

Safe Access Zones – Proposal for reform in Western Australia

Submission to the Office of the Chief Health Officer,
Department of Health

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Who we are

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our website.¹

The ALA office is located on the land of the Gadigal of the Eora Nation.

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to have input into the proposal for reform with respect to the provision of safe access zones in Western Australia. The ALA commends the Minister for Health and Government of Western Australia for contemplating such reforms and seeking the input of the community before proceeding.
2. This response has been prepared by the Western Australian State Committee of the Australian Lawyers Alliance, all of whom are resident in Western Australia and have substantial and direct expertise in this area. We are lawyers who represent individuals, in both criminal and civil settings. As such, the ALA has always supported and championed the rights of the individual as being a necessary component of a democracy which values the rule of law.
3. We say that a fundamental right in our democracy is the safe access to health care, free from intimidation and harassment. The ALA's view is that the provision of safe access zones will protect that right for vulnerable members of our community, in a balanced and proportionate way. As a national organisation, our members have witnessed first-hand the crucial benefits of the introduction of safe access zones in other jurisdictions of Australia. The ALA recognises that the *Commonwealth Constitution* protects the implied freedom of political communication, and is confident that the reforms contemplated do not infringe that right.
4. We do not wish for this submission to be confidential.

Consultation questions

Consultation questions 1–6

5. Consultation questions 1–6 (where applicable) have been addressed in the introduction above. Our response to the remaining consultation questions raised at pages 18 and 19 of the Discussion Paper is set out below.

Consultation question 7 – Do you support the introduction of safe access zones around premises that provide abortion services in Western Australia?

6. Yes.

7. Two options are outlined in the discussion paper, which can be summarised as either a continuation of the status quo, or reform modelled on that that has already been successfully introduced in other States and Territories.² The ALA's view is that continuation of the status quo is not an option.
8. The ALA notes that since abortion was legalised in Western Australia, there have been numerous reports of vulnerable women seeking access to lawful medical services being approached by protestors outside the clinics and subjected to:
- Emotive verbal communications, seeking to change the minds of those seeking abortion;
 - Loud prayer and singing that can be heard within the abortion clinic;
 - Visually emotive placards containing images of babies and fetuses;
 - Physical interference from accessing the clinic;
 - Being recorded entering and exiting the clinic; and/or
 - Being provided with gifts of food designed to interfere with the termination process/stop access to general anaesthesia.³
9. In our view, the current legislative regime designed to protect individuals from, or provide redress for, such behaviour is inadequate.
10. The ALA notes that the Queensland Law Reform Commission's (QLRC) review of termination of pregnancy laws⁴ found:

'... evidence that people who oppose termination of pregnancy sometimes engage in activities including protesting, holding prayer vigils, or providing 'footpath counselling' at or near premises at which a service of performing terminations on women is provided, and that such behaviour may impact on the safety, privacy and well-being of women who are accessing those premises and of service providers. (para 5.1)'; and

² WA Department of Health, *Safe access zones – Proposal for reform in Western Australia*, Discussion Paper, ss3.1–3.2.

³ *Ibid* 6–7.

⁴ https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf.

*'.....the purpose of safe access zone provisions is to protect the safety and wellbeing and respect the privacy and dignity of persons accessing services provided at termination services premises and employees and others who need to access those premises in the course of their duties and responsibilities.'*⁵

11. Subsequently, the Government of Queensland enacted legislation legalising termination of pregnancy including the creation of safe access zones.⁶
12. The ALA recognises that freedom of speech, including robust political debate on emotive issues, is also a necessary constituent of a representative democracy. The ALA acknowledges that those rights are protected in the *Constitution* which has been interpreted as guaranteeing an implied right of political communication.⁷ However, the experience in other jurisdictions is that such rights will not be infringed by the contemplated legislative change.
13. Two anti-abortion protestors sought to challenge the constitutional validity of the Victorian safe access zone legislative provisions. However, the High Court of Australia agreed with the respondent's submissions that laws to prevent such infringements of privacy, well-being and dignity within safe access zones constituted a legitimate restriction on freedom of expression.⁸
14. The ALA submits that the proposed changes in Western Australia are likely to be protected by these decisions.

Consultation question 8 – During what times should safe access zones apply?

15. (b) 24 hours a day, 7 days a week. Safe access, both for clients of clinics and, crucially, employees, should be guaranteed at all times.

Consultation question 9 – How far should the safe access zones extend?

16. The ALA submits that the safe access zone should extend for a minimum of 150 metres. The majority of other jurisdictions have imposed this limit. In the ALA's view, shorter boundaries

⁵ *Ibid* [5.128].

⁶ *Termination of Pregnancy Act 2018* (Qld).

⁷ *Lange v Australian Broadcasting Corporation* [1997] HCA 25, (1997) 189 CLR 520.

⁸ *Clubb v Edwards; Preston v Avery* [2019] HCA 11.

lead for the potential for loud voices to be heard inside the safe access zone, from people outside it. They would also allow the potential for recording of clients or workers of the clinic as a means of harassment.

Consultation question 10

18. The ALA agrees with the approach outlined in consultation question 10. The Victorian model has proven successful and has resisted challenge on constitutional grounds (discussed above).

Consultation question 11 – Should the legislation specifically exclude the application of the buffer zone in certain circumstances?

19. The ALA submits that there should be no exemptions.

Consultation question 12 – Are there premises, other than abortion clinics, that should also be protected by safe access zones?

20. Yes. The ALA notes para 2.1.2 of the Discussion Paper and is concerned at the evidence of members of the public interfering with those who seek to access health services within our community. Specifically, the ALA is of the view that safe access zones should apply also to needle and syringe programs across our State.

21. The ALA submits that these exchange programs are a vital tool in addressing health and social problems within our community, including the spread of serious disease,⁹ and combatting the misuse of drugs. People seeking access to such programs should be encouraged and protected in a like manner to those seeking access to termination of pregnancy and other family planning services.

Consultation question 13 – What (if any) other options are there for addressing the problem identified?

22. We believe that the success of the contemplated changes in other jurisdictions demonstrates that the proposals fully address the problem identified in a proportionate way.

⁹ WA Department of Health, *Safe access zones – Proposal for reform in Western Australia*, Discussion Paper, 7.

Conclusion

23. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input into the proposal for reform with respect to the provision of safe access zones in Western Australia. Given our State is one of only two jurisdictions of Australia not to have provision for such zones,¹⁰ we believe that the changes contemplated are both welcome and overdue.



Graham Droppert

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Australian Lawyers Alliance

¹⁰ *Health Act 1993* (ACT), ss 85-7; *Public Health Act 2010* (NSW), Part 6A; *Termination of Pregnancy Law Reform Act 2017* (NT), Part 3; *Reproductive Health (Access to Terminations) Act 2013* (Tas), s 9(2); *Public Health and Wellbeing Act 2008* (Vic), s 185D