

**Commentary on the
Public Health Amendment
(Safe Access to Reproductive Health Clinics) Bill 2018¹**

Introduction

1. This document provides a concise critique of this Bill, which seeks to create a 150-meter 'safe access zone' around reproductive health clinics in this state which perform abortion, where three types of behavior within it will be illegal. These behaviors can be broadly summarized as impeding access to abortion clinics; making communications in relation to abortion that are reasonably likely to cause anxiety or distress to any person accessing, leaving or inside an abortion facility and; capturing or distributing visual data of people within the zone.
2. With its ambiguous language, the Bill has a potentially wide ambit of operation. It not only infringes the fundamental rights and freedoms of people to protest about abortion outside an abortion clinic and, potentially, to engage in political communication on this topic, but arguably extends to those maintaining a silent prayer vigil outside a clinic, or who stand outside clinics with information about options other than abortion in order to empower women to make an informed decision about their pregnancy. This Bill raises legitimate concerns, set out below.

The Public Health Act 2010 (NSW)

3. This Bill is the third attempt in two years to enact safe access zones in New South Wales, and is preceded by the failure of the Summary Offences Amendment (Safe Access to Reproductive Health Clinics) Bill 2017 Act, and the Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016. Adopting a different tack to most other states,² it utilizes the *Public Health Act 2010 (NSW)* which empowers the government to, amongst other things, make laws to promote, protect and improve public health and control risks to it.³ As public health laws may infringe individual rights and freedoms, the risks to health must be justified.
4. To qualify as a bona fide public health issue, as opposed to a law and order issue, Parliament should be satisfied that there is evidenced based research that can identify what activities occur outside abortion clinics in New South Wales, prove that these activities cause harm to women that can be differentiated from any harm consequent to undergoing abortion, and conclude that these activities represent a genuine public health risk that can only be controlled by the proposed insertion of these particular safe access zone laws.

¹ Prepared by Lawrence Avena Walsh, Michael McAuley, and Michael Quinlan.

² The Bill is drafted in similar terms to Part 9A of the *Public Health and Wellbeing Act 2008 (Vic)*.

³ See *Public Health Act 2010 (NSW)* ss 3(1)(a)(b).