or a patient.

^ There is a defence to all the above prohibited activities for service providers, doctors who provide abortion services, and patients.

- Graphically recording, by any means, a service provider, doctor who provides abortion services, or a patient, for the purpose of dissuading that person from providing, facilitating the provision of, or using abortion services.

A person cannot be convicted of an offence unless he/she knew, or at any time before the contravention, was given notice of, the location of the access zone.

Note: there is a separate offence for harassment of doctors and service providers that is not tied to the access zone (so this protects doctors/service providers anywhere in the two provinces).

## **Quebec**

Demonstration conducted in any manner and intervening in any way, in an attempt to (1) dissuade a woman from obtaining an abortion or condemn her choice of obtaining or having obtained an abortion, or (2) dissuade a person from providing, or from participating in the provision of, abortion, or condemn the person's choice of providing, or participating in the provision of, abortion, or working in a facility that provides abortion services.

## **Ontario**

Note: there is a separate list of prohibited activities for residences of protected service providers.

- Advising or persuading, or attempting to advise or persuade, a person to refrain from accessing abortion services.
- Informing, or attempting to inform, by any means, a person concerning issues related to abortion services.
- Performing, or attempting to perform, by any means, an act of disapproval concerning issues related to abortion services.
- Persistently requesting that a person refrain from accessing abortion services, or a protected service provider refrain from providing, or assisting with the provision of, abortion services.

^ All the above prohibited activities do not apply to anything done in the course of a person's

work at the clinic/facility or to anything occurring between (i) a person accessing, or attempting

to access, abortion services and (ii) someone who is accompanying that person (providing the person has consented).

- For the purpose of dissuading a person from accessing abortion services or dissuading a protected service provider from providing, or assisting with the provision of, abortion services: continuously or repeatedly observing the clinic/facility, or persons entering/leaving the clinic/facility; physically interfering with, or attempting to interference with, the person/provider; intimidating, or attempting to intimidate, the person/provider; and graphically recording (in any way) the person/provider.
- Anything else prescribed by regulation for the purpose of the clause.

A person cannot be convicted of an offence unless the person knew or, at any time before the contravention, was given notice of, the location of the relevant access zone.

Note: there is a separate offence for harassment of service providers that is not tied to the access zone (so this protects service providers anywhere in Ontario).

## **Alberta & Nova Scotia**

- Advising or persuading, or attempting to advise or persuade, another person to refrain from accessing abortion services, or a physician/service provider to refrain from providing, or facilitating the provision of, abortion services ('interference').
- Informing or attempting to inform, by any means, another person concerning issues related to abortion services ('interference').



- Any act of disapproval, or attempted act of disapproval, by any means, concerning issues related to abortion services ('protest').
- Continually or repeatedly observing: a patient, physician who provides abortion services, or service provider; a residence of a physician who provides abortion services or of a service provider; or a building in which abortion services are provided/facilitated.
- Requesting that a patient refrain from accessing abortion services or a physician/service provider refrain from providing, or facilitating the provision of, abortion services.
- Physically impeding, or attempting to impede, the passage of a patient or physician who provides abortion services/service provider.
- Intimidating, or attempting to intimidate, a patient or a physician who provides abortion services/service provider.

^ The prohibitions listed above do not apply to police officers (and, in Alberta, persons

empowered to enforce a bylaw) while they carry out their duties. The prohibitions listed above

also do not apply to a patient, physician who provides abortion services, or a service provider.

- Any audio, visual, or audio-visual recording of a patient, physician who provides abortion services, or a service provider without his/her consent. (There are some exceptions for security cameras and police carrying out their duties.)

A person cannot be convicted of an offence unless the person knew or, at any time before the contravention, was given notice of, the location of the relevant access zone.

Note: there are two separate offences for harassment of physicians/service providers that is not tied to the access zone (so this protects physicians/service providers anywhere in the two provinces) and distributing recordings.

## **Penalty for the offence**

### **British Columbia & Newfoundland and Labrador**

First conviction: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second or subsequent conviction: a fine between 1,000 CAD and 10,000 CAD or both a fine between 1,000 CAD and 10,000 CAD and imprisonment for not more than 12 months.

- A person who suffers loss as a result of a contravention of the Act may recover damages for the loss from the other person.
- The Supreme Court may grant an injunction to restrain a person from contravening the Act, whether or not a penalty or other remedy is provided by the Act. The Attorney General can apply for an injunction.

### **Quebec**

A fine of 250 CAD to 1,250 CAD. If the person threatened or intimidated someone trying to access/leave a facility where voluntary termination of pregnancy services are provided, however, the level of the fine increases to between 500 CAD and 2,500 CAD.

## **Ontario**

First offence: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second or subsequent offence: a fine between 1,000 CAD and 10,000 CAD, imprisonment for not more than 12 months, or both.

- A person who suffers loss as a result of a contravention of the Act by another person has a right of action for damages against that person.
- The Superior Court of Justice may grant an injunction to restrain a person from contravening the Act. The Attorney General can apply for an injunction.

## **Alberta & Nova Scotia**

First offence: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second/subsequent offence: a fine between 1,000 CAD and 10,000 CAD, imprisonment for not more than 12 months, or both.

- The Court of the King's Bench (Alberta) / Supreme Court (Nova Scotia) may grant an injunction to restrain a person from contravening a provision of the Act, whether or not a penalty or other remedy is provided by the Act. The Attorney General can apply for an injunction.
- A person who suffers loss as a result of a contravention of or failure to comply with the Act by another person may recover damages from the other person for the loss.

## **Context informing the introduction of the legislation**

### **British Columbia**

It is clear from the [second reading debate](#) on the government's Access to Abortion Services Bill that anti-abortion protest at freestanding abortion clinics (especially the [Everywoman's Health Centre](#)) and doctors' homes was a 'long term' (p15977) and 'chronic' (p15978) issue in British Columbia. There seemed to be particular concern about protests having 'created an atmosphere that has led to violence' (p15978). Indeed, the (non-fatal) shooting of [Dr Garson Romalis](#) in 1994 while he was eating breakfast in his kitchen at home was referenced a number of times during the debate.

### **Newfoundland and Labrador**

The [second reading debate](#) on the government's Access to Abortion Services Bill indicates that the proposed legislation was a response to frequent anti-abortion protests outside one particular clinic: the Athena Health Centre. Although a 40 metre access zone had been established for the Athena Health Centre by an Order of the Supreme Court since government ministers began consulting on potential access zone legislation, the government indicated that such legislation was still necessary to provide for the creation of access zones around other facilities (without the monetary and time costs of going to court) if the need arose. It is also clear from the debate that the government were influenced by the access zone legislation in British Columbia that had survived constitutional challenge in the courts (this was the only other safe access zone legislation in existence in Canada at the time).

## **Quebec**

Since 1995, the Morgentaler Clinic had an injunction against anti-abortion protestors. After the clinic moved to a new location, adjacent to the Femina Clinic, in November 2014, anti-abortion protestors re-appeared and the two clinics jointly secured a new injunction. The protestors then moved to another clinic nearby, which subsequently secured its own injunction. When the injunctions expired, new injunctions were secured, but the time-consuming and expensive process of going to court and renewing injunctions led to [calls from abortion clinics in Quebec](#) for access zone legislation. The government responded by [adding access zone provisions to an amendment Bill](#) originally concerned only with commercial practices relating to medications.

## **Ontario**

At around 3.30am on 18 [May 1992](#), an abortion clinic in Toronto was bombed. Nobody was injured and this was an exceptional incident. At the start of the [second reading debate](#) of the government Bill in October 2017, Indira Naidoo-Harris MPP explained that the proposed legislation was urgently needed because ‘over the past year, anti-abortion protests have increased at locations that provide abortion services’ throughout the province and were occurring ‘on an almost daily basis’ at some clinics (1420). Anti-abortion protests at one clinic (the Morgentaler Clinic in Ottawa) were said to be more aggressive (1420). Naidoo-Harris also noted that healthcare professionals involved in abortion provision had been targeted both at work and at home (1420). At the time, Naidoo-Harris was the first minister for the newly created Ministry of the Status of Women, which had been set up in January 2017 to advance gender equality in Ontario (1410).

## **Alberta**

At the start of the [third reading debate](#) of the government Bill, the Minister for Health explained that the two clinics in Alberta that provide 75% of abortions in the province (Women’s Health Options Edmonton and Kensington Clinic Calgary) were seeing an increase in anti-abortion protest activity despite both clinics having injunctions against anti-abortion protestors (1352). The Minister for Health noted that a patient and her mother had been ‘intimidated and videotaped’ while entering the Edmonton clinic within the area covered by the injunction just two days prior to the third reading debate (1353). The concern was that the protections available at the time (injunctions) were not working.

## **Nova Scotia**

In November 2019, Megan Bourdreau (a university student at the time) created both [online](#) (1,361 signatures) and paper (150 signatures) petitions calling for an access zone around the Nova Scotia Women’s Choice Clinic based at the Victoria General hospital in Halifax, after she observed anti-abortion protests outside during the “40 days for life” campaign in September and October. The paper petition was tabled in the Nova Scotia House of Assembly on [3 March 2020](#). The [following day](#), Claudia Chendler MLA (who tabled the Private Members’ Bill which would establish the provisions for access zones) credited Bourdreau for motivating the proposed legislation (5746).

## **Challenges encountered during or after the passage of the legislation**

## Legal Challenges in British Columbia

### R v Lewis (1996) 24 BCLR (3d) 247

Maurice Lewis was charged with engaging in sidewalk interference and protest while in an access zone, contrary to sections 2(1)(a) and 2(1)(b) of the Access to Abortion Services Act 1996, after he had walked within the access zone wearing a sandwich board that read “Our Lady of Guadalupe Patron of the Unborn Please Help Us Stop Abortion” (paras 54-56). Lewis challenged the constitutionality of sections 2(1)(a) and 2(1)(b) of the Access to Abortion Services Act 1996, by arguing that the prohibitions violate a number of his (and other protestors’) freedoms as set out in the Canadian Charter of Rights and Freedoms – namely, freedom of conscience and religion, freedom of expression, freedom of assembly, and freedom of association (paras 58-77). The British Columbia Supreme Court acknowledged that the relevant sections of the Act infringed the freedoms of Lewis and other protestors (paras 58-77). However, the Court ultimately concluded that the infringement of these freedoms was a reasonable limit which could be demonstrably justified in a free and democratic society (para 149) and it entered a conviction (para 150).

- > Saunders J was in ‘no doubt’ that ‘the objective of equal access to abortion services, enhanced privacy and dignity for women making use of the services and improved climate and security for service providers [was] a sufficiently important objective’ to satisfy the requirement for the objective of the Act to be both pressing and substantial (paras 87-102).
- > Saunders J also considered there to be a rational connection between the objective and the establishment of the access zone (paras 103-114).
- > Moreover, Saunders J held that both the size of the zone and the prohibited conduct created only a minimal impairment (paras 115-131).
  - He noted that ‘[t]he size of the area, considering the location of the clinic, is reasonable to provide a quiet space with privacy and dignity for the users of the clinic ... [a] reduction in the length of the zone to something in the range of 20 metres ... would not significantly enhance the expression of the protestors, the objective of which is to address the women as near as possible to the clinic doors’ (para 127). Saunders J also noted that a smaller protest-free zone within a larger limited protest zone would be difficult to enforce, create confusion, and represent a greater interference with the protestors’ freedoms (para 127).
  - With regard to the breadth of the prohibited activities, Saunders J said, ‘[w]hile non-violent, even passive, expression of disapproval is captured by this Act, the evidence establishes that such activity, in the context of the well-known history of rigorous protest and the vulnerable nature of those who enter the clinic, is contrary to the well-being, privacy and dignity of those using the clinics’ services’ (para 130).
- > Finally, Saunders J held that the objective of the Act outweighed the deleterious effects of the Act on those who wanted to demonstrate their opposition to abortion and persuade women not to have abortions (paras 132-249).
  - He noted that the case did not present an example of the freedom of expression at its highest value because the expressive activity limited by the Act is not central to the following core values: the search for political, artistic, and scientific truth; the protection of individual autonomy and self-development; and the promotion of public participation in the democratic process (para 143). In contrast, Saunders J noted that the right to access

healthcare without unnecessary loss of privacy and dignity was regarded as a 'fundamental value' (paras 144-148).

- Saunders J also noted that 'expressive activity concerning abortion is not banned in total by the Act ... [o]utside the access zone ... citizens may picket, leaflet and otherwise propound their views' (para 142).

### R v Spratt (2008) BCCA 340

Gordon Watson and David Spratt were convicted of engaging in sidewalk interference and protest while in an access zone, contrary to sections 2(1)(a) and 2(1)(b) of the Access to Abortion Services Act 1996. They had gone to the clinic together on 17 December 1998 intending to 'test' the new law by doing different things within the access zone (paras 16-19). Watson stood with two large signs (one read "abortion is murder" and the other read "unborn persons have the right to live") for an hour. He also told an employee that she was doing harm to women and that she should be aware that abortion increases a woman's risk of breast cancer, and he attempted to give brochures with similar messages to other employees. Spratt stood apart from Watson with a large wooden cross and a sign that read "you shall not murder". He spoke to two employees about the love of God, forgiveness of sin, and redemption.

After their appeal was unsuccessful at the Supreme Court of British Columbia in 2002, Watson and Spratt further appealed to the British Columbia Court of Appeal on the ground that sections 2(1)(a) and 2(1)(b) of the Access to Abortion Services Act 1996 were unconstitutional because they violated protestors' freedom of expression as set out in the Canadian Charter of Rights and Freedoms (paras 4-5). Counsel for the Crown acknowledged that the relevant sections of the Act infringed protestors' freedom of expression, so the only issue for the Court to determine was whether the infringement was a reasonable limit which could be demonstrably justified in a free and democratic society (para 28). The Court concluded that the infringement of the freedom of expression by sections 2(1)(a) and 2(1)(b) of the Access to Abortion Services Act 1996 was justified, and it dismissed Watson's and Spratt's appeals (para 92).

- > First, Ryan JA rejected the argument that the Act was too vague (regarding when and whether to establish an access zone) to facilitate a discussion about the Act's justification (paras 34-40).
- > Second, Ryan JA held that the objectives of the Act (equal access to abortion services, enhanced privacy and dignity for women making use of the services, and improved climate and security for service providers) were sufficiently important to constitute a valid state objective, because they serve the broader purpose of protecting the health and safety of citizens (paras 71-75).
- > Third, Ryan JA found that the measures were not 'arbitrary, unfair, or based on unconstitutional considerations' because the access zone 'offers distance and therefore protection to the staff and patients of the clinic' (para 76).
- > Fourth, Ryan JA held that protestors' freedom of expression had been impaired as little as possible (paras 77-89).
  - He explained that a clear rule against any interference is the best way to achieve the objectives of the Act because it would be too difficult to characterise every approach to a patient/member of staff (paras 80-81).

- He further explained that ‘protestors are not entitled to have a captive audience’ (para 84) and that protestors are still entitled to picket, leaflet and otherwise propound their views outside the access zone (so expressive activity is not completely banned) (para 85).
  - Ryan JA added that, in his view, ‘the zone around the Everywoman’s Health Centre is reasonably tailored to the location and circumstances of the clinic’ (para 88).
- > Finally, Ryan JA held that ‘[t]he objective of the Act justifies the limited infringement of freedom of expression in the circumstances’ (para 91).

### **Unsuccessful attempts elsewhere**

In Manitoba, Nahanni Fontaine MLA has introduced her Private Member’s Bill that would create buffer/access zones around facilities that provide abortion services [five](#) times between 2018 and 2022. None of these Bills have been passed. When introducing her [most recent attempt](#) to pass safe access zone legislation, Fontaine suggested that the lack of success for her Bill was because ‘75 per cent of current elected Conservative MPs are anti-choice’. Similarly, in Saskatchewan, Jennifer Bowes MLA introduced her Bill [three](#) times between 2021 and 2022 without success. In 2021 the Saskatchewan Parliament did however pass [legislation](#) that established 50-metre access zones at *hospitals* for two years in response to anti-vaccination protests during the height of the Covid-19 pandemic (similar legislation [failed in Manitoba](#)). Hospitals that also provided abortion fell under this protection during the two-year period, but other facilities providing abortion services were not included. This led to [criticism](#) that the government was not ‘interested’ in protecting access to reproductive healthcare.

### **Impact of the legislation**

In April 2022, Pro Bono Students Canada student volunteers from the UNB Law Chapter, Cindy Abreu and Isabel Cox, published a [report](#) that considered how well access zones were working in two provinces (Newfoundland and Labrador and Nova Scotia) through interviews with persons involved in abortion provision in those provinces. In relation to the situation in Nova Scotia, Abreu and Cox interviewed Dr Melissa Brooks and Dr Lianne Yoshida – co-medical directors of the Women’s Choice Clinic in Halifax. Both service providers ‘noted the absence of protests outside of Victoria General’ (which is where the Women’s Choice clinic is based) (p4). Abreu and Cox speculate, however, that ‘pandemic restrictions are a factor that may account, at least in part, for the absence of protestors and the lack of challenges to the new Act’ (p4). Indeed, it is not clear (given the apparent lack of regulations) that there is actually an access zone established at the site. In relation to the situation in Newfoundland and Labrador, Abreu and Cox interviewed Rolanda Ryan – owner of the Athena Health Centre. Abreu and Cox conclude that their interview with Ryan ‘demonstrates that safe access zone legislation has been effective’ (p10). They note that the anti-abortion protestors have been ‘pushed back’ 50 metres from the clinic and, although ‘people still have to drive by protestors, and the bus stop is near where they are located’, generally ‘clients and staff are more comfortable and are not as afraid’ (p5).

In October 2010, the Abortion Rights Coalition of Canada (ARCC) published a [report](#) based on a study of 33 abortion service providers across Canada. The survey was



conducted to assess anti-abortion activity. At the time, only British Columbia (BC) had access zone legislation, and only two

of the BC providers actually had access zones in place. It was concluded that:

These two clinics experienced reduced protesting activity after the legislation came into effect. One clinic no longer has any protesters at all, while the other clinic still experiences regular protests outside the bubble zone across the street, and the occasional rare intrusion of protesters into the zone. However, staff and patients at these two clinics do not feel threatened by the protesters, in contrast to some other clinics that do not have bubble zone legislation (p15).

The need for research into the efficacy of access zone legislation in Canada has been acknowledged in the academic literature.

- Writing in the journal *Contraception* in [2020](#), Foster, Persaud and LaRoche note: ‘...our research does not capture how [the enactment of access zone legislation] might have impacted abortion seekers’ encounters with protesters ... future research would benefit from exploring these dynamics’ (p312). Between 2012 and 2016, the authors interviewed 305 women who had obtained abortion services to assess their experiences with anti-abortion protesters.
- Then, writing in the journal *Contraception* in [2022](#), LaRoche, Martzke, Doctoroff, Goldberg and Foster note:  
...further research is needed to explore how the passage, implementation, and enforcement of provincial safe access zone legislation has influenced the frequency and type of anti-choice disruptive events targeting Canadian abortion providing facilities as well as the degree to which these laws have shaped the experiences and perspectives of providers and patients (p76).  
The authors had analysed data collected by the National Abortion Federation about the anti-abortion protest activity occurring at its 38 facilities across Canada during 2017. Their findings...  
...indicate that incidents of violence and disruption occurred throughout the country and, with the exception of Newfoundland and Labrador, these events were largely concentrated at free-standing clinics in provinces without a safe access zone law (p76).

The authors suggest that this offers a baseline for future studies.

## Timeline

- **1996** – British Columbia  
[Access to Abortion Services Act 1996](#)
- 2016** – Newfoundland and Labrador  
[Access to Abortion Services Act 2016](#)
- 2016** – Quebec  
[An Act respecting health services and social services](#) as amended by [An Act to extend the powers of the Régie de l'assurance maladie du Québec and to amend various legislative provisions 2016](#)
- 2017** – Ontario  
[Safe Access to Abortion Services Act 2017](#)

2018 – Alberta

[Protecting Choice for Women Accessing Health Care Act 2018](#)

2020 – Nova Scotia

[Protecting Access to Reproductive Health Care Act 2020](#)

Note: for a list of abortion providers in Canada, see [here](#).

## United States of America (USA)

At a Federal level, the Freedom of Access to Clinics Act 1994 amended the [U.S Code](#) making it an offence to (1) by force, or threat of force, or by physical obstruction, intentionally injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services, and to (2) intentionally damage or destroy the property of a facility, or attempt to do so, because such facility provides reproductive health services. Here, 'intimidate' and 'interfere with' are given narrow meanings: 'reasonable apprehension of bodily harm' and 'to restrict a person's freedom of movement', respectively. At State level, there have also been a variety of measures to protect premises where abortion services are provided from damage and to protect those accessing premises from violence and obstruction. The context informing these federal and state measures is a climate of anti-abortion violence [since the early 1990s](#), which has included arson, bombings, vandalism, assault, stalking, obstruction, and murder. Incidences of such violence seems to have been [increasing since 2020](#).

However, the focus here will be on five States that have implemented protective areas around premises where abortion services are provided *through legislation*. Accordingly, safe access zones created by municipal ordinance or injunction will not be considered here, though there are a number of examples of this (including Buffalo and Rochester in New York, which were upheld by the Supreme Court of the United States in [Schenck v Pro-Choice Network of Western NY, 519 US 357 \(1997\)](#)).<sup>1</sup>

**Note:** although the Supreme Court of the United States, in [Dobbs v Jackson Women's Health Organization 597 US \\_\\_\\_ \(2022\)](#), held that the United States Constitution does not confer a right to abortion, and [abortion has been explicitly or effectively banned in some States, abortion remains legal in a number of other States](#) – including Colorado, New Hampshire, Maine and Massachusetts. The situation is more complicated in Montana, however, as restrictions on abortion passed by the legislature have been temporarily blocked by the courts. For now, abortion (until viability) remains legal in Montana.

## Colorado

In 1993, the Colorado legislature passed an Act Concerning The Protection of a Person's Access to Health Care Facilities, which amended the [Colorado Criminal](#)

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<sup>1</sup> See also: [Madsen v Women's Health Center 512 US 753 \(1994\)](#).

[Code](#) by adding two offences. The first offence was knowingly obstructing, detaining, hindering, impeding, or blocking another person's entry to, or exit from, a healthcare facility. The second offence was, within 100 feet (approximately 30 metres) of a facility's entrance, knowingly approaching within 8 feet (approximately 2 metres) of another person, without that person's consent, in order to: pass a leaflet/handbill; display a sign; or engage in oral protest, education or counselling with that person. Both offences were originally 'class 3 misdemeanors' punishable by a fine between 50 USD and 100 USD, and up to seven months imprisonment. However, this most minor class of misdemeanor was abolished in Colorado on 1 March 2022. The two offences are now '[petty offenses](#)', punishable by a fine not exceeding 300 USD and/or ten days imprisonment.

Five months after the statute was enacted, three abortion '[sidewalk counsellors](#)' challenged the second offence on the ground that it violated the First Amendment (which protects freedoms to religion, expression and assembly) and was therefore unconstitutional. At the [Supreme Court of Colorado](#), Justice Scott noted that the statute:

...was enacted by the General Assembly in response to concerns regarding open access to health care counseling and treatment at Colorado health care facilities. While the legislation was pending, the Colorado House and Senate Judiciary Committees heard testimony regarding abortion opponents' conduct at abortion clinics, including physically blocking entrances, intimidation, and harassment of individuals seeking services.

Justice Scott explained that:

Shortly before 1993, many citizens seeking medical counseling and treatment at Colorado health care facilities were openly subjected to verbal abuse and on occasion, were physically assaulted while entering or leaving health care facilities. Confronted by these threats to public safety and open, hostile, and sometimes violent confrontations in public places, the Colorado General Assembly held public hearings to determine the nature and extent of the danger posed by such acts to public safety. As a consequence of the testimony of several witnesses that revealed widespread, violent confrontations, the General Assembly undertook to develop a statute intended to acknowledge a citizen's "right to protest" or counsel against certain medical procedures while assuring that government protects a "person's right to obtain medical counseling and treatment".

Although the statute is not limited to *reproductive* healthcare facilities, the testimony from the various witnesses concerned opposition to abortion.

The Supreme Court of the United States upheld the constitutionality of the second offence (6-3) in [Hill v Colorado 530 US 703 \(2000\)](#).

- Both the side-walk counsellors and the State have 'legitimate and important concerns': to communicate effectively with persons through leafletting, sign displays and oral communication and to protect the health and safety of citizens, respectively. (714-715)
- The regulation is 'content neutral' because (1) it merely regulates places where some speech may occur (as opposed to regulating speech), (2) it was not adopted because of disagreement with the message of the speech, and (3) the State's interests are unrelated to the content of the demonstrators' speech. (719-725)

- The regulation is ‘narrowly tailored’ because it serves the State’s legitimate and important concerns while leaving open alternative communication channels (726-730):

Signs, pictures, and voice itself can cross an 8-foot gap with ease ... demonstrators with leaflets might easily stand on the sidewalk at entrances (without blocking the entrance) and, without physically approaching those who are entering the clinic, peacefully hand them leaflets as they pass by. (729-730)

...the statute takes a prophylactic approach; it forbids all unwelcome demonstrators to come closer than eight feet. We recognize that by doing so, it will sometimes inhibit a demonstrator whose approach in fact would have proved harmless. But the statute's prophylactic aspect is justified by the great difficulty of protecting, say, a pregnant woman from physical harassment with legal rules that focus exclusively on the individual impact of each instance of behavior, demanding in each case an accurate characterization (as harassing or not harassing) of each individual movement within the 8-foot boundary. Such individualized characterization of each individual movement is often difficult to make accurately. A bright-line prophylactic rule may be the best way to provide protection, and, at the same time, by offering clear guidance and avoiding subjectivity, to protect speech itself. (729)

...the 8-foot restriction occurs only within 100 feet of a health care facility - the place where the restriction is most needed. (730)

On [1 June 2023](#), Wendy Austin (another sidewalk counsellor) filed a new challenge to the Colorado law (and a [near identical ordinance](#) in Denver) at the US District Court of Colorado. She argues that the law violates both the First Amendment (free speech) and the Fourteenth Amendment (equal protection), and is therefore unconstitutional, because she is prevented from conversing with women entering abortion clinics in the Denver area. She argues that *Hill v Colorado* was wrongly decided, is irreconcilable with more recent precedent, and distorted First Amendment doctrines. No decision has yet been handed down by a court regarding this case.

## Montana

On 5 January 2005, Robyn Driscoll introduced Bill [HB 324](#) to the Montana Legislature. When it became law in April 2005, it amended the [Montana Code](#) and prohibited knowingly approaching within 8 feet (approximately 2 metres) of a person who is entering or leaving a healthcare facility to: give the person written or oral information; display a sign; or to protest, counsel, or educate about a health issue, when that person does not consent to that activity and is within 36 feet (approximately 11 metres) of an entrance to or exit from the healthcare facility. The penalty for the offence is a fine not exceeding 100 USD. A person can also commit the offence of obstructing healthcare facility access if he/she knowingly obstructs, hinders, or blocks another person’s entry into or exit from a healthcare facility in some other way. Prayer vigils are regularly held near the Blue Mountain Clinic in Missoula (which provides abortion services) [during the “40 Days for Life” campaign](#).

Indeed, such a vigil is planned for [14 February to 24 March 2024](#). This does not seem to be the type of conduct the legislation was intended to prevent.

## Massachusetts

In 2000, the Massachusetts legislature passed the [Reproductive Health Care Facilities Act](#), which amended the General Laws, ‘to address clashes between abortion opponents and advocates of abortion rights that were occurring outside clinics where abortions were performed’ (*McCullen v Coakley* 573 US 464 (2014) at 1A). The Act was modelled on the Colorado law that was upheld by the Supreme Court of the United States (see above) and it contained two key provisions. First, the Act made it an offence to knowingly obstruct, detain, hinder, impede or block another person’s entry to, or exit from, a reproductive healthcare facility. Second, the Act established an 18-foot zone (approximately 5 metres) around reproductive healthcare facilities. Within this zone, the Act prohibited knowingly approaching within 6 feet (just under 2 metres, approximately) a person without their consent for the purpose of: passing a leaflet or handbill to that person; displaying a sign to that person; or engaging in oral protest, education, or counselling with the person.

By 2007, the fixed and floating buffer zone arrangement was regarded as inadequate. At legislative hearings, witnesses detailed regular violations of the law and noted the difficulty of policing the zones. Both Captain William Evans (Boston Police Department) and the Attorney General called for a fixed ‘no entry’ buffer zone around reproductive health facilities (*McCullen v Coakley* 573 US 464 (2014) at 1A). In response, the Massachusetts legislature passed an [Act Relative to Public Safety at Reproductive Health Care Facilities](#) in November 2007, which amended the new section that had been added to the General Laws by the 2000 Act. It established a 35-foot (approximately 11 meters) zone around reproductive healthcare facilities, and made it an offence to knowingly enter or remain within this area.

In January 2008, a group of sidewalk counsellors initiated a legal challenge to the new law. They claimed that it violated the both the First Amendment (free speech) and the Fourteenth Amendment (equal protection) and was therefore unconstitutional because they were unable to occupy their normal positions outside the facilities, which negatively affected their counselling efforts. The Supreme Court of the United States held that the new law was indeed unconstitutional, and struck it down, in [McCullen v Coakley 573 US 464 \(2014\)](#) (9-0).

The regulation was regarded as ‘content neutral’ on its face because a violation of the law was determined on the basis of the location of, rather than the content of, speech. It was also significant that a violation did not depend on the listeners’ reactions. The Court noted that ‘a facially neutral law does not become content-based simply because it may disproportionately affect speech on certain topics’. Further, the Court suggested that limiting the law’s application to *reproductive* healthcare facilities restricted less speech than if it were to apply to all healthcare facilities, plus this was where the problem was. Finally, it was noted that the exemption for clinic employees was framed in such a way as to ensure it was limited to merely allowing employees to do their jobs (as opposed to allowing them to speak about abortion within the zones).



However, the Court held that the regulation was **not** ‘narrowly tailored’. Although the State had a legitimate and significant interest in ‘public safety, patient access to healthcare and the unobstructed use of public sidewalks and roadways’, the regulation placed too great a burden on the petitioners’ rights under the First Amendment. The petitioners were prevented from being able to engage effectively in sidewalk counselling, which the Court considered to be the very kind of communication the First Amendment was intended to protect. The Court explained that the petitioners were not seeking merely to express their opposition to abortion (‘protest’) but were seeking to ‘inform women of various alternatives’ and ‘provide help’. Therefore, it was no answer to their claims that they could chant slogans and display signs outside the buffer zone. The Court also noted ‘a variety of approaches that appear capable of serving its interests, without excluding individuals from areas historically open for speech and debate’. Finally, the Court found that, ‘[g]iven the vital First Amendment interests at stake, it is not enough for Massachusetts simply to say that other approaches have not worked’.

Approximately one month after the 2007 law had been struck down, the Massachusetts legislature replaced the unconstitutional section with a [new provision in the General Laws](#). Now, anti-abortion protestors may be required to move back 25 feet (approximately 8 metres) from the entrance of a reproductive healthcare facility for eight hours or until the facility closes for the day (whichever is earlier), if police decide they have ‘substantially impeded access to or departure from an entrance or driveway to a reproductive healthcare facility’. If a person fails to comply with a withdrawal order for the first time, they will be punished by a fine not exceeding 500 USD, no more than 3 months imprisonment, or both. For a second or subsequent offence, a person will be punished by a fine between 500 USD and 5,000 USD, imprisoned for no more than 2 1/2 years, or both. In addition, the Attorney General or an aggrieved person may commence civil action against the person who fails to comply with the withdrawal order in order to obtain injunctive relief and/or damages. In an action brought by the Attorney General, the court may also award civil penalties against each defendant – 5,000 USD for a first non-violent violation and 7,500 USD for a subsequent non-violent violation (*violent* violations incur a higher penalty).

## **New Hampshire**

In 2014, the New Hampshire legislature passed an Act Relative to Access to Reproductive Health Care Facilities, which amended the [New Hampshire Revised Statutes](#) and allowed a reproductive healthcare facility to create a 25-foot buffer zone (approximately 8 metres) by clearly demarcating the zone and using a sign containing specific information that is set out in the law itself. A reproductive healthcare facility must consult with law enforcement and local authorities who have responsibility for approving the locations of and size of signage to ensure compliance with local ordinances. During the facility’s business hours, it is an offence to knowingly enter or remain on a public way or sidewalk within the 25-foot zone, but there are a number of exemptions – for example: persons entering/leaving the facility; employees/agents of the facility acting within the scope of their employment for the purpose of providing patient escort services; law enforcement, ambulance, firefighting, construction, utilities, public works and other municipal agents acting within the scope of their employment; and persons using the public sidewalk or street right-of-way solely for the purpose of reaching a destination other than the facility.



With regard to the [penalty](#) for the offence, law enforcement officers are limited to issuing a written warning for a first violation. For a subsequent violation, law enforcement officers may issue a citation which carries a minimum fine of 100 USD. Also, the Attorney General may seek an injunction to prevent any further offences.

In its Statement of Findings and Purposes accompanying the Act, the New Hampshire legislature noted that recent demonstrations outside reproductive healthcare facilities had: ‘resulted in the fear and intimidation of patients and employees’; ‘caused patients and employees ... to believe that their safety and right of privacy [were] threatened’; and ‘resulted in the fear and intimidation of residents and patrons seeking to enter or leave their homes of other private businesses adjacent to the reproductive health care facilities’. However, it was also acknowledged that ‘[t]he exercise of a person’s right to protest or counsel against certain medical procedures is a First Amendment activity that must be protected’. The New Hampshire legislature concluded that:

...establishing a limited buffer zone outside of some reproductive health care facilities located in the state of New Hampshire is necessary to ensure that patients and employees of reproductive health care facilities have unimpeded access to reproductive health care services while accommodating the First Amendment rights of people to communicate their message to their intended audience without undue burdens or restrictions.

Three days before the Act was due to take effect (and very soon after the decision of the Supreme Court of the United States in *McCullen v Coakley* – discussed above), a group of seven anti-abortion advocates brought an action challenging the constitutionality of the new law. The group regularly engaged in sidewalk counselling in the area that would be encompassed by the buffer zones, and they expressed concern that they would be prosecuted if they continued this activity. However, the 1st US Circuit Court of Appeals upheld the New Hampshire Law in [Reddy v Foster 845 F3d 493 \(1st Cir. 2017\)](#) on the ground that the plaintiffs lacked standing to challenge the law in the absence of any buffer zones actually being in place at the time. The plaintiffs’ action was described as ‘premature’ because it relied on ‘overly speculative allegations of injury in fact’ (497).

Seemingly, still no reproductive health facility in New Hampshire has demarcated a buffer zone. The [Equality Health Center](#) attempted to demarcate a buffer zone, but it was unable to get permission from the relevant officials. Instead, the facility has had to rely on [clinic escorts](#) and permits which allow staff to stand in front of the facility. If a buffer zone were to be established, it would almost certainly be challenged again in the courts. Such a challenge may be successful this time, as the New Hampshire law is more similar to the Massachusetts law that was struck down in *McCullen v Coakley* than the Colorado law upheld in *Hill v Colorado* (both cases are discussed above). However, one notable difference is that the Massachusetts law *mandated* buffer zones rather than affording facilities a power to create one (as is the case in the New Hampshire law).

It is worth noting too that that there have been attempts by the New Hampshire legislature to repeal the relevant law. In 2022, for example, Bill 1609 (which would have repealed the provision for buffer zones) was passed by the legislature, but it was ultimately [vetoed by Gov Chris Sununu](#).

## Maine

In 1995, [the Maine Civil Rights Act was amended](#) in response to violence directed at reproductive health clinics in Massachusetts. It prohibited individuals from intentionally interfering with, or attempting to intentionally interfere with, the exercise of or enjoyment by any other person of rights ... by: engaging in the physical obstruction of a building; making or causing repeated telephone calls to a person or a building, whether or not conversation ensues, with the intent to impede access to a person's or building's telephone lines, or otherwise disrupt a person's or building's activities; activating a device or exposing a substance that releases noxious and offensive odours within a building; or, after having been ordered by a law enforcement officer to cease such noise, intentionally making noise that can be heard within a building and with the further intent either to (1) jeopardize the health of persons receiving health services within the building or to (2) interfere with the safe and effective delivery of those services within the building.

In 2013, the City of Portland [established](#) a 39-foot protest-free buffer zone (approximately 12 meters) for its Planned Parenthood clinic via municipal ordinance. However, this was repealed in July 2014 following the decision of the Supreme Court of the United States in *McCullen v Coakley* (discussed above). A [legal challenge](#) was filed *before* the ordinance was repealed, and a judge determined that the petitioners could nevertheless seek damages for the period during which the buffer zone was in effect.

In 2022, the Maine legislature amended the 1995 addition to the [Maine Civil Rights Act](#) via [An Act to Ensure Safe Entry and Access for People Seeking Health Care and Other Constitutional Rights](#). The providers of health services may now opt-in to having an 8-foot medical safety zone (approximately 2 meters). At the provider's request, the relevant municipality will demarcate the zone in the way prescribed in the Act. Such a zone has been established at the [Planned Parenthood clinic in Portland](#). Persons are prohibited from knowingly entering into, remaining in, or creating an obstruction in a medical safety zone during the posted hours of operation of the provider (subject to some exceptions for: persons entering/leaving the building; persons using the public sidewalk or street right-of-way adjacent to the building solely for the purpose of reaching a destination other than the building; a law enforcement officer, firefighter, emergency medical services provider, employee of a construction company or a utility or employee of a public works department or other municipal service acting in the course of employment; and an employee or agent of the health service or the operator of the building acting in the course of employment). A violation constitutes a [Class E crime](#), which is punishable by a fine not exceeding 1,000 USD, imprisonment for up to 180 days, or both.

Joyce McCreight, who sponsored the 2022 Act, [explained](#) that it was introduced in response to a 'significant and long-standing problem':

For more than a decade, patients and providers have had to navigate safe entry and disruptions to the delivery of care. These disruptions include protestors intentionally blocking entry and exit; screaming, ridiculing and threatening patients; making noise so loud that patients are unable to hear or process critical medical information; and protestors refusing to socially

distance or provide space for patients as they attempt to enter or exit a health care facility. (p2)

McCreight asserted that the new law was a 'reasonable tool to address intentional barriers and bring greater safety and equity in access to health care' (p3), and she was at pains to stress that the new law appropriately balanced the First Amendment rights of 'persons who might want to wish to express opinions about [abortion] services and influence prospective patients in their health care decisions' (p3).

## Republic of Ireland

Safe access zone legislation is currently working its way through the Oireachtas (Irish Parliament). The Health (Termination of Pregnancy Services) (Safe Access Zones) Bill 2023 passed the Dáil Éireann (House of Representatives) in November 2023. The Bill is currently before the Seanad Éireann (Senate). It completed its Second Stage in December 2023 and, as of 12 February 2024, awaits competition of the Committee Stage. The Bill's progress can be followed [here](#).

## Details of the provisions contained within the Bill

**Please note: here, I set out the provisions in the Bill as passed by the Dáil Éireann in November 2023. However, this is subject to further amendment by the Seanad Éireann. Therefore, there may be differences in the final Bill and subsequent law.**

### [Health \(Termination of Pregnancy Services\) \(Safe Access Zones\) Bill 2023](#)

**Size of the safe access zone** 100 metres – no scope for extension or reduction.

**Activities prohibited within the safe access zone** When done without lawful authority and with intent to obstruct or impede a person from availing of, or providing, termination of pregnancy services: engaging in any conduct that is likely to obstruct or impede another person from accessing a relevant healthcare premises. When done with intent to influence the decision of a person in relation to availing of, or providing, termination of pregnancy services, or being reckless as to whether such a decision is thereby so influenced: communicating material to, or otherwise engaging in conduct directed at, the public or a section of the public in a manner that is likely to influence the decision of another person in relation to availing of, or providing, termination of pregnancy services; engaging in conduct that is likely to threaten or intimidate a person who is accessing, or attempting to access, a relevant healthcare premises; accompanying, following or repeatedly approaching a person who is accessing, or attempting to access, a relevant healthcare premises; and photographing, filming or otherwise recording, by any means, a person in a safe access zone.

This is subject to some exceptions, including: protest outside the Oireachtas; lawful conduct that occurs inside a place of religious worship; and acts done by a relevant healthcare provider (or someone acting on behalf of a relevant healthcare provider) in the course of the provision of healthcare services.

**Penalty for the offence**

First offence: liable on summary conviction to a class E fine (500 euros), imprisonment for not more than 1 month, or both. Second offence: liable on summary conviction to a class D fine (1,000 euros), imprisonment for not more than 3 months, or both. Third or subsequent offence: liable on summary conviction to a class C fine (2,500 euros), imprisonment for not more than 6 months, or both. (On fine classes, see [here](#).)

Note: a person only commits an offence by engaging in prohibited conduct once they have been issued with a warning by a member of the Garda.

Note: the Bill would create safe access zones automatically outside premises where obstetricians and general practitioners provide healthcare services, as well as hospitals that provide acute inpatient services – ie. premises where abortion services may be provided. The Minister for Health – Deputy Steven Donnelly – [explained](#) that the legislation would not highlight the specific premises where abortions are provided to ensure women can access them ‘in relative anonymity’.

## Context informing the introduction of the Bill

### Abortion law reform

In December 2018, the [Health \(Regulation of Termination of Pregnancy\) Act 2018](#) legalised abortion in a wider range of circumstances, including on request up to 12 weeks of pregnancy. Prior to this, and as a result of the [Protection of Life During Pregnancy Act 2013](#), an abortion was only legal in Ireland if doctors considered the woman’s life to be at risk from physical illness or suicide if the pregnancy were not terminated. It is worth noting that abortions in Ireland are more commonly provided by [publicly funded General Practitioners’ Surgeries and hospitals](#) than freestanding abortion or reproductive health clinics (though the [Irish Family Planning Association](#) has two such clinics in Dublin City Centre and Tallaght).

### Anti-abortion protests

The first anti-abortion protest was [reported](#) on 3 January 2019 outside the Galvia West Medical Centre in Galway – just three days after the new abortion law came into force. A group of protestors stood outside the medical centre holding written signs. In 2021, Camilla Fitzsimons conducted [research](#) into Irish healthcare workers’ experiences of general clinic protest through an online survey questionnaire of 75 abortion providers from 15 counties across Ireland. She found that ‘[t]he majority had not been directly impacted however a sizable minority [45%] had experienced protests’ (p9) and, ‘[f]or those who did not have gatherings outside their clinics at the time of the research, there were fears these could happen in the future’ (p28). Fitzsimons’ data showed that the frequency of the protests varied ‘from daily (for two providers) and less than once a month for the majority (55 percent)’ (p11). Regarding

the types of protest, Fitzsimons noted that '[t]he most common form of protest reported was silent street gatherings ... this was followed by reports of people displaying posters and placards often with graphic images of fetuses' (p12). Some anti-abortion protests have received media and government attention – for example, an anti-abortion protest by the Catholic Arena group in [July 2019](#) in which three white baby-sized coffins were placed on the ground outside the Holles Street Maternity Hospital. The then Health Minister – Simon Harris – described this as 'grossly insensitive'. [Speaking in the Seanad Éireann](#) in May 2021, Senator Paul Gavan noted that, '[e]very single day over Lent there were protests outside the maternity hospital in Limerick'.

### **Pressure from campaign groups**

The pro-choice movement in Ireland has consistently applied pressure to the government concerning safe access zones – for example, the introduction of safe access zone legislation was one of a number of demands made during a [rally in September 2021](#) organised by the [Abortion Rights Campaign](#) group. Further, the Private Members' Bill introduced by Senator Paul Gavan that would have implemented safe access zones in Ireland in the absence of the government Bill was '[commissioned and drafted](#)' by campaign group [Together for Safety](#).

### **Support for legislation**

Surveys have shown majority support for safe access zone legislation by [abortion providers \(2021\)](#) and the [Irish public \(2020\)](#). There have also been calls for safe access zone legislation from organisations, including the [Irish College of General Practitioners](#) and the [Irish Council for Civil Liberties](#).

### **Motions to introduce byelaws**

Motions to introduce byelaws that would create safe access zones around abortion providers have been passed by several county councils – the first being [Louth in February 2019](#). In her [report](#) published in July 2022, Camilla Fitzsimons noted that this had '...not had an impact as legal advice given to councils is that central legislation from the Oireachtas is needed' (p20).

## **Challenges encountered**

**Please note: the passage of the Bill through the Oireachtas is not yet complete.**

### **Delay introducing legislation 2018-2023**

- At the [Second Stage debate in the Seanad Éireann](#) for the Health (Regulation of Termination of Pregnancy) Bill 2018 on 6 December 2018, the then Minister for Health – Deputy Simon Harris – stated that he intended to introduce separate standalone legislation 'in early 2019' that would make provision for safe access zones in Ireland.
- On [5 November 2019](#), the then Minister for Health – Deputy Simon Harris – responded to Deputy Louise O'Reilly's written question asking when a Bill providing for safe access zones would be introduced. He said that it remained a 'priority' and that he had been 'closely monitoring the situation'. He also noted that he had met with



the Commissioner of An Garda Síochána and Oireachtas members to discuss the issue, and that a consultation of health service providers was in progress. Harris had also commissioned both a [report](#) into safe access zone legislation in other countries and a [rapid evidence assessment](#) on the impact of anti-abortion protest on women accessing services.

- In January 2020, the 32nd Dáil was dissolved and this was followed by a general election in February 2020. In June 2020, the draft [programme for the new government](#) was published and it noted the government's commitment to introducing safe access legislation (p47).  
The Minister for Health – Deputy Stephen Donnelly – [later explained](#) that safe access zones were not '...legislated for by the previous Government, and that was partly because the previous Minister was presented with a significant amount of legal opinion which said that this type of provision was unnecessary and unconstitutional or would have too much of a chilling effect on civil liberties ... we hold civil liberties to be sacred in this country and a delicate balance must be found'.
- On [13 July 2021](#), the Minister for Health – Deputy Stephen Donnelly – responded to Deputy Neasa Hourigan's written question asking what his plans were regarding safe access zone legislation. He noted that '[s]ince services under the Health (Regulation of Termination of Pregnancy) Act 2018 commenced in January 2019, there has been a limited number of reports of protests or other actions relating to termination of pregnancy'. He continued, '[w]here problems do arise with protests outside healthcare services, there is existing public order legislation in place to protect people accessing services, staff and local residents'.
- In August 2021, the Minister for Health – Deputy Stephen Donnelly – issued a [statement](#) in response to an [article in the Irish Examiner](#) which reported on 'the quiet shelving of legislation to provide for safe access zones'. He said he was 'fully committed' to the introduction of safe access zone legislation.
- On 10 November 2021, during the [Second Stage debate in the Seanad Éireann](#) for a Private Members' Bill that would implement safe access zones in Ireland, Senator Lisa Chambers confirmed that the Department of Health was in the process of drafting its own safe access zone Bill and noted that the government was 'committed' to making provision for safe access zones in Ireland. In the same debate, Senator Paul Gavan (who introduced the Private Members' Bill) said '[w]e need this legislation without further delay'.
- Later, on 10 February 2022, during the [Committee Stage of the Private Members' Bill](#) in the Seanad Éireann, Senator Paul Gavan reiterated this concern about the 'lack of timeliness'. He said, 'I am concerned because we are now four years on from the promise that safe access zones would be legislated for and yet Department officials are apparently saying more time is needed'. This was in response to a number of concerns about the framing of the Private Members' Bill raised by the Minister for Health – Deputy Stephen Donnelly. Donnelly said the Private Members' Bill 'would not survive constitutional challenge', as its scope was too wide.  
Donnelly also stressed that his Department was continuing to work on its own Bill. The government was [criticised](#) for pursuing its own version of the Bill rather than supporting the Private Members' Bill.
- In March 2022, the Minister for Health – Deputy Stephen Donnelly – published the Department of Health's [Women's Health Plan 2022-2023](#). In the plan, the



Department said, '[w]e will advance proposals for safe access to termination of pregnancy services in 2022' (p35).

- On [12 July 2022](#), the Irish Examiner reported that, '[a] Government source confirmed that party leaders were recently briefed on the measures and a memo was last night circulated to Cabinet ministers detailing General Scheme of Bill [to introduce safe access zones]'. The article also said, '[i]t is now expected that the legislation will be prioritised during the Autumn session and it is hoped it will be signed into law this year'.
- However, the Bill was only eventually introduced to the Dáil Éireann in [June 2023](#). In his [Second Stage speech](#), the Minister for Health – Deputy Stephen Donnelly – acknowledged that the Bill was 'much anticipated' and 'that it has taken time to get to this point'. He explained:

However, this is a complex area of law. We are seeking to balance important competing constitutional rights. Therefore, it is important that any legislative provisions introduced are implementable, enforceable and capable of standing up to any legal challenges that might be brought against them. With that in mind and following Cabinet approval last year, officials from my Department have worked extensively with the Office of the Attorney General and other relevant stakeholders to draft the text of the Bill before us today.

### **Opposition from the Gardaí (police force)**

- In September 2019, the [Irish Times reported](#) on a letter from Garda Commissioner Drew Harris to the then Minister of Health – Deputy Simon Harris. The newspaper claimed that the Commissioner had said in the letter that safe access zone legislation would be 'redundant' due to the existence of current laws and the fact that 'no incidence of criminality has been reported or observed'. He allegedly added that there was 'no evidence to suggest that there is threatening, abusive or insulting behaviour directed towards persons utilising such services'.
- In April 2022, the [Irish Examiner reported](#) on documents released via a freedom of information request which revealed details of a meeting between the Health Service Executive, the Department of Health, and Garda officials. In the article, it is claimed that Gardaí said safe access zone legislation was not required because levels of anti-abortion protests were low and because existing legislation already allows Gardaí to deal with breaches of law. Concern was also allegedly expressed that safe access zone legislation would 'add fuel to the fire', and that there would have to be a balance between new legislation and freedom of speech/peaceful protest.

## **Impact**

The Health (Termination of Pregnancy Services) (Safe Access Zones) Bill is currently working its way through the Oireachtas, so safe access zones are not yet in place in Ireland and there is no impact to consider. However, the Bill, as passed by the Dáil Éireann, mandates a review of the operation of the Act by the Minister for Health no later than 18 months after its commencement. The findings/conclusions of the review are to be published and laid before the Oireachtas, and this could be a useful source of evidence regarding the impact of the legislation.

## Conclusions

This research has provided an overview of existing safe access zone legislation, in order to provide members of the Health, Social Care and Sport Committee with an insight into the international picture. Here, I will summarise the key findings from my research.

### **Details of the provisions contained within the legislation**

Safe access zone legislation is characterised by creating, or providing for the creation of, a protective area around premises where abortion services are provided. However, the details of the provisions contained within safe access zone legislation vary considerably between jurisdictions – particularly with regard to the method for the creation of the protective areas, the size of the protective areas, the behaviour that is prohibited within the protective areas, and the penalties for violating the law. (A comparison table for each of these points of distinction is included in the appendices that follow.)

### **The context informing the introduction of the legislation**

Safe access zone legislation is typically passed in response to concern about current or future general clinic protest and a desire to ensure good access to abortion services. The lack of existing legal measures that could adequately deal with general clinic protest is a common justification for safe access zone legislation. Often, but not always, provision for safe access zones is made alongside, or shortly after, broader abortion law reform that liberalises access to abortion services. The climate of severe anti-abortion violence is unique to the United States of America, though there have been incidences of anti-abortion violence in Australia and Canada.

### **Challenges encountered during or after the passage of the legislation**

The most significant challenge encountered both during and after the passage of safe access zone legislation has been achieving an appropriate balance between the rights of those who wish to protest at clinics and clinic users/staff. It is necessary to strike an appropriate balance in order to comply with human rights and/or constitutional obligations. The challenge is clear from the Parliamentary debates, where those who opposed safe access zone legislation criticised Bills for “going too far” and others struggled to frame the Bills in such a way as to strike a satisfactory balance. The challenge is also clear from the various legal challenges brought against safe access zone legislation for purportedly violating the rights of protestors. Most of these challenges have been unsuccessful.

### **The impact of the legislation**

The availability of evidence on the impact of safe access zone legislation is generally very limited, though some academic research on the efficacy of safe access zones has been conducted in Australia. This may be because much of the safe access zone legislation has been passed only very recently. Sources cited in this report have called for further research to be done in due course.

## Appendix 1: Comparison table – size of zones

England and Wales	<b>150 metres</b> from any part of an abortion clinic or any access point to any building or site that contains an abortion clinic.
Northern Ireland	<b>100 metres</b> from each entrance to, or exit from, the protected premises. This can be extended up to 250 metres where the operator is of the opinion that 100 metres would not be adequate to afford safe access to the protected premises and it gives notice to the Department of Health that it wishes the safe access zone to be extended by a specific distance.
New Zealand	<b>Up to 150 metres</b> from the perimeter of any premises where abortion services are provided – determined on a case by case basis.
Isle of Man	<b>Up to 100 metres</b> around premises where terminations are performed or counselling is provided. The legislation allows the Department of Health and Social Care to amend by Order the maximum size of access zones specified in the legislation.
Tasmania (Australia)	<b>150 metres</b> from the premises at which terminations are provided.
Australian Capital Territory (Australia)	<b>Minimum of 50 metres</b> at any point from the protected facility. Could be a larger size that is sufficient to ensure privacy and unimpeded access to the facility, but no larger than is necessary to ensure that outcome. Determined on a case by case basis.
Victoria (Australia)	<b>150 metres</b> from premises at which abortions are provided.
Northern Territory (Australia)	<b>150 metres</b> outside the boundary of premises for performing terminations.
New South Wales (Australia)	<b>150 metres</b> from any part of the premises of a reproductive health clinic at which abortions are provided or a pedestrian access point to a building that houses a reproductive health clinic at which abortions are provided.
Queensland (Australia)	<b>150 metres</b> from an entrance to the premises, but a smaller or greater distance may be prescribed by regulation for a particular premises if the Minister is satisfied that 150 metres is insufficient, or greater than necessary, to protect the safety and wellbeing of, and respect the privacy and dignity of, (1) persons accessing terminations services, (2) persons who are employed to provide abortion services, and (3) persons who otherwise need to access the premises in the course of their duties/responsibilities.
South Australia (Australia)	Within <b>150 metres</b> of the protected premises.
Western Australia (Australia)	Within <b>150 metres</b> outside the boundary of premises at which abortions are provided.
British Columbia (Canada)	<b>Not exceeding 50 metres</b> from the boundaries of the parcel on which the facility is located – decided on a case by case basis.
Newfoundland and Labrador (Canada)	<b>Not exceeding 50 metres</b> from the boundaries of the land on which the facility is located – decided on a case by case basis.
Quebec (Canada)	<b>50 metres</b> from the grounds on which a facility or premises providing voluntary termination of pregnancy services are situated.

Ontario (Canada)	<b>50 metres</b> from the boundaries of the property, but the zone can be decreased or increased (up to 150 metres) by regulation.
Alberta (Canada)	<b>50 metres</b> from the boundaries of the parcel of land on which the facility is located, but this may be decreased or increased (up to 150 metres) in respect of a particular facility or class of facilities through regulations made by the Lieutenant Governor.
Nova Scotia (Canada)	<b>50 metres</b> from the boundaries of any parcel of land on which the facility is located, but this may be decreased or increased (up to 150 metres) in respect of a particular facility or class of facilities through regulations made by the Governor in Council.
Colorado (USA)	A fixed buffer zone of 100 feet (approx. <b>30 metres</b> ) of a facility's entrance and a floating buffer zone of 8 feet (approx. 2 metres) of another person.
Montana (USA)	A fixed buffer zone of 36 feet (approx. <b>11 metres</b> ) of an entrance to or exit from the healthcare facility and a floating buffer zone of 8 feet (approx. 2 metres) of another person).
Massachusetts (USA)	25 feet (approx. <b>8 metres</b> ) of an entrance or driveway to the reproductive healthcare facility.
New Hampshire (USA)	25 feet (approx. <b>8 metres</b> ) of any portion of an entrance, exit, or driveway of a reproductive healthcare facility.
Maine (USA)	8 feet (approx. <b>2 metres</b> ) from the centre of the entrance of a building in which patients receive health services.
Republic of Ireland ( <b>as passed by the Dáil Éireann in November 2023</b> )	<b>100 metres</b> of an entrance to the relevant healthcare premises.

## Appendix 2: Comparison table – penalties

England and Wales	Liable on summary conviction to an unlimited fine.
Northern Ireland	Punishable on summary conviction by a fine not exceeding level 2 (£500) on the standard scale.
New Zealand	Liable on conviction to a fine not exceeding 1,000 NZD.
Isle of Man	12 months' custody or a level 5 fine (maximum 10,000 IMP).
Tasmania (Australia)	Fine up to 75 penalty units (currently 14,625 AUD) and/or imprisonment for a maximum of 12 months.
Australian Capital Territory (Australia)	Fine up to 25 penalty units (currently 4,000 AUD).
Victoria (Australia)	Fine – 120 penalty units (currently 23,077.20 AUD) or imprisonment for a maximum of 12 months.
Northern Territory (Australia)	Fine up to 100 penalty units (currently 17,600 AUD) or imprisonment for 12 months.
New South Wales (Australia)	Fine (50 penalty units for a first offence (currently 5,500 AUD); 100 penalty units for a subsequent offence (currently 11,000 AUD)) and/or imprisonment (6 months for a first offence; 12 months for a subsequent offence).
Queensland (Australia)	Fine – 20 penalty units (currently 3,096 AUD) or imprisonment for a maximum of 12 months.
South Australia (Australia)	Fine up to 10,000 AUD or imprisonment for 12 months.
Western Australia (Australia)	Fine – 12,000 AUD and imprisonment for 12 months.
British Columbia (Canada)	First conviction: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second or subsequent conviction: a fine between 1,000 CAD and 10,000 CAD or both a fine between 1,000 CAD and 10,000 CAD and imprisonment for not more than 12 months.
Newfoundland and Labrador (Canada)	First conviction: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second or subsequent conviction: a fine between 1,000 CAD and 10,000 CAD or both a fine between 1,000 CAD and 10,000 CAD and imprisonment for not more than 12 months.
Quebec (Canada)	A fine of 250 CAD to 1,250 CAD. If the person threatened or intimidated someone trying to access/leave the facility, however, the level of the fine increases to between 500 CAD and 2,500 CAD.
Ontario (Canada)	First offence: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second or subsequent offence: a fine between 1,000 CAD and 10,000 CAD, imprisonment for not more than 12 months, or both.
Alberta (Canada)	First offence: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second/subsequent offence: a fine between 1,000 CAD and 10,000 CAD, imprisonment for not more than 12 months, or both.
Nova Scotia (Canada)	First offence: a fine of not more than 5,000 CAD, imprisonment for not more than 6 months, or both. Second/subsequent offence: a fine between 1,000 CAD and 10,000 CAD, imprisonment for not more than 12 months, or both.
Colorado (USA)	A 'pretty offense' punishable by a fine not exceeding 300 USD and/or ten days imprisonment.

Montana (USA)	A fine not exceeding 100 USD.
Massachusetts (USA)	First offence: a fine not exceeding 500 USD, no more than 3 months imprisonment, or both. Second/subsequent offence: a fine between 500 USD and 5,000 USD, imprisonment for no more than 2 1/2 years, or both.
New Hampshire (USA)	First violation: a written warning. Subsequent violation: a citation which carries a minimum fine of 100 USD.
Maine (USA)	A violation constitutes a Class E crime, which is punishable by a fine not exceeding 1,000 USD, imprisonment for up to 180 days, or both.
Republic of Ireland <b>(as passed by the Dáil Éireann in November 2023)</b>	First offence: liable on summary conviction to a class E fine (500 euros), imprisonment for not more than 1 month, or both. Second offence: liable on summary conviction to a class D fine (1,000 euros), imprisonment for not more than 3 months, or both. Third or subsequent offence: liable on summary conviction to a class C fine (2,500 euros), imprisonment for not more than 6 months, or both.



### Appendix 3: Comparison table – automatic protection

England and Wales	Y	'Abortion clinics', ie. places approved by the Secretary of State for the purposes of section 1 of the Abortion Act 1967, or hospitals identified in a notification to the Chief Medical Officer under the Abortion Act 1967 in the current or previous calendar year and published identifying them as such.
Northern Ireland	N	The operator of premises where treatment, information, advice or counselling related to abortion is carried out must notify the Department of Health that it wishes the premises to be protected.
New Zealand	N	Safe areas are created through regulations made by the Governor-General by Order in Council on the recommendation of the Minister of Health (after consultation with the Minister of Justice). The Minister of Health may recommend the creation of safe area regulations if he/she is satisfied that (1) a safe area is desirable to address any risk to the safety and wellbeing of, or to respect the privacy and dignity, of persons seeking to access abortion services/advice/information or persons providing/assisting with providing abortion services/advice/information and (2) prescribing a safe area can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms.
Isle of Man	N	The Department of Health and Social Care may establish an access zone (1) by Order for any national health service hospital (for the purpose of facilitating access to abortion services) and (2) by notice <i>on request</i> for other premises providing abortion services/counselling.
Tasmania (Australia)	Y	Premises at which terminations are provided.
Australian Capital Territory (Australia)	N	The Minister for Health may declare that an area around an approved medical facility or a place where an abortifacient is prescribed, supplied or administered is a protected area.
Victoria (Australia)	Y	Premises at which terminations are provided (does not include a pharmacy).
Northern Territory (Australia)	Y	Premises for performing terminations (does not include a pharmacy).
New South Wales (Australia)	Y	Any premises at which medical services relating to aspects of human reproduction or maternal health are provided (does not include a pharmacy).
Queensland (Australia)	Y	Termination service premises (does not include a pharmacy).
South Australia (Australia)	Y	Any premises at which abortions are lawfully performed (does not include a pharmacy).
Western Australia (Australia)	Y	Premises at which abortions are provided (does not include a pharmacy).
British Columbia (Canada)	N	The Lieutenant Governor may establish, by regulation, an access zone for a specific facility.
Newfoundland and Labrador (Canada)	N	The Lieutenant Governor may establish, by regulation, an access zone for a specific facility.
Quebec (Canada)	Y	All facilities/premises providing voluntary termination of pregnancy services.
Ontario (Canada)	Y/N	Abortion clinics (ie. places other than hospitals which have the primary purpose of providing abortion services) have access zones automatically. Any other place where abortions are provided (eg. hospitals, healthcare centres or pharmacies) can request that the Attorney General creates an access zone by regulation.

Alberta (Canada)	N	An access zone is established for every facility (ie. place where abortions are provided) or class of facility specified by the Lieutenant Governor in the regulations. The Lieutenant Governor must be of the opinion that activities referred to in the Act are being engaged in.
Nova Scotia (Canada)	N	An access zone is established for every facility (ie. place where abortions are provided) or class of facility specified by the Governor in Council in the regulations. The Governor in Council must be of the opinion that activities referred to in the Act are being engaged in.
Colorado (USA)	Y	Healthcare facilities (not limited to abortion/reproductive health).
Montana (USA)	Y	Healthcare facilities (not limited to abortion/reproductive health).
Massachusetts (USA)	N	Anti-abortion protestors may be required to move back from the entrance of a reproductive healthcare facility for eight hours or until the facility closes for the day (whichever is earlier), if police decide they have 'substantially impeded access to or departure from an entrance or driveway to a reproductive healthcare facility'.
New Hampshire (USA)	N	A healthcare facility is required to clearly demarcate the zone using a sign containing specific information that is set out in the law. A reproductive healthcare facility must first consult with law enforcement and local authorities who have responsibility for approving the locations and size of signage to ensure compliance with local ordinances.
Maine (USA)	N	At the provider's request, the relevant municipality will demarcate the zone in the way prescribed by the law.
Republic of Ireland (as passed by the Dáil Éireann in November 2023)	Y	Premises where abortion services may be provided – ie. premises where obstetricians and general practitioners provide healthcare services, as well as hospitals that provide acute inpatient services.

## Appendix 4: Comparison table – activities prohibited within the zone

England and Wales	Any act done with the intent of, or reckless as to whether it has the effect of (a) influencing any person’s decision to access, provide or facilitate the provision of abortion services at an abortion clinic, (b) obstructing or impeding any person accessing, providing, or facilitating the provision of abortion services at an abortion clinic, or (c) causing harassment, alarm or distress to any person in connection with a decision to access, provide, or facilitate the provision of abortion services at an abortion clinic.
Northern Ireland	Any act done with the intent of, or reckless as to whether it has the effect of (a) influencing a protected person, whether directly or indirectly, (b) preventing or impeding access by a protected person, or (c) causing harassment, alarm or distress to a protected person. Recording a protected person without that person’s consent and with the intent of, or reckless as to whether it has the effect of (a) influencing a protected person, whether directly or indirectly, (b) preventing or impeding access by a protected person, or (c) causing harassment, alarm or distress to a protected person.
New Zealand	Obstructing a person in a safe area who is approaching, entering, or leaving any building in which abortion services are provided. Making a visual recording of another person in a safe area in a manner that is likely to cause emotional distress to a person accessing, providing, or assisting with providing, abortion services. Doing any of the following in a safe area in a manner that could be easily seen or heard by another person (A) who may be accessing, providing, or assisting with providing, abortion services: (1) advising or persuading A to refrain from accessing or providing abortion services; (2) informing A about matters related to the provision of abortion services, other than during the course of providing those services or assisting with provision of those services; or (3) engaging in protest about matters relating to the provision of abortion services.
Isle of Man	Prohibited after having been warned not to do so by a constable: engaging in pavement interference; protesting about abortion services or counselling with the intention of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling; observing (continuously or repeatedly) any premises in or from which abortion services or counselling are provided, for the purpose of dissuading anyone from providing, or a patient from using, abortion services or receiving counselling; placing oneself close to, and importuning (a) a person providing abortion services or counselling for the purpose of dissuading that person from doing so, or (b) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling; harassing or intimidating (a) a person providing abortion services or counselling for the purpose of dissuading that person from doing so, or (b) a patient for the purpose of dissuading the patient from using abortion services or receiving counselling; graphically recording a person providing abortion services, or a patient, for the purpose of dissuading any person from providing or using abortion services; repeatedly approaching, accompanying, or following someone, or engaging in threatening conduct directed at someone, for the purpose of dissuading them from providing or using abortion services;

	and repeatedly communicating with someone without that person's consent for the purpose of dissuading them from providing or using abortion services.
Tasmania (Australia)	Besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding a person; intentionally recording a person accessing, or attempting to access, the premises without that person's consent; protest in relation to terminations that is able to be seen or heard by a person accessing, or attempting to access, premises at which terminations are provided; footpath interference in relation to terminations; and any other prescribed behaviour.
Australian Capital Territory (Australia)	Harassing, hindering, intimidating, interfering with, threatening or obstructing a person if it is intended to stop the person entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/administering an abortifacient in the facility; capturing visual data (moving or still images) of a person if it is intended to stop the person entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/administering an abortifacient in the facility; protest by any means in relation to a person entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/administering an abortifacient in the facility; and any act that can be seen or heard by anyone during the protected period and that is intended to stop a person from entering the facility, having an abortion, providing a surgical abortion in the facility, or prescribing/supplying/administering an abortifacient in the facility.
Victoria (Australia)	Besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding a person accessing, attempting to access, or leaving the premises; intentionally recording a person accessing, attempting to access, or leaving the premises without that person's consent and without reasonable excuse; communicating by any means in relation to abortions in a manner that is able to be seen or heard by a person accessing, attempting to access, or leaving the premises and that is reasonably likely to cause distress or anxiety; interfering with or impeding a footpath, road, or vehicle in relation to premises at which abortions are provided (without reasonable excuse); and any other prescribed behaviour.
Northern Territory (Australia)	Harassing, hindering, intimidating, interfering with, threatening or obstructing a person where the conduct may result in deterring the person from entering/leaving the premises or performing/receiving a termination at the premises; recording a person without that person's consent and without reasonable excuse, where this may result in deterring the person from entering/leaving the premises or performing/receiving a termination at the premises; and any act that can be seen or heard by a person in the vicinity of the premises that may result in deterring the person or another person from entering/leaving the premises or performing/receiving a termination at the premises.
New South Wales (Australia)	Harassing, intimidating, besetting, threatening, hindering, obstructing or impeding a person accessing, leaving, or attempting to access or leave, the clinic; intentionally capturing visual data (moving or still images) of another person who is within the safe access zone without that person's consent and without reasonable excuse; communication by any means that relates to abortions in a manner that is able to be seen or heard by a person accessing, leaving, or attempting to access or leave the clinic, or inside the clinic, and that is

	reasonably likely to cause distress or anxiety to such a person; and obstructing or blocking a footpath or road leading to any reproductive health clinic at which abortions are provided (without reasonable excuse).
Queensland (Australia)	Any conduct that relates to terminations (or could reasonably be perceived as relating to terminations) that would be visible to someone entering/leaving the premises and would be reasonably likely to deter someone from: entering/leaving the premises; requesting/undergoing a termination; or performing/assisting with the performance of a termination – whether or not another person sees/hears the conduct or is in fact deterred. Recording persons in or near the premises.
South Australia (Australia)	Threatening, intimidating or harassing another person; obstructing another person approaching, entering or leaving protected premises; recording images of a person approaching, entering or leaving the premises; protest in relation to abortion; and communication by any means in relation to abortion in a manner that is able to be seen or heard by a person accessing, attempting to access or leaving the premises and that is reasonably likely to cause distress or anxiety.
Western Australia (Australia)	Besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding a person accessing, attempting to access or leaving premises at which abortions are provided; recording (a photograph or digital image) another person accessing, attempting to access or leaving the premises without that person's consent and without reasonable excuse; communication by any means in relation to abortion in a manner that is able to be seen or heard by a person accessing, attempting to access or leaving the premises and that is reasonably likely to cause distress or anxiety; interfering with or impeding a footpath, road, or vehicle in relation to abortion (without reasonable excuse); and any other behaviour prescribed by the regulations.
British Columbia (Canada)	Advising or persuading, or attempting to advise or persuade, a person to refrain from making use of abortion services (by any means) ('sidewalk interference'); informing, or attempting to inform, a person concerning issues related to abortion services (by any means) ('sidewalk interference'); any act of disapproval, or attempted act of disapproval, with respect to issues related to abortion services (by any means) ('protest'); continuously or repeatedly observing a service provider, doctor who provides abortion services, patient, or building in which abortion services are provided; physical interference with, or an attempt to interfere with, a service provider, a doctor who provides abortion services, or a patient; intimidating, or attempting to intimidate, a service provider, a doctor who provides abortion services, or a patient; graphically recording, by any means, a service provider, doctor who provides abortion services, or a patient, for the purpose of dissuading that person from providing, facilitating the provision of, or using abortion services.
Newfoundland and Labrador (Canada)	Advising or persuading, or attempting to advise or persuade, a person to refrain from making use of abortion services (by any means) ('sidewalk interference'); informing, or attempting to inform, a person concerning issues related to abortion services (by any means) ('sidewalk interference'); any act of disapproval, or attempted act of disapproval, with respect to issues related to abortion services (by any means) ('protest'); continuously or repeatedly observing a service provider, doctor who provides abortion services, patient, or

	building in which abortion services are provided; physical interference with, or an attempt to interfere with, a service provider, a doctor who provides abortion services, or a patient; intimidating, or attempting to intimidate, a service provider, a doctor who provides abortion services, or a patient; graphically recording, by any means, a service provider, doctor who provides abortion services, or a patient, for the purpose of dissuading that person from providing, facilitating the provision of, or using abortion services.
Quebec (Canada)	Demonstration conducted in any manner and intervening in any way, in an attempt to (a) dissuade a woman from obtaining an abortion or condemn her choice of obtaining or having obtained an abortion, or (b) dissuade a person from providing, or from participating in the provision of, abortion, or condemn the person's choice of providing, or participating in the provision of, abortion, or working in a facility that provides abortion services.
Ontario (Canada)	Advising or persuading, or attempting to advise or persuade, a person to refrain from accessing abortion services; informing, or attempting to inform, by any means, a person concerning issues related to abortion services; performing, or attempting to perform, by any means, an act of disapproval concerning issues related to abortion services; and persistently requesting that a person refrain from accessing abortion services, or a protected service provider refrain from providing, or assisting with the provision of, abortion services. When done for the purpose of dissuading a person from accessing abortion services or dissuading a protected service provider from providing, or assisting with the provision of, abortion services: continuously or repeatedly observing the clinic/facility, or persons entering/leaving the clinic/facility; physically interfering with, or attempting to interference with, the person/provider; intimidating, or attempting to intimidate, the person/provider; and graphically recording (in any way) the person/provider. Plus, anything else prescribed by regulation for the purpose of the clause.
Alberta (Canada)	Advising or persuading, or attempting to advise or persuade, another person to refrain from accessing abortion services, or a physician/service provider to refrain from providing, or facilitating the provision of, abortion services ('interference'); informing or attempting to inform, by any means, another person concerning issues related to abortion services ('interference'); any act of disapproval, or attempted act of disapproval, by any means, concerning issues related to abortion services ('protest'); continually or repeatedly observing a patient, physician who provides abortion services, service provider or a building in which abortion services are provided/facilitated; requesting that a patient refrain from accessing abortion services or a physician/service provider refrain from providing, or facilitating the provision of, abortion services; physically impeding, or attempting to impede, the passage of a patient or physician who provides abortion services/service provider; intimidating, or attempting to intimidate, a patient or a physician who provides abortion services/service provider; any audio, visual, or audio-visual recording of a patient, physician who provides abortion services, or a service provider, without his/her consent.
Nova Scotia (Canada)	Advising or persuading, or attempting to advise or persuade, another person to refrain from accessing abortion services, or a physician/service provider to refrain from providing, or facilitating the provision of, abortion services ('interference'); informing or attempting to inform, by any means, another person concerning

	issues related to abortion services ('interference'); any act of disapproval, or attempted act of disapproval, by any means, concerning issues related to abortion services ('protest'); continually or repeatedly observing a patient, physician who provides abortion services, service provider or a building in which abortion services are provided/facilitated; requesting that a patient refrain from accessing abortion services or a physician/service provider refrain from providing, or facilitating the provision of, abortion services; physically impeding, or attempting to impede, the passage of a patient or physician who provides abortion services/service provider; intimidating, or attempting to intimidate, a patient or a physician who provides abortion services/service provider; any audio, visual, or audio-visual recording of a patient, physician who provides abortion services, or a service provider, without his/her consent.
Colorado (USA)	Knowingly approaching within 8 feet (approximately 2 metres) of another person, without that person's consent, in order to: pass a leaflet/handbill; display a sign; or engage in oral protest, education or counselling with that person.
Montana (USA)	Knowingly approaching within 8 feet (approximately 2 metres) of a person who is entering or leaving a healthcare facility to: give the person written or oral information; display a sign; or to protest, counsel, or educate about a health issue (when that person does not consent to that activity).
Massachusetts (USA)	Presence in the zone (having received a withdrawal order).
New Hampshire (USA)	Knowingly entering or remaining on a public way or sidewalk within the zone.
Maine (USA)	Knowingly entering into, remaining in, or creating an obstruction in the zone.
Republic of Ireland <b>(as passed by the Dáil Éireann in November 2023)</b>	When done without lawful authority and with intent to obstruct or impede a person from availing of, or providing, termination of pregnancy services: engaging in any conduct that is likely to obstruct or impede another person from accessing a relevant healthcare premises. When done with intent to influence the decision of a person in relation to availing of, or providing, termination of pregnancy services, or being reckless as to whether such a decision is thereby so influenced: communicating material to, or otherwise engaging in conduct directed at, the public or a section of the public in a manner that is likely to influence the decision of another person in relation to availing of, or providing, termination of pregnancy services; engaging in conduct that is likely to threaten or intimidate a person who is accessing, or attempting to access, a relevant healthcare premises; accompanying, following or repeatedly approaching a person who is accessing, or attempting to access, a relevant healthcare premises; and photographing, filming or otherwise recording, by any means, a person in a safe access zone.