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Committee Secretary
Health, Communities, Disability Services and Domestic and Family Violence Prevention
Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: health@parliament.qld.gov.au

Dear Sir/Madam,

Thank you for the opportunity to contribute to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee's consideration of the Termination of Pregnancy Bill 2018.

As you will know, Maurice Blackburn Pty Ltd is a plaintiff law firm with 31 permanent offices and 29 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial Social Justice Practice.

Maurice Blackburn employs over 1000 staff, including approximately 330 lawyers who provide advice and assistance to thousands of clients each year. The advice services are often provided free of charge as it is firm policy in many areas to give the first consultation for free.

Relevantly, our Social Justice Practice has been instrumental in arguing for the establishment of safe access zones around termination services in other Australian jurisdictions. We have direct experience acting for the Victorian Fertility Control Clinic (**FCC**) in court proceedings that were a catalyst for crucial legislative change in Victoria. We have witnessed first-hand the significant difference safe access zones have made to the lives of patients and healthcare professionals.

We note that, in introducing the Bill, Attorney-General and Minister for Justice, Hon. Yvette D'Ath said: "*The Palaszczuk government is committed to informed, effective, evidence based policy along with a consultative approach to inform policy development*".¹

¹ Qld Parliament Hansard, 22 Aug 2018, p.1962

We commend the Queensland Government for introducing law reforms targeted to ensuring women can access health care and termination services safely. We are grateful for the opportunity to participate in the consultative process.

To this end, we restrict our comments to the section of the proposed legislation that we believe we can contribute most to the Committee's deliberations, being Part 4 of the Bill concerning safe access zones.

Our key recommendation, discussed below, is that the Bill be amended to prohibit certain conduct *without* the additional need to establish the impact of that conduct on the victim, in line with other safe access zone legislation across Australia, such as Victoria.

In the following paragraphs, we outline the information which we hope will be instructive for the Committee, in the following format:

- i. The importance of safe access zones;
- ii. Learnings from our experience in arguing for safe access zones in other jurisdictions, in particular Victoria;
- iii. Victorian case study – how the introduction of safe access zone legislation made a critical difference to the lives of patients and staff members of Melbourne's Fertility Control Clinic;
- iv. Safe access zones as essential to ensuring workplace safety;
- v. Concern regarding Part 4's requirement that prohibited conduct be 'reasonably likely to deter';
- vi. Reflections on Part 4 of the draft legislation and recommended amendments;
- vii. The importance of adopting gender neutral language.

We offer 10 recommendations for amendments to the Bill for consideration by the Committee.

We are keen to offer our experience and expertise as legal professionals to the Committee. We would welcome the opportunity to meet with the Committee and elaborate on our insights, and those of our former client, Dr Susie Allanson.

i. The importance of safe access zones

The Queensland Law Reform Commission's (QLRC) review of termination of pregnancy laws² found that:

"There is 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)

² https://www.qlrc.qld.gov.au/__data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf p.155

The QLRC report goes on to find that:

“.....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”. (para 5.128)³

The report, in para. 5.122 concludes that *“(t)he draft legislation should include safe access zone provisions”*.

Similar conclusions have been drawn when like legislation has been introduced in other jurisdictions. With various wordings, the legislation in the Northern Territory, New South Wales, Tasmania and Victoria all contain similar provisions.

In NSW, the process for embedding safe access zones in the legislation was politically characterised by bi-partisanship. The Bill was co-sponsored by the Australian Labor Party and The Nationals, with the Liberal Premier allowing a conscience vote amongst her party members.⁴

In Victoria, Premier Daniel Andrews’ media release highlighted the importance of establishing safe access zones for the benefit of the staff of the facility, saying:

“Staff who work at places where abortions are performed also have the right to enter and leave their workplace safely, without being obstructed, interfered with, hindered or harassed”.⁵

Maurice Blackburn has long recognised the importance of safe access zones – not just for those accessing services, but as a workplace safety issue.⁶

ii. Learnings from our experience in arguing for safe access zones in other jurisdictions, in particular Victoria

Maurice Blackburn was instrumental in advocating for the establishment of safe access zones around termination services in Victoria and has witnessed the significant and positive difference this has made for patients and healthcare providers.

In 2015 Maurice Blackburn, together with the Human Rights Law Centre (**HRLC**) commenced legal proceedings in the Supreme Court of Victoria on behalf of the FCC against the Melbourne City Council (**MCC**), seeking orders compelling the MCC to stop the ongoing harassment and intimidation of staff and patients entering the Clinic.

Based in East Melbourne, the FCC is Australia’s first private clinic established to provide women with access to high quality and safe termination of pregnancy, contraception, family planning and reproductive healthcare. For more than 20 years anti-abortion protestors stood outside the entrance to the Clinic, verbally and physically intimidating patients and staff members on a daily basis.

³ This is restated in the Explanatory Memorandum to the Bill, p.11

⁴ <https://www.smh.com.au/politics/nsw/abortion-clinic-safe-access-zones-become-law-in-nsw-20180607-p4zk18.html>

⁵ <https://www.premier.vic.gov.au/safe-access-zones-to-protect-womens-right-to-medical-privacy-and-dignity/>

⁶ See for example <https://www.mauriceblackburn.com.au/about/media-centre/media-statements/2015/judgment-in-melbourne-fertility-control-clinic-case-highlights-need-for-safe-access-zones/>

In the course of conducting this case, Maurice Blackburn was contacted by dozens of women from diverse backgrounds, keen to share their experience of feeling threatened, followed and intimidated by protestors outside the Clinic.

In conjunction with commencing these legal proceedings, Maurice Blackburn worked closely with the HRLC, community members, staff from the FCC, women's rights organisations and Victorian politicians to highlight the need for safe access laws across the state.

Although the case itself was not successful, we were able to help garner crucial momentum for legislative change in Victoria.

Since coming into operation in May 2016, Victorian safe access zone legislation has had a significant and beneficial impact for both patients and staff members of termination services. For the first time in two decades, patients have been able to access the Clinic free from harassment, and staff members have been able to arrive at work without fear for their safety.

Despite the success of these laws in preventing the harassment and intimidation of patients and staff members of termination services, one anti-abortion protestor is seeking to challenge the constitutional validity of the Victorian legislation. Maurice Blackburn is acting for the FCC in proceedings currently before the High Court of Australia, in which we argue that laws to prevent such infringements of privacy, wellbeing and dignity within safe access zones constitute a legitimate restriction on freedom of expression. The FCC has been granted leave to appear as amicus curiae.

iii. Victorian case study – how the introduction of safe access zone legislation made a critical difference to the lives of patients and staff members of Melbourne's Fertility Control Clinic

Through representing the FCC in the abovementioned proceedings, Maurice Blackburn witnessed first-hand the significant toll the behaviour of protestors had on staff members, who had been repeatedly verbally abused, stalked and harassed.

Maurice Blackburn draws the Committee's attention to the experience of Dr Susie Allanson, who worked at the FCC as a Clinical Psychologist for twenty-six years, before and after Victoria implemented safe access zones:

Case Study

Dr Susie Allanson worked at the FCC as a Clinical Psychologist for twenty six years, retiring in June 2017.

Prior to the introduction of the safe access laws, she would arrive at work early in order to avoid the group of anti-abortion protestors who would picket outside the clinic's front gate. On occasion, she would drive home with the suspicion of being followed, and developed a habit of driving past her own house as a precaution.

Regularly she would see women arriving at the clinic visibly distressed by their contact with protestors. In her words:

'Patients would put off coming in to see us because they saw the protestors out the front. Other patients would avoid attending appointments all together because they felt too scared. In other cases, women felt so intimidated and harassed by the behaviour they experienced at their initial consultation that they would avoid coming back for their follow-up appointments. This would have a detrimental impact on their healthcare.'

The daily presence of the protestors had a huge impact on staff. Often we would arrive early and avoid leaving the Clinic when we knew they were outside. Our focus was always on patient care. In addition to counselling women who were already dealing with a highly stressful situation, the behaviour of the protestors left them noticeably shaken. We'd have to spend a lot of extra time reassuring them, making sure they felt safe and calming them down before we were able to begin providing them with the medical care they were actually there to receive.

When the behaviour was particularly intrusive and patients were arriving for their appointments scared and crying we would call the police. Over the years, the police secured convictions against the protestors for assault, obscenity, threat to kill and even murder but this made no difference.

After my colleague Steve Rogers was killed at the Clinic by an anti-abortion protestor in 2001 it became particularly stressful arrive at work each morning and see them standing at the entrance; their presence felt like a trigger reminding me of what had happened that day.

When the safe access zone legislation came in we didn't need to call the police anymore; the behaviour stopped. This was so freeing for staff and patients – it meant we could focus on our job and the women accessing our services could arrive without fear of harassment.

Safe access zones work where other legal protections fail.

The introduction of safe access zones in Victoria has meant women and staff no longer have a target on their back entering the Clinic, and women no longer carry the heavy burden of being publicly shamed for seeking medical assistance.

Securing safe access zones is about more than just protecting the safety, dignity and privacy of women accessing health care facilities and the ability for staff members to arrive at work each day without feeling afraid; it speaks volumes to our capacity as a society to genuinely address inequalities for women.'

iv. Safe access zones as essential to ensuring workplace safety

The right to a safe workplace is fundamental to the Australian industrial relations system, and our way of life.

For a considerable time, employers have borne a responsibility to provide a safe working environment. However, as detailed in the case study above, premises offering termination services often struggle to protect staff from the actions of protestors, which at the very least, regularly cause staff to experience feelings of fear, intimidation, anxiety and anger.

Anti-abortion protestors engage in obstructive and abusive behaviour that at times amounts to assault. Most significantly, on 16 July 2001, Steven Rogers, a security guard at the FCC, was shot and killed by anti-abortion activist Peter James Knight, in full view of staff and patients. Armed with a gun, ammunition and kerosene, Peter Knight later spoke of his intention to massacre the 15 staff and 26 patients who were present at the Clinic.

Anti-abortion protestors were outside the FCC the very next day, furthering the trauma of staff.

Maurice Blackburn has long been an advocate and champion of worker safety. As detailed by Dr Susie Allanson who had direct experience working at the FCC before and after the

introduction of Victoria's safe access zone legislation, safe access zones have the potential to significantly improve the safety, wellbeing and freedom of movement of staff.

Maurice Blackburn is proud to add its voice to the many individuals, agencies and organisations calling for change on behalf of patients of termination services. However, we remind the Committee that the introduction of safe access zones is equally about ensuring workplace safety.

v. Concern regarding Part 4's requirement that prohibited conduct be 'reasonably likely to deter'

We commend the Queensland Government for introducing law reforms targeted to ensuring patients can access health care and termination services safely. Maurice Blackburn notes that Part 4 of the Bill essentially reflects the recommendations of the Queensland Law Reform Commission (QLRC).⁷

However we are seriously concerned that the Bill as currently drafted will not adequately prevent conduct likely to cause harm. As currently drafted, behaviour that may not be 'reasonably likely to deter' a patient from accessing termination services but is nevertheless distressing, or breaches their right to privacy and dignity may be permitted. This outcome is clearly incompatible with the purported purpose of the safe access zones as set out in Part 4 of the Bill.⁸

Maurice Blackburn is also concerned that establishing whether or not a person has engaged in 'prohibited conduct' will be very difficult as it varies depending on the particular experience of each patient. This is likely to make the laws problematic to enforce.

Furthermore, it will be difficult for a patient to adequately prove whether certain intimidating behaviour is likely to deter them from accessing a service, and the process of having to do so is likely to be detrimental to their well-being.

The imposition of this high bar is also likely to result in reluctance by police to prosecute persons who engage in intimidating behaviour within safe access zones.

Recommendation 1: The Bill should be amended to prohibit certain conduct *without* the additional need to establish the impact on the victim, in line with other safe access zone legislation in Australia, such as Victoria.

A more detailed analysis of Part 4 of the Bill's provisions and suggested amendments are provided below.

vi. Reflections on Part 4 of the draft legislation and suggested amendments

Maurice Blackburn has conducted a comparison of the Bill's safe access zone provisions and equivalent legislation in New South Wales, Victoria, Tasmania, the Australian Capital Territory and the Northern Territory.

We offer the following observations:

⁷ https://www qlrc qld gov au/_data/assets/pdf_file/0004/576166/qlrc-report-76-2018-final.pdf p.187 - 188

⁸ Section 11 of the Bill states that the purpose of the safe access zone laws is to protect the safety and well-being, and respect the privacy and dignity of persons accessing services provided at termination service premises and persons employed at these services.

Section 13 - Meaning of termination services premises

We are concerned that the proposed definition of “**termination services premises**” is too narrow in scope and may exclude facilities that only occasionally provide terminations. For example, this definition may exclude the practices of General Practitioners who are authorised to provide prescriptions for medications which induce terminations.

We recommend the following amendments to section 13:

Recommendation 2:

That the definition of “**termination services premises**” as provided for in section 13 of the Bill be amended by:

- i. removing “ordinarily” from the definition; or,
- ii. replacing it with the definition contained in the equivalent NSW legislation to include “any premises at which medical services relating to aspects of human reproduction or maternal health, including termination, are provided, but does not include a pharmacy”⁹.

Section 14 - Meaning of safe access zone

We are concerned that allowing the safe access zone radius to be set by regulations makes it vulnerable to reduction by future governments to an extent that it is rendered ineffectual.

The safe access zone radius should also factor in potential attempts by anti-abortion protestors to stop patients entering clinics by accosting them at pedestrian access points.

We suggest the following adjustments:

Recommendation 3:

Sections 14 (1)(b) to (4) be removed, and replaced with:

- “(b) within no less than 150m of:
- (i) any part of the premises; or
 - (ii) a pedestrian access point to a building that houses the premises.

(2) A regulation may prescribe a distance greater than 150m for stated termination services premises.

(3) The Minister may recommend to the Governor in Council the making of a regulation under subsection (2) if satisfied that, having regard to the location of the premises, a prescribed distance of 150m is insufficient to achieve the purpose of this part in relation to the premises.”

Section 15 - Prohibited conduct in safe access zones

As discussed at Section iii of this submission above, we are concerned that the requirement imposed by section 15 (1) (c) that a person’s conduct be “*reasonably likely to deter a person from:*

⁹ s 98A Public Health Act 2010 (NSW)

- *entering or leaving a termination services premises;*
- *requesting or undergoing a termination; or*
- *performing or assisting in the performance of, a termination”*

will significantly limit the type of harmful conduct that may be successfully prosecuted under this law.

The goal of the proposed section is to ensure patients can access health care facilities unhindered by anti-choice protestors, whose tactics range from aggressive abuse to the offering of prayer and display of photos of late term fetuses.¹⁰

Maurice Blackburn is concerned that such behaviour may not be considered “*reasonably likely to deter a patient from entering or leaving the premises, or requesting or undergoing an abortion, or to deter a medical provider from performing or assisting in a termination*”; but it still may be highly distressing to the recipient.

We are concerned that the inclusion of this high bar may have the unintended consequence of allowing certain behaviours intended to be captured by section 15 to lawfully occur.

We offer the following suggestion:

Recommendation 4:

That section 15 (1) be replaced with:

15 Prohibited conduct in safe access zones

(1) A person’s conduct in the safe access zone for termination services premises is **prohibited conduct** if the conduct—

- (a) in relation to a person accessing, attempting to access, or leaving termination services premises, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person by any means; or
- (b) subject to subsection (4), 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 premises at which abortions are provided and is reasonably likely to cause distress or anxiety; or
- (c) interfering with or impeding a footpath, road or vehicle, without reasonable excuse, in relation to premises at which abortions are provided; or
- (d) is a protest in relation to terminations that is able to be seen or heard by a person accessing, or attempting to access, termination services premises”¹¹

¹⁰ See for example: <https://www.news.com.au/lifestyle/real-life/news-life/woman-begs-christian-protester-to-leave-her-alone-outside-queensland-abortion-clinic/news-story/d209c09c11a5d8df9a66db6e44096f67>, <https://www.couriermail.com.au/questnews/city/anti-abortionists-stand-their-ground-over-confronting-image-on-sign/news-story/042eecd262345938883e15467b71>, <https://www.watoday.com.au/national/western-australia/push-for-safe-zones-around-abortion-clinics-after-employees-called-murderers-20180223-h0wkms.html>

¹¹ This suggestion comes from the Tasmanian legislation, and recognises that protestors outside the safe access zone may use loud messages to circumvent the restrictions. As an alternative for the Committee to consider, (d) could be replaced with a new (2) which could be worded along the lines of “a person’s conduct will be deemed to have taken place in the safe access zone if it is able to be seen or heard by a person within the safe access zone”.

The above proposed text is modelled on the equivalent provision in the Victorian and Tasmanian safe access zone legislation.¹²

As stated at section iv of this submission above, section 15 of the Bill should be amended to prohibit certain conduct without the additional need to establish the impact on the victim. This will promote consistency in safe access zone legislation across Australia.

In our experience, and as documented in the case study of Dr Susie Allanson above, those who protest at termination services premises often do so repeatedly, despite police cautions and previous charges. As such, we recommend the following:

Recommendation 5:

That an additional provision be inserted into section 15 of the Bill providing for a higher penalty for serial offenders via the insertion of a new section 15 (3):

“for a second or subsequent offence—200 penalty units or imprisonment for 18 months, or both.”¹³

Section 16 - Recording persons in or near termination services premises

For clarity, and to ensure the privacy of persons who are patients or employees/contractors of a termination services premises, we recommend:

Recommendation 6:

That section 16 (1) (a) be amended to read:

“is an audio or visual recording of a person within a safe access zone;”

For the same reasons provided in support of Recommendation 5, above, in relation to penalties regarding audio and visual recordings, we recommend:

Recommendation 7:

That the Committee consider a higher penalty for repeat offenders for the offences created by sections 16 (2) and (3), via the insertion of a new s16 (4) which reads:

“for a second or subsequent offence—200 penalty units or imprisonment for 18 months, or both.”¹⁴

To provide staff with certainty that visual or audio recording of persons engaging in prohibited conduct within safe access zones is lawful, we recommend the insertion of an example after section 16 (3) (c), similar to the example provided under section 16 (3) (b) of the Bill.

Recommendation 8:

That an example be provided in section 16 (3) (c) be inserted, with words to the effect of:

¹² s185B of the *Public Health and Wellbeing Act 2008* (Vic) and s 9 of the *Reproductive Health (Access to Terminations) Act 2013* (Tas).

¹³ This proposed clause is drawn from ss 98C(b), 98D(b) and 98E(b)

¹⁴ This proposed clause is drawn from ss 98C(b), 98D(b) and 98E(b)

“it may be reasonable excuse for the occupier of the premises to distribute a restricted recording of another person without the other person’s consent to staff and contractors of the premises, or to police, for security purposes”.

To provide staff and operators of termination services with certainty regarding steps they can take to secure the premises, we recommend the insertion of a new clause in section 16 which explicitly permits the operation of security cameras.

Recommendation 9:

That a new clause be inserted below section 16 (4) which reads:

“Subsections (2) and (3) do not apply to the operation of a security camera, for security reasons only, by or on behalf of a person a person operating a termination services premises, or premises adjust to or near such a premises”¹⁵

vii. The importance of adopting gender neutral language:

Maurice Blackburn commends the Queensland Government for its commitment to LGBTI equality. Maurice Blackburn believes it is important that the proposed legislation protects all people who may become pregnant. We therefore recommend that references to ‘women’ in the Bill be replaced with ‘patient’ or ‘pregnant person.’

Recommendation 10:

References in the Bill to ‘women’ be replaced by ‘patient’ or ‘pregnant person.’

Once again, we congratulate the Committee on its important work. We would welcome the opportunity to meet with the Committee alongside representatives of the FCC and Dr Susie Allanson to answer questions and elaborate on our insights.

Yours faithfully,



Sarah Atkinson
Principal
Maurice Blackburn



Katie Robertson
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Maurice Blackburn

¹⁵ This proposed clause is drawn from s 98E(3)(a) of the *Public Health Act 2010* (NSW).