

Hon James Hayward; Hon Steve Martin; Hon Brian Walker; Hon Martin Pritchard; Hon Stephen Dawson; Hon Nick Goiran; Hon Wilson Tucker; Hon Martin Aldridge

PUBLIC HEALTH AMENDMENT (SAFE ACCESS ZONES) BILL 2021

Second Reading

Resumed from an earlier stage of the sitting.

HON JAMES HAYWARD (South West) [5.03 pm]: I struggled to decide whether I would get up and speak today; I have been very, very impressed with the quality of debate so far. Some members in particular have expressed their views very well, so I am a bit torn about my contribution, but there are a couple of things I want to say.

Discussion has been around the fact that this debate is not about abortion; there is no question that that is correct. The discussion and the debate have been had; a decision has been made and it is a lawful activity in Western Australia. I guess, for me, born in 1969 and adopted from birth, it has always been something that has been close to my heart because over the years I have come to the realisation that if abortion on demand had been available then, which is what we have now, perhaps I would not be here, given the situation in 1969. I have therefore always felt a bit personally connected to this debate. I acknowledge also that over time, the laws have changed and I can see that certainly in some instances there have been appropriate reasons for that. However, it does not change people's sense of connection to these laws.

I absolutely support some of the provisions in this bill. The idea that people might be photographed and have their image shared on social media is absolutely abhorrent. I think that type of shaming is absolutely disgraceful. I am not sure a lot of that has happened in Western Australia, though, I have to say. As Hon Nick Goiran pointed out, many of the people who turn up honestly do not see themselves as protesting. I have heard a lot about protesting and we have heard some examples of some of the terrible things that have happened in other places or may have happened here from time to time over the years. However, my impression of the people who go to these places is that that is not their intention at all, that they are compassionate people and are there because they believe they are helping the vulnerable.

We have heard a couple of speakers talk about how vulnerable women are when they go to these places and I absolutely agree with that. I agree also that by the time people make this decision for themselves, they are in a very vulnerable state. However, unborn babies are also in a pretty vulnerable state. I know it will not be a popular statement but that is the reality. They are the ones who cannot speak. That might be a very strong statement to make, but I have a personal connection with a person who rang me some years ago from an abortion clinic. They were in all sorts of strife. That person wanted to talk to me about what they were going through. They knew of my adoption and my view around abortion and how for me, personally, it is a difficult journey and I am, obviously, not that supportive of it, although I respectfully acknowledge that people have their own decisions to make in that space. She asked me what she should do in the circumstances. It was a fairly confronting phone call. I suggested that she take a little bit of time to think about what she was doing, which she agreed to do, but then told me that she felt bullied to go ahead by the people on the inside of the clinic. It turned out that she did not make the decision to go ahead. She left and her child is now eight years old. Again, I do not share this story with any disrespect for anyone who makes their own decision. It is not my intention to do that. What I am saying is that the motivation of people standing out the front of clinics is the stories like the one I and Hon Nick Goiran just told. Those people actually believe that there is a chance the individual walking into this facility is in such a state of despair and vulnerability that perhaps they could use the help and assistance that they offer.

One of the other challenges, of course, is that people who are in that position, and even a long time after they may have had the procedure, can take great offence to somebody who is not even saying anything, but are just standing there with a placard, a sign or anything they might have. That can also be confronting. It is certainly not my intention to see people suffer, nor do I wish anyone in that very difficult circumstance anything but the best support they can have to get through that time and ongoing support. But I raise the point because I think some of the language we have heard today around people who are protesting and some of the examples of protest action have been abhorrent. I imagine that they can have a lasting and very hurtful effect on the individuals walking into a clinic. I certainly do not support that. With that in the background, I can understand why this bill has come forward and the concerns that people inside a clinic would have.

I also agree completely with some of the comments made by Hon Donna Faragher around the right of people to access medical treatment in private. It does not matter what medical procedure; the patient does not want it shared around social media. The patient does not want to be photographed or filmed, or to be threatened or whatever. It might be something of a personal nature; a procedure, whether it be for a form of cancer or something else, is really not anybody's business. I accept that.

The point I want to make is that, in my view, the people who turn up to these places are not there to protest; it is my view that those people turn up because they are making a contribution and they can assist, and in some instances there is no doubt that they have. At other times I have no doubt that people have taken offence or have been intimidated by

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their presence. I guess that is the difficulty and the yin and yang of it all, if you like, in terms of competing pressures. We know the people who access these services are required by law to be offered counselling, but there is not a lot of visibility around how that all works or what it means. The difficulty is that this legislation will certainly frustrate the efforts of those people—which is its intention, of course—to give people support. Again, others mentioned that these are people they do not know; that is right. However, I know through the work of Pregnancy Problem House and others within the state who work with people in this situation that there are stories of people who get through and do not end up taking those steps. They have been able to help people. After this legislation has passed, it will be much, much more difficult for them to do so.

HON STEVE MARTIN (Agricultural) [5.11 pm]: I would like to make a very brief contribution on the Public Health Amendment (Safe Access Zones) Bill 2021. Like others, including Hon James Hayward, I am extremely impressed by the quality of the debate and the respectful nature of it. As a new member, I have enjoyed that side of the debate. I would just like to make a few quick comments. My stance on this bill, which I will support, is that everybody's right to access medical treatment is obviously something we need to protect. It is as much about privacy as anything. I see that as a fundamental right. As well intentioned as some of these protesters or people who turn up at these facilities might be, I think the privacy of the people seeking medical treatment is paramount.

In public life and in all sorts of positions, we have to choose between competing rights—freedom of speech, if you like, versus other rights. In this instance, I think on balance this bill comes down on the right side of that argument, so I will support the bill. It brings us into line with other jurisdictions in Australia; I think that is important. As Hon Peter Collier mentioned, that is important in Western Australia. Again, I will make a brief contribution to indicate that I support the bill. I got to my feet to make that point because we have been offered a conscience vote on this side of the chamber and I think that is important. My responsibility is to let the house know how I will be contributing.

Hon Martin Aldridge raised a point about the 150 metres and Hon Lorna Harper responded to it. Hon Lorna Harper might have misunderstood Hon Martin Aldridge's point. It is important that the people who have to put this law into effect can do that. As was raised, we have seen the six-metre rule at election time. I can imagine a 150-metre measuring tape being rolled out, so I hope that can be clarified in the process. Thank you very much for the opportunity.

HON DR BRIAN WALKER (East Metropolitan) [5.14 pm]: Once again, I would like to pay tribute to all the members who have spoken and made heartfelt contributions on the Public Health Amendment (Safe Access Zones) Bill 2021. I would also like to reinforce the understanding that this is not about abortion as a concept or as a procedure. It is about safety, the safety of women, the rights of women and the ability to access medical care without being criticised. Bear in mind that this is personal to me because I deal with this on a regular basis. Imagine, if you would, if someone came in and confessed to me—some years back—that they felt as though they are homosexual and I then shouted loudly, “Oh, that is awful! I disagree entirely! We will have to do something about that and give you some medication to take away your libido!”, how would that go down? How dare I impose my views on someone else? They have come to me for a medical opinion. I need to deal with them as a doctor, not as a moralist. Yet we are comfortable with the concept that someone can stand in the street and point at someone ostensibly praying and criticising someone for needing a medical procedure. How dare we allow that? It is not acceptable.

Also, I found it very pleasing today that a male-dominated discussion did not happen. That is respectful because it is a female issue. We might have a view about our partner seeking an abortion, but ultimately we do not have a uterus—not our problem. We might have an opinion that we want to share, but if we are looking at the whole concept of sexuality and childbirth, we need to consider not only this current pregnancy, but all of life. I mean, it is not the case that at 18 years of age your child goes away. You have a child until you die. You have a whole life to deal with a child, but the idea of “I can help you through the pregnancy” does nothing for who will pay for the child care; who will help put food on the table; and who will help when someone is assaulted at home and the police do nothing because there is no evidence and someone has to go back, especially in lockdown, and confront their abuser on a daily basis. Who is going to help with that? The nice people standing outside the clinic? Of course they will not.

I also find that the vast majority of the younger women coming to me asking for an abortion are devastated. They are in a situation they do not want. I personally find the concept that I, as a doctor, would not be in a position to give them advice very insulting. That is why they are there—“Help me”. There is even a woman right now who is going through a pregnancy who was in severe distress from medical issues. She wanted to keep the baby. That was her choice. She had an option, but we helped her work through that and she was willing with that. That is fantastic. It happens that we give advice and the patient will say that they will proceed with the pregnancy. They have a time of doubt and concern; we talk through that, not only then but the next time and the time after; they make a decision and they say what they have decided to do. There is no criticism. I can give advice, but the young woman has to make a decision herself about what she is prepared to do. Maybe one or two use abortion as a method of contraception. The vast majority are in a position in which they do not want to be and are seeking good advice. If an abortion is to be their decision, that is fine by me. I personally—if I had the skills—would not do an abortion. It is not part of

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my belief set. I do not like it. That does not mean that I refuse them. I send them on to people who are kind and caring and compassionate. What these centres do excellently is give psychological support. Someone may walk through a barricade of people ostensibly praying to get psychological support for what they would sensibly want to do. If the option is abortion, fine, that can be done. It does not mean just because someone is walking through, they are going to have an abortion. It means they have a problem and this is the place to be so that the problem can be addressed.

Our duty is to protect the vulnerable; that is our duty. We have a duty to the people of Western Australia, male and female, young and old, to give them the opportunity to live life as they feel best, and to support the community. The concept that we could humiliate someone and give them a guilt complex for the rest of their life is abhorrent. Hon Peter Collier's words just now were excellent: words make a difference. There are suicides of young people who have been bullied on social media, and these are not isolated phenomena. We need to protect the vulnerable.

One could say, "What about those with strong religious views? They have a right to express those views." They do, indeed, but they have to be genuine about it. If we look at a religious book, one of the laws, if you like, is: do not pray ostentatiously in public; do not make it a big hue and cry. Do not stand in a public place and pray, where people can see you praying. The words of the prophet when he mentioned that were: these are hypocrites. It is a hypocritical thing to do. You pray in private. If you then say, "I have to pray in public", you are also saying, "I don't believe God is actually there, or that he actually works, because if he did, prayer would work. But no, I'm going to have to do something more." What you are basically doing, then, is making a bald exclamation to the world: I do not really believe what I am preaching. How dare you, then, try to stand as an example to other people. It must be in private. Using prayer and shouting words to force, cajole and hurt is actually really un-Christian, is it not? Can anyone tell me that this is what Christ would approve of?

This legislation is about the act of keeping people safe from those who seek to cause harm, whether physical, as in the 14 cases in which the police were able to make a charge, or non-physical—the insidious, hidden bullying that is intolerable and plays a role in our daily lives, to the detriment of all in society. This is what we are facing. It is not just about keeping the clinics safe from such people; it is about a statement on our society—that this sort of behaviour is no longer to be tolerated, under any circumstances, anywhere. These vulnerable people pass by, and these are the people we have to protect.

I commend the Public Health Amendment (Safe Access Zones) Bill 2021, and I thank the government for bringing it forward. It is beyond time for it. We are the last state in Australia to pass such legislation; let us make it happen. From a medical perspective, I can tell members from personal experience that this causes psychological harm; people are scarred and damaged. This is not the point of putting one's point of view across. This is causing harm and must not happen.

My final point is: protest, by all means; we have a right to protest. A protest does not include harassment of people. There is a difference between protesting and harassing. Protesting is our right. We live in a free society. We can make our point of view clear, but to harass someone for having a different point of view is neither democracy nor protest. I bring this issue passionately because I have patients who are suffering because of the actions of these people. I do not like it; no-one likes it. I commend the bill.

HON MARTIN PRITCHARD (North Metropolitan) [5.23 pm]: I will make a very brief contribution. First of all, I do not want anyone on either side of the house to think that just because not everyone on this side has spoken to the Public Health Amendment (Safe Access Zones) Bill 2021 it means that they are not fully supportive of it; I am very, very supportive of this legislation. That is one of the reasons I was not going to speak, because the sooner it is in place the better, but I will just make a couple of points.

Firstly, we are talking about the areas outside abortion clinics for women who are making a very, very difficult decision. We are saying through this legislation that women who are making this difficult choice should not be beset, harassed, intimidated, interfered with, threatened, hindered, obstructed or impeded. They should not be photographed or recorded. That is what this bill seeks to protect women from. It is a fairly simple bill, and I am not sure that too many people would say it was appropriate to threaten, hinder or harass women outside abortion clinics. I ask members to just read the bill. I am fully supportive of it.

HON STEPHEN DAWSON (Mining and Pastoral — Minister for Mental Health) [5.25 pm] — in reply: At the outset I thank all those who have made a contribution to the second reading debate on the Public Health Amendment (Safe Access Zones) Bill 2021: Hon Martin Aldridge, Hon Samantha Rowe, Hon Lorna Harper, Hon Sophia Moermond, Hon Donna Faragher, Hon Colin de Grussa, Hon Dr Brad Pettitt, Hon Wilson Tucker, Hon Neil Thomson, Hon Peter Collier, Hon Dan Caddy, Hon Tjorn Sibma, Hon Nick Goiran, Hon James Hayward, Hon Steve Martin, Hon Dr Brian Walker and Hon Martin Pritchard.

It has been a good debate and I think we have all heeded the earlier advice of the President: it has been a respectful debate, as debate on an issue like this should be, for an important piece of legislation, the Public Health

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Amendment (Safe Access Zones) Bill 2021. A number of honourable members asked questions in their contributions and I will seek to provide answers to them now, noting of course that there is an appetite to go into Committee of the Whole afterwards.

The Department of Health, as part of the extensive consultation process undertaken on the issue in 2019, received strong feedback from women and their family members about their experiences visiting the main abortion clinics in Western Australia. It was clear and evident that a new regulatory framework was required to deal with the unique behaviours experienced outside those clinics. No other health service experiences these types of regular, organised protests.

I thank Hon Martin Aldridge for his comments; he asked a number of questions. In relation to the timing of the introduction of the bill, work on the project was delayed in order to take into account the decision of the High Court in *Clubb v Edwards*, as it was important that we knew whether safe access zones were constitutionally valid. Shortly following the High Court's decision on 10 April 2019, the Department of Health released a discussion paper inviting community feedback on introducing safe access zone legislation in Western Australia. A final report, including the department's recommendations, was submitted to cabinet in January 2020, seeking approval to draft a bill to implement safe access zones in WA.

When COVID-19 arrived, it required the Department of Health to pivot its focus on many other urgent COVID directions and COVID-related bills. However, the government was able to introduce the previous bill in October 2020 and successfully pass it through the Legislative Assembly, although of course it did not pass through this place due to the prorogation of Parliament. We needed to reintroduce the bill, and we have done so as soon as possible following the recent state election. This government is determined to ensure that this legislation becomes law because we are well aware of the importance of finding a legislative solution to the ongoing problem outside the main abortion clinics in this state.

With regard to the differences between the previous safe access zones bill, which was introduced into this house in 2020, and the bill before us, as the honourable member was previously advised, the bill before us is pretty much the same as the one that was passed by the Legislative Assembly on 11 November 2020 and was introduced into this place on 24 November 2020. Apart from a few editorial changes, only one minor change was made to the previous bill: the removal of proposed section 306C "Laying reports before House of Parliament not sitting". I am advised that that was a procedural provision and not related to the substantial safe access zones provisions that required the minister to send their report on the review of the bill, prepared after its fifth anniversary, to the Clerk of the house if, in the minister's opinion, a house of Parliament would not sit during the period of 21 days after finalisation of the report.

I am advised that that provision was originally added to the previous bill—as well as to other bills drafted at the same time—at the request of the Parliamentary Counsel's Office. I am told that it has indicated that there is no longer any need for it, and it has been removed from the 2021 bill.

I mentioned the conversation about South Australia. South Australia has already passed similar legislation in its jurisdiction. That was assented to on 19 November 2020. At this stage, Western Australia is the only jurisdiction in Australia that does not have legislative protection around those clinics. There is a risk that groups that support protests against abortions from all over the country, or even from other countries, could target Western Australian clinics and we could witness more and more protests. This concern was also mentioned in the report called *Abortion: A review of South Australian law and practice* that was published by the South Australian Law Reform Institute.

The honourable member also queried the method used by the Department of Health to analyse submissions received as part of the work on the final report on the issue published in February 2020, and about how generic submissions were dealt with. I am advised that data collected from the consultation responses was analysed by the Department of Health using SAS Enterprise Guide and Excel computer programs. Frequencies and proportions were used to describe demographic data to identify the most common words and to summarise responses to the questions. The results of the survey and feedback in submissions were collated, thematically coded and analysed. Every effort was made to ensure the report was a true representation of the various opinions across the submissions.

Incomplete responses and duplicates from the same person and/or containing the same content were removed from the survey. To check for duplicates in the survey, the department used the internet protocol address and time and date stamps of the submissions and checked for the presence of duplicate answers. It was possible for different people to submit responses from the same IP address, such as when multiple individuals responded from a library, health centre or home. This was taken into consideration when checking for duplicates. When duplicates were identified, one response was kept and duplicate responses were removed. The department received only 119 submissions from individuals via email who had used the same campaign website. That was flagged on page 12 of the report.

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Hon Martin Aldridge also mentioned in his contribution the exemptions provided in the NSW safe access zones legislation. I am told that New South Wales is the only jurisdiction in which safe access zones legislation specifically included those type of exemptions, and we did not identify any need to include them in our bill. The WA bill includes sufficient tests to ensure that those who should not be captured by this legislation, whether it is a protest outside Parliament House or a sermon about abortions inside a church, will not be captured.

Hon Nick Goiran raised some concerns in his contribution related to the possibility of women being coerced to undergo an abortion. Even though this bill does not deal with the existing procedures of undertaking abortions in WA, which is regulated by a completely different piece of legislation, I would like to briefly provide a few general comments. In WA, abortion is available on request, provided that informed consent has been freely given by the woman, unless exceptional circumstances apply. The current requirements for counselling are specified in section 334 of the Health (Miscellaneous Provisions) Act 1911. By law, a medical practitioner, other than the one performing the abortion, must provide the woman with medical information about the medical risk of termination of pregnancy and of carrying a pregnancy to term, and must also offer her a referral to appropriate and adequate counselling about matters relating to termination of pregnancy and carrying a pregnancy to term. These are minimum legal requirements and do not prevent a woman from choosing to seek additional counselling or considering other support services that may be available. It is important that counselling is accessible, impartial and non-judgemental, as a number of members have mentioned, and imparted by trained health professionals. Counselling is voluntary; women seek it out when and if they want to.

Some comments and questions were raised about the current regulatory framework in Western Australia. I will take a moment to properly explain the problems we have identified with the current regulatory system for managing protestor behaviour through the permit system under the Public Order in Streets Act 1984. Similar to the experience in other Australian jurisdictions prior to the introduction of safe access zone legislation, WA's existing laws do not adequately address the full range of behaviours engaged in by people who demonstrate at or near premises at which abortions are provided. This may be accounted for in considering the nature of the demonstrations outside these premises and the unique effect on the target audience. The vulnerable nature of the audience means that they are likely to be particularly affected by the presence and behaviour of demonstrators.

Those protests have been going on for many years. It is evident from the testimonials received from Western Australian women during the consultation process that the current mechanism does not deter protesters from harassing or intimidating those women who try to access legal health services. Although conditions may apply to the protest permits, breaches of a condition on a permit are not an offence under the Public Order in Streets Act 1984, so WA police are not able to impose any penalty on anyone. Unless a person commits an offence under other legislation, police are only able to add more conditions on future permits, revoke an existing permit or issue a move-on notice. It is also the case that WA police are there only at certain times, often when the behaviour is not being demonstrated.

The figures and information provided by police indicate that it is difficult for them to capture those unique behaviours outside these clinics, as many of them are not currently offences. It can be hard to prove that the behaviour occurring outside the premises satisfies the current regulatory criteria to act. No protester has ever been arrested or prosecuted for an offence identified outside an abortion clinic. Women, who are usually the witnesses, do not normally wish to take those kinds of matters any further by making a complaint as they want to move on and put this part of their life behind them. They also want to protect their privacy, and they are aware that the experience is generally a one-off. I am advised that it is clear the tools WA police currently have do not equip them to adequately protect women, their supporters and clinic staff from being able to go about their work or gain access without being shamed, harassed or intimidated. A physical separation between the entrance to the service and the people who are seeking to protest outside is the solution to avoiding harassing and intimidating behaviour. The bill will provide WA police with the ability to enforce new offences, which have been tailored specifically to deal with the unique issues outside these clinics. The legislated buffer zone will largely avoid the current need for police officers to respond only after inappropriate conduct has occurred.

A number of honourable members mentioned the decision to have the boundary 150 metres away from the premises. This has been modelled on the Victorian legislation, which defines the zone as 150 metres away from the boundary of the premises at which terminations are provided. That specific zone was tested by the High Court in *Clubb v Edwards* and was considered a critical factor in the High Court upholding its constitutional validity. The High Court concluded that a radius of 150 metres was appropriate and adequate to balance the purpose of the legislation. Also, it is a size that was strongly supported by the community and health services in WA during the course of consultation; 75.3 per cent of respondents who were in favour of safe access zones supported a minimum of 150 metres. Experience from other Australian jurisdictions supports a minimum distance of 150 metres from premises at which termination services are provided. Beyond 150 metres, it will be harder for demonstrators to distinguish patients and staff from a passer-by. In light of that, the government took the view that the 150-metre zone is the appropriate distance for safe

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access zones. We are of the view that a safe access zone less than 150 metres will not adequately protect patients and staff who access or leave premises where abortions are provided.

Hon Wilson Tucker asked about the possibility of reducing the size of safe access zones. That is not available under the bill before us today; it says 150 metres.

As I want all honourable members to better understand the terrible situations that some women have faced in Western Australia, I would like to finish with several statements that were made by those women and were recorded by Marie Stopes during the Lent period in 2018. They were: “Made the mistake of walking into carpark past them”; “Using very emotive language. You’re killing babies, Jesus hates sinners”; “Feel threatened”; “Disgusting the way they speak to people. As a patient was confronting and unnecessary”; and “Felt very judged”. Another person said that they felt very emotional because of the confronting posters of babies. Others said: “Both myself and my partner were affected by this and it was totally unacceptable”; “It was quite intimidating, especially in the way they approached me. I am here as a support person for my sister. I’m glad I was approached and not her”; “A protester put hand inside car and dropped a bag. I threw it back”; and “A protester paced onto the driveway. I had to brake and she waved her brochures at me while trying to tap on my window.” The honourable members for the North Metropolitan Region, Hon Dan Caddy and Hon Peter Collier, in their contributions, spoke about the power of words both written and oral. The statements of the women who I have quoted from reiterate that point and the effect that it has had on them.

This bill is ultimately about the freedom of patients to access legal medical services—that point has been made by a number of honourable members—at termination clinics, in a private manner and without harassment or intimidation. Again, can I thank all honourable members for their contributions thus far. I commend the bill to the house.

Division

Hon Alannah MacTiernan: Are we being photographed?

[Interruption from the gallery.]

Question put and a division taken, the Deputy President casting his vote with the ayes, with the following result —

Ayes (27)

Hon Martin Aldridge	Hon Donna Faragher	Hon Shelley Payne	Hon Matthew Swinbourn
Hon Dan Caddy	Hon Peter Foster	Hon Dr Brad Pettitt	Hon Dr Sally Talbot
Hon Sandra Carr	Hon Lorna Harper	Hon Stephen Pratt	Hon Wilson Tucker
Hon Peter Collier	Hon Alannah MacTiernan	Hon Martin Pritchard	Hon Dr Brian Walker
Hon Stephen Dawson	Hon Steve Martin	Hon Samantha Rowe	Hon Darren West
Hon Colin de Grussa	Hon Kyle McGinn	Hon Rosie Sahanna	Hon Pierre Yang (<i>Teller</i>)
Hon Sue Ellery	Hon Sophia Moermond	Hon Tjorn Sibma	

Noes (3)

Hon James Hayward	Hon Neil Thomson	Hon Nick Goiran (<i>Teller</i>)
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Question thus passed.

Bill read a second time.

The DEPUTY PRESIDENT: We will now move into committee. I just want to remind members of the public gallery that it is disorderly to communicate with the chamber and more so to photograph the chamber if indeed that occurred. We are in committee.

Committee

The Chair of Committees (Hon Martin Aldridge) in the chair; Hon Stephen Dawson (Minister for Mental Health) in charge of the bill.

Clause 1: Short title —

Hon NICK GOIRAN: During the second reading of the Public Health Amendment (Safe Access Zones) Bill 2021 on 24 June 2021, the second reading speech was delivered by the parliamentary secretary, Hon Kyle McGinn, on the minister’s behalf. On that day, he said, and I quote —

Except for a few minor changes, the bill before us is identical to the bill that was debated and passed by this house late last year.

What are the minor changes in this bill to the 2020 version?

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Hon STEPHEN DAWSON: Originally, the bill was titled “Public Health Amendment (Safe Access Zones) Bill 2020”. A number of places in the previous bill—I am happy to identify them for the member if I need to—make reference to 2020. That now reads 2021. For example, the short title of the bill previously read 2020, and that now reads 2021. If the member looks at the contents page of the previous bill—I am looking at page i—he will see that clause 5 was headed “Sections 306B and 306C inserted”. Proposed section 306C in the previous bill was headed, “Laying reports before House of Parliament not sitting”. Those are the changes—the change of date and the removal of proposed section 306C.

Hon NICK GOIRAN: I thank the minister. That is helpful, and to the extent that I have any further questions on that, I will leave that until such time as we get to clause 5. The remainder of the matters are self-explanatory and simply an update to reflect the fact that we are in a new calendar year after the election and the previous bill has lapsed.

There was reference during the second reading debate, and I think also in the second reading speech by the parliamentary secretary, and in other speeches, to a discussion paper. Other than the discussion paper, were any particular stakeholders consulted in the development of this bill?

Hon STEPHEN DAWSON: My advisers tell me that Western Australia Police Force was consulted, as were a range of other government departments, as part of the cabinet process. I am told that the main clinics offering termination services were also consulted, along with, as the member mentioned previously, people who were consulted as part of the discussion paper process. I am told we also engaged with other jurisdictions around the country.

Hon NICK GOIRAN: The minister made reference to government departments. Is the minister able to be more specific about which government departments were consulted?

Hon STEPHEN DAWSON: I am not able to provide that to the honourable member. They may well be cabinet-in-confidence. I am not even in a position to say the types of agencies. Certainly, as part of the cabinet process, as is the normal process, the cabinet submission is circulated to government agencies and they provide cabinet commentary on the bill.

Hon NICK GOIRAN: Is the list of government departments that were consulted, other than WAPOL, not able to be provided today because the information is not readily available or because it is secret information?

Hon STEPHEN DAWSON: It is not readily available, and we would have to check with the cabinet office as well about how appropriate it would be for us to release that information, and I cannot do that now.

Hon NICK GOIRAN: Would the minister be willing to undertake to see whether he would be able to provide that information at a later stage?

Hon STEPHEN DAWSON: We can certainly inquire with cabinet services about whether that is available.

Hon NICK GOIRAN: The minister mentioned that another group that was consulted on the preparation of this bill was the clinics. Is that the two clinics that have been referred to or are we talking about more than that?

Hon STEPHEN DAWSON: Yes, that is correct. That is Marie Stopes and Nanyara Medical Group.

Hon NICK GOIRAN: Is the minister in a position to advise us in what form that consultation with those two clinics took place? I am particularly interested to know whether there were any in-person meetings or whether the consultation was by way of written correspondence.

Hon STEPHEN DAWSON: I am told there were in-person conversations, and written correspondence, too.

Hon NICK GOIRAN: Is the written correspondence something that the minister is able to provide to the chamber?

Hon STEPHEN DAWSON: I am not in a position to give the member any correspondence.

Hon NICK GOIRAN: Minister, once again, is that because it is not readily available or because it is a secret document?

Hon STEPHEN DAWSON: I am told that it is not readily available, and I am not in a position to provide it. We would not ordinarily provide the correspondence between the government and stakeholders on a bill.

Hon WILSON TUCKER: The Australian Capital Territory has equivalent legislation, which includes a minimum of 50 metres, I believe, for the safe zone, and a head-of-power provision to grant distance extensions for specific clinics, depending on their individual circumstances. Did the government consider including in this bill a head-of-power provision similar to that in the ACT legislation?

Hon STEPHEN DAWSON: I am told that the Australian Capital Territory was the first jurisdiction in Australia to develop legislation on safe access zones. The thinking in jurisdictions has evolved since that time, so it was not considered. We modelled our legislation on the Victorian legislation. In my second reading reply, I spoke about the

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High Court decision, which found that a 150-metre distance—these are my words, not the decision—was essentially reasonable. That 150-metre decision was landed on based on the knowledge that the High Court found it reasonable.

Sitting suspended from 6.00 to 7.30 pm

Hon WILSON TUCKER: When the bill was being drafted, was legal advice sought to ensure that the distance of 150 metres would not violate freedom of speech rights?

Hon STEPHEN DAWSON: There was consultation across government about the 150-metre distance. The advice received was that it was best to go in line with the High Court decision. Earlier in the evening in answer to a question that Hon Wilson Tucker asked me about the Australian Capital Territory, I said that the ACT was the first jurisdiction to bring this legislation into being. I was subsequently advised during the break that that in fact is incorrect so I apologise for misleading the member and the chamber. The ACT was, in fact, the third jurisdiction to bring in this legislation.

A question was asked earlier about site-specific zones. We ruled out site-specific access zones, similar to the ACT, for a range of reasons but in particular because varying the physical perimeter around such premises on a case-by-case basis would make enforcement of the laws complex and impractical. The police would need to establish the particular size of the perimeter for each individual premise and that would obviously create a considerable workload for them. A range of both public and private facilities provide termination services in our state and therefore this would compound the enforcement complexity. WA's legislation provides a blanket approach to protect all premises at which terminations are provided, which is different from the approach taken by the ACT. The blanket approach makes the public interest that is sought to be protected abundantly clear; namely, the advancement of public health and the preservation and protection of the privacy and dignity of women accessing termination services. Having a system in which some services are protected whilst others are not could potentially dilute the public interest that will be protected by the legislation, the result being that a court may find that the legislation is not reasonably appropriate and adapted to the purpose sought to be protected. During the consultation process, it became clear that community and health services supported 150 metres as the most appropriate distance for safe access zones in WA.

Hon WILSON TUCKER: Given the blanket 150-metre rule for all abortion clinics, what would be the outcome if the 150-metre distance was deemed inadequate in protecting the privacy of staff and clinics?

Hon STEPHEN DAWSON: Honourable member, do you mind asking that again? We did not hear the beginning of the question.

Hon WILSON TUCKER: There is a blanket rule of 150 metres for clinics across the board. What would be the outcome if that 150 metres was not deemed adequate in protecting clinic staff and the women who attend those clinics?

Hon STEPHEN DAWSON: As I have indicated previously, there is no capacity in the bill before us to extend that perimeter. If such a thing were deemed in the future, the government at the time would need to bring legislation to the Parliament. I reiterate the point I made previously about the High Court decision on the Victorian and Tasmanian legislation and the fact that in that decision, a distance of 150 metres was deemed appropriate and reasonable.

Hon NICK GOIRAN: Minister, I would also like to ask questions about the 150-metre zone but I will do so under clause 4. I wanted to indicate that now so that when we get there, there is no confusion. I also want to pick up on the questions Hon Wilson Tucker has been asking about the head of power in the ACT. But before I do that, I want to go back to an earlier discussion we had about consultation with stakeholders. The minister indicated that five groups had been consulted in the preparation of this bill: the Western Australia Police Force and other government departments. We had a discussion about that and the minister was going to see whether he could find out some more information, which was not readily available at that stage. I take it there was no change to that during the dinner break.

Hon STEPHEN DAWSON: As the honourable member is aware, I aim to please and when I can get extra information, I am happy to provide it. I advise the member that the main stakeholders that were consulted as part of the work on the bill are internal and were the Western Australia Police, as I have indicated previously; the Department of Justice; the Better Regulation Unit in the Department of Treasury; the State-Solicitor's Office, the Parliamentary Counsel's Office; and the Minister for Women's Interests. In terms of which ministerial offices and other agencies were consulted, I do not have that information. The cabinet office has it and it was closed for the day. That is certainly what I have got. In terms of the 2020 final report, appendix 2 also lists the other organisations that provided submissions during the consultation process, in case the member has not seen that already.

Hon NICK GOIRAN: Minister, the list of those government departments—the Departments of Justice and Treasury, State Solicitor's Office, Parliamentary Counsel's Office and the office of the Minister for Women's Interests—is a non-exhaustive list at this stage and there are others but that information is not readily available at this point.

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Hon STEPHEN DAWSON: That is everybody that the agency consulted with. The cabinet process may have sent it to a number of other agencies, but we are not in a position to be able to advise the member on that tonight. The cabinet process involves the minister in conjunction with their agency suggesting which other agencies across government should have access to documents or have an opportunity to comment on documents, but that is not available tonight.

Hon NICK GOIRAN: There was some consultation with clinics in person and some written correspondence. Prior to the dinner break, the minister indicated that the written correspondence is not readily available and seemed to indicate that in any event it might not, or probably would not, be provided or something to that effect.

Hon Stephen Dawson: By way of interjection, if you don't mind, I will clarify. I am advised correspondence to or from a third party outside government would need that party to consent to the disclosure before we could make it available.

Hon NICK GOIRAN: Okay. Therefore, rather than pursue that particular written correspondence, is the government in a position to indicate the nature of the feedback provided in the written correspondence? Without actually providing it, effectively, what did people have to say that helped inform the development of this bill?

Hon STEPHEN DAWSON: I am told that the feedback from those agencies is summarised in the report. Subsequently, though, I am advised that after the election—as we embarked on the reintroduction of the legislation—the agency sought feedback from those organisations on whether the protests were still occurring. That is what the conversation was about.

Hon NICK GOIRAN: Did the clinics provide information that this continues to be a problem?

Hon STEPHEN DAWSON: I am advised that, yes, we were advised the protests were still occurring and specific incidents were taking place outside those two clinics.

Hon NICK GOIRAN: This question goes to a broader issue. Obviously, the government is relying on the word of these clinics; what system has the government implemented to ascertain the veracity of what these clinics are saying?

Hon STEPHEN DAWSON: The government's decision to bring forward this bill is not about what those agencies told us. We consulted on the issue. We conducted an inquiry and published a report. As a result of that report, the government took the course of action to bring forward a bill to Parliament. In the honourable member's contribution earlier, he alluded to some feedback he received from an external organisation that said something different. I, too, had a conversation in the last couple of days with somebody who goes to an accountant next door to one of those clinics. This woman, whom I trust deeply and sincerely, told me that she has on occasion been approached as she has driven up to that street. People have approached her and started to give her things and talk to her. It is only when she walks into the accountant's office that they walk away. Anecdotally, it is happening. Different people have different views about whether it is right or wrong, but, certainly, based on the consultation process we undertook, which sought feedback from a range of organisations and the public, we decided to bring forward a bill.

Hon NICK GOIRAN: This is helpful, minister. Certainly, I am not aware of anyone who disputes that people approach people. The situation the minister described sounds to me entirely plausible. I do not know the person the minister referred to and I accept that the minister trusts this person. The sequence of events that they described sounds entirely consistent with everything that I know of these matters. One would think that approaching a person is not offensive —

Hon Stephen Dawson: I put it to you that that depends on the person.

Hon NICK GOIRAN: Let us explore that a little bit. When the minister or I approach each other, I would like to think that most of the time we are not offended by that approach. Of course, in this situation we are talking about a very different set of circumstances. As I think all members have recognised in their contributions to this debate, it is also in very sensitive circumstances. What information has the government relied upon, whether it be in the discussion paper or in the subsequent consultation with stakeholders, that gives those approaching people some sort of character? Is there a particular type of behaviour that accompanies approaching people that is considered to be the mischief that the government wishes to fix at this point?

I want to give an example, minister. Before I do so, I emphasise—noting that people are keenly watching the debate and that in this particular debate I find that, unlike what has happened during the course of the debate in the chamber today, some people external to Parliament have a tremendous capacity to blow things out of proportion—that the example I am about to give is in no way intended to be a like-for-like example. It is intended to describe what I mean by approaching somebody and whether that approach is offensive. I will use the example of handing out how-to-vote cards. No doubt the minister and I will have done that on many occasions this year, particularly in the lead-up to March. When we do that, we approach people. Sometimes we might take steps towards them; other times we simply stand and people come towards us. The minister, like me, has been involved in many election campaigns

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and I am sure that, like me, he has also witnessed some individuals—they may be from our party; they may be from other parties—who behave in a fashion that I would describe as unacceptable. In fact, I remember working in the Rockingham area in the lead-up to the election and one of our volunteers was spat upon. I know that every member in this chamber would condemn the spitter for their actions, and rightly so. There are certain types of conduct that we all agree is unacceptable. In this particular context, is there information that the government has verified to confirm the character of the approaches that have been made?

Hon STEPHEN DAWSON: I draw the honourable member's attention to page 13 of the report *Safe access zones—A proposal for reform in Western Australia*.

Hon Nick Goiran: Minister, just by way of interjection, is this what is generally described as the “discussion paper”?

Hon STEPHEN DAWSON: No, it is the report—the final report.

Hon Nick Goiran: So this is a report subsequent to the discussion paper?

Hon STEPHEN DAWSON: It is, yes. On page 13 of that report is a tabled titled “Summary of submissions”. The block of text is titled “Impact on health and wellbeing”. The document states —

Approximately 50 submissions provided examples from patients and staff regarding interactions with demonstrators outside the clinics.

Hon Nick Goiran: Minister, I am sorry to interrupt, but did you mention a page number?

Hon STEPHEN DAWSON: It is page 13.

Hon Nick Goiran: Because, for whatever reason, the version of the report that I have here has no page numbers. I do not know whether that is because my photocopier is not as sophisticated as yours.

Hon STEPHEN DAWSON: It may well be.

Hon Nick Goiran: In order to progress things, would it be possible for the minister to table that report? We can make copies available.

Hon STEPHEN DAWSON: Presumably, this is a copy.

Hon Nick Goiran: Answer the question first.

Hon STEPHEN DAWSON: I will not table it yet because I want to read from it. I will quote the document again. It states —

Approximately 50 submissions provided examples from patients and staff regarding interactions with demonstrators outside the clinics. Of these submissions, the majority described the experience as ‘traumatic, stressful, overwhelming, awful, horrible, painful, hard, scary, hurtful, confronting, upsetting, frightening, horrifying, putting off, disturbing and distressing’;

I turn now to the next page, page 14, which states —

Approximately 50 submissions commented that demonstrators act as a barrier to access to safe abortion services. Approximately 50 submissions made comments to the effect that a health service is not an appropriate place to protest or that demonstrators could protest in other places outside the safe access zones.

That is an analysis of submissions in the report. In the example that the member gave about elections and election days, I understand that people do get distressed and offended. I suggest that it is open for people to write to the minister and express a view about that. I spent a couple of years as Minister for Electoral Affairs and I never had any correspondence from anybody suggesting that the process was so painful, hurtful and awful that we should stop handing out how-to-vote cards and having people there. However, if people feel like that, it would be open for them to write to the minister and, indeed, politicians, to ask for that process to be stopped. But these comments were made as part of submissions into the process in which people said that they felt hurt et cetera when interacting with demonstrators outside these clinics. It has been pointed out that this is not phenomena that solely happens in Western Australia. Examples were given of other jurisdictions in Australia and, indeed, around the world where this stuff has happened.

Hon NICK GOIRAN: Thank you, minister, for that response, which I found quite helpful. I reiterate that my example was not intended to be like for like. I know the minister recognises that as well; I was merely talking about the type of behaviour that we all condemn.

Hon STEPHEN DAWSON: Deputy Chair, if I may, the honourable member asked if I would table a copy of the report. I am happy to do so now so that the honourable member can have a copy with page numbers on it to quote from. I will provide that.

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[See paper [446](#).]

Hon NICK GOIRAN: Thank you, minister, for tabling that document. The minister helpfully referred to some information and submissions. The summary of submissions the minister referred to are under table 2, which is entitled “Submissions in favour of the proposal”. The minister referred to various extracts. The report says that approximately 50 submissions have said this and approximately 50 submissions have said that. My question is: what process did the government embark upon to ascertain the veracity of those submissions? I accept that the government received those submissions. For example, one of the paragraphs states —

Approximately 50 submissions provided examples from patients and staff regarding interactions with demonstrators outside the clinics.

I accept that the government received approximately 50 submissions. Just as an aside, it is not clear to me why the government or the writers of the report needed to consistently refer to “approximately 50 submissions”. I do not know why a document like this could not have been precise and said exactly how many submissions were received. Nevertheless, let us take it at face value that approximately 50 submissions were received and they said what this report says they said. But what process was then embarked upon, in the government’s mind, to confirm the veracity of what was alleged?

Hon STEPHEN DAWSON: The issue has been in the media a number of times. It has been reported that these altercations have taken place outside these services. The police have confirmed issues have arisen outside these areas, albeit I made the point—as the honourable member made the point—that no-one was charged as a result of the current legislation. But people have indicated that these types of altercations have been happening. Obviously, a range of organisations submitted to the consultation process, and the outcome of the consultation process shows that 2 927 of all submissions were in favour of introducing safe access zones around premises at which abortion services are provided in Western Australia.

Hon NICK GOIRAN: The minister indicated there has been media about this. Is that media about Western Australian incidents? I would be certainly happy to concede without any further debate that there has been media coverage regarding international incidents and incidents in the eastern states, but, of course, they are not the concern of this Parliament. For the time being we are concerned about Western Australian matters. If it is the government’s contention that the submissions are supported by Western Australian media reporting, are we in a position to identify any of that reporting?

Hon STEPHEN DAWSON: I am told, yes, there are stories that have been in Western Australia; they are not international stories. The fact that this issue has been happening here has been published. An adviser has brought to my attention an ABC news story from 25 March 2019 in which a woman talks about how protesters compounded her feelings of grief and loss after her abortion. It refers to her “exiting a Perth abortion clinic, teary and in pain”, and how “she remembers being called a ‘murderer’ by pro-life protesters waiting outside”. That report by Rhiannon Shine was published on 25 March 2019.

The submissions that we received were not made public, but I have seen at least one in which a submitter talked about people who were trying to take her car licence plate number and take photographs of her outside the clinic. I think that should not happen. Contributions made by quite a few here tonight acknowledge that people should be able to access medical services without other people intervening or trying to cause them to do something else. The matter has been reported in the media. It is one issue, but an issue that we have been aware of for some time. We made a decision after we embarked on a process. There was proper consultation and a report was put out that recommended legislation was the best way to deal with the issue.

Hon NICK GOIRAN: The minister will recall that in my second reading contribution I went out of my way on at least one occasion to emphasise a very important principle; that is, I believe—I think this is what the minister is saying as well—that every Western Australian should be able to go about their lawful business unimpeded by other Western Australians. Nothing has changed since I said that earlier. At least in that regard I think we are of one mind. The minister mentioned that one of the incidents discussed was taking photographs. Imagine that this bill did not pass tonight. Are there any laws at the moment in Western Australia that enable police or any other investigative body to pursue a complaint of harassment or intimidation and even possibly prosecute people for such things? Do we have any laws of that nature in Western Australia?

Hon STEPHEN DAWSON: The short answer is probably. Hon Nick Goiran probably knows better than me, given his legal background. I made a note of his contribution earlier on and I wrote down “everyone should be able to go about their lawful business without being abused”. That is what I wrote down, but the member might have used a different word. The government has made a decision that this bill before us now is the correct course of action to deal with complaints raised by people trying to access legal medical services. This is the course of action, so I cannot comment. The advisers here are health advisers and not from other agencies. They are advisers

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appropriate to the bill before us, so I am not able to canvass other laws that exist on the statute book. I can just talk about legislation for us this evening. The member might have a view that a different course of action should have been taken with a different piece of legislation. If the chamber decides this evening, or indeed in the next couple of days, not to pass this, the government would obviously have to go back to the drawing board and look at what else it might do to deal with the issue people are facing outside these termination clinics. However, this bill is before us now, so until the chamber has voted and had its final say, I am not going to canvass any other options or opportunities.

Hon MARTIN ALDRIDGE: In the course of my second reading contribution I mentioned a number of 45, which was the number of locations that will be impacted by this bill that I was advised of in my 2020 briefing. Obviously, a lot of discussion has occurred about the two private clinics that deal with the majority of abortions in Western Australia. Is the minister in a position to confirm whether 45 is still the current number and whether he has a list he can provide of those 45 locations?

Hon STEPHEN DAWSON: I am advised that the number of WA premises that notify abortion to the Department of Health varies each year, so that figure may well have been correct at the time it was disclosed to the member. However, I am told that during that same year there was a time when the legislation would have applied to 50 premises. There were 50 premises that notified the Department of Health that they performed abortions. They included 15 hospitals, 34 general practices and one other place. I am not sure what the other place was; I have not got that information before me. I do not have an exhaustive list of where they are. To be honest, I am not sure whether it is in the best interests to table a list of the 34 general practitioners around the state who may offer these services to their clients, because it may have an adverse impact on those services.

Hon MARTIN ALDRIDGE: On the minister's last comment, I contemplated that same problem, but then I resigned myself to the fact that surely if somebody is going to be referred to services, it means they are not secret but publicly available health services, so there would not necessarily be any secrecy about where they could be accessed.

Hon Stephen Dawson: Certainly in terms of the 15 hospitals. I do not have a list, but it is probably easier to do. Again, I do not have a list of the general practitioners, but they are probably in a different category to the hospitals.

Hon MARTIN ALDRIDGE: This bill is obviously going to bring in a prohibited-behaviour regime. It is going to restrict people behaving in certain ways, and also from using recording devices and distributing recordings in certain circumstances, for which somebody will face a penalty of a fine of up to \$12 000 and 12 months' imprisonment. The broad application of the boundary of within 150 metres of a premises is quite a radius in a suburban or urban context if we think about. How would one know where these locations are and where a behaviour may or may not be captured by this legislation once it receives assent?

Hon STEPHEN DAWSON: My advice is that in 2018, which is the date of the last lot of information I have, a total of 7 816 abortions were notified to the Department of Health, with 83 per cent of those taking place at two clinics, so 17 per cent were taken elsewhere. We have no evidence to suggest that there are protests anywhere else other than outside those two centres—Nanyara Medical Group and the Marie Stopes centre in Midland. It is not happening elsewhere; it is happening only at those two places. The member asked a good question, but it is not a problem elsewhere; it is a problem only at these two places.

Hon MARTIN ALDRIDGE: I accept that, minister. I am just contemplating what would happen. The 34 general practitioners' offices could be in shopping centres or retail areas. I am just wondering when a general practitioner's office becomes premises at which abortions are provided, and when is it not? Is that assessed on a calendar basis, based on the notifications that the minister was talking about, so if a GP office does not engage in any terminations in a calendar year, then it is no longer premises for the purposes of this bill? I would like to understand, because this could be an issue that arises perhaps unintentionally, whereby somebody might protest within 150 metres of a hospital or one of these GP offices perhaps unknowingly. I think that the minister might well say that these are questions for the implementation phase of the bill, but I think we need to have some understanding of the practical application at this point.

Hon STEPHEN DAWSON: Sorry; this is a complicated issue, honourable member. In terms of when, the state finds out after the fact. I understand that the medication that is used is fairly tightly regulated, and general practitioners need to be registered to be able to access the medication to use in the terminations. I will reiterate the point that the list has never been made public, and a similar list has not been made public in any other jurisdiction, either. There have been no reported cases of these types of protests happening outside random GP clinics in Western Australia. If there were a protest outside a random GP clinic at some stage, the police would obviously look into the matter, would investigate and determine whether termination services were being provided by a particular GP, and would then at that stage decide to take a course of action. They may well decide to give a warning to the person who was protesting, if they knew who that person was, but it would be up to the police to decide how to deal with the issue.

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It has not been an issue thus far in Western Australia. As I indicated, those protests happen outside the two clinics that I have previously mentioned.

Hon MARTIN ALDRIDGE: I appreciate that point. The problem that I see here is the unintended consequence. I think it is twofold. The first issue is how the protesters or people wishing to engage in the prohibited behaviour know where the no-go zones are and are not. The other issue is how these activations happen. How do we avoid entrapping somebody, or avoid somebody unknowingly committing an offence, remembering that ignorance is no defence in law? If I am in the Hay Street Mall wanting people to sign my petition for abortion reform in Western Australia and I do not know that there is a general practice within 150 metres of my location on Hay Street Mall that practices medical abortions, I will have committed an offence under this future act.

The minister's response to me does not give me much confidence around when a place will and will not be designated a premises for the purposes of this act. I understand that the problem will be resolved at the two clinics in question, and I agree. My issue is with the other 48 premises. The conduct and behaviour of individuals today will not necessarily be the same into the future. We are looking at up to 50 premises here, which will change. It is still not clear to me exactly what the trigger would be for the purposes of this bill. That matter is probably better considered when we look at clause 4 and particularly the terms that are used, because I think the minister said that a general practitioner who wants to practise medical abortions—that is, non-surgical abortions—requires a higher level of registration or approval than an ordinary general practitioner, so that registration status will be the point at which that general practice becomes a premises subject to this bill. I think I am going to leave that as a comment for now until we get to that clause later in our discussion of the bill, minister, but it does concern me in both making sure that we do not entrap people unknowingly, but that we also make it clear to people who are going to engage in prohibited behaviours that they do so outside of the potentially 50 no-go zones that this bill creates.

I want to ask about the current regulatory regime and why it is deficient in the context of the need for this new regulatory regime. The minister addressed this issue in his second reading reply. He said that the current regulatory framework does not adequately address the full range of behaviours. I agree with him on that point. He went on to say that police are often not there when the behaviour is expressed and that often witnesses are not prepared to make a complaint or give evidence in those circumstances. I am not quite sure how those last two issues are resolvable by this bill. I imagine that if someone is to be charged with an offence under this regime, those two latter issues will remain. Although this may be a better regulatory approach, actually having somebody make a complaint and be willing to be a witness to that complaint is not necessarily resolved by this bill, in my mind. One of the questions I raised in the second reading debate was: if we accept that this behaviour ought to be prohibited, why is Western Australia Police Force issuing 40 permits a year for this behaviour to occur within the vicinity of these two private practices?

Hon STEPHEN DAWSON: They are doing it because they legally can. We do not have the protections in the current legislation that we will have if the bill before us is passed. Quite simply, somebody can apply for a permit now and get it. I think it was the member in his contribution earlier who spoke about some of the limitations or restrictions around the permit and the fact that it can be for a period of time and for up to 30 people. That happens now under the existing legislation. That will not be able to happen under this new legislation.

Hon MARTIN ALDRIDGE: I was trying to stretch my memory back to the second reading debate when I talked about the subjective versus the objective. I think I was advised in 2020 that if the police were to make a judgement that this sort of behaviour ought not to be happening and therefore they would not issue permits, that may be subject to some sort of external review. Perhaps it would be alleged that it was discriminatory or a breach of somebody's freedom of speech or political expression. I got the impression—I want the minister to clarify whether my recollection is sound—that the police were reluctant to make judgements about the types of things that were happening. Therefore, I was trying to understand what assessments the police make when approving a permit when the police force currently receives an application under the obscure act that I mentioned earlier, the Public Order in Streets Act 1984. Are they purely public safety considerations, such as whether the conduct of the protest would obstruct traffic and potentially put protesters' personal safety at risk, or are other considerations, such as policy considerations, either considered or not considered in the context of that permit process?

Hon STEPHEN DAWSON: The short answer is that we do not know. The police do that. The information that I have been provided—the police have confirmed this—suggests that no permits have been refused. The criteria to refuse the granting of a permit for a public meeting or procession under the Public Order in Streets Act 1984 is limited and does not seem to capture some of the unique behaviours identified outside the main abortion clinics in WA.

Hon MARTIN ALDRIDGE: Given that the bill before us amends only the Public Health Act—it does not amend or repeal the Public Order in Streets Act 1984—how will these two pieces of legislation interact with one another? I assume that a permit will still be required for a gathering of, I think, it is three or more people in a public place.

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I assume that if this bill passes, it will be grounds for refusal of a permit, if a permit application was to contravene the amended Public Health Act.

Hon STEPHEN DAWSON: In relation to the issuing of those permits under the Public Order in Streets Act 1984, the police would need to be confident that the person seeking to access the permit was not seeking to protest outside one of these services and beset, harass, intimidate, interfere with, threaten, hinder, obstruct or impede a person accessing or attempting to access or leave the premises at which abortions are provided.

Hon MARTIN ALDRIDGE: I accept that. This bill is limited to the abortion services and protests and protesters relating to that. It does not prevent other protests from happening within the safe access zone that are not related. My issue, more so particularly since my earlier questions around the 50 premises, is whether the police officers responsible for the issuing of permits under the Public Order in Streets Act 1984 will have live access, for want of a better term, to the list of premises to which this act will apply and which we do not have access to now. I assume that will be a key piece of information that a decision-maker in the WA Police Force will need to have to say they have just received an application for a prayer vigil in a certain street in a certain suburb and the decision-maker needs to satisfy himself that the protest will not occur within a safe access zone. Keep in mind that the nature of some protests is that they are not stationary. Sometimes protests are mobile; they may involve a walk. Will that information be available to the WA police, and will the decision-maker say that the nature and location of the protest will be a breach under the amended Public Health Act and that therefore the permit will be denied? Is that grounds for refusal under the Public Order in Streets Act 1984? Remembering that the minister said there were limited grounds for refusing a permit, is one of those grounds that issuing the permit will offend another statutory law?

Hon STEPHEN DAWSON: Sharing a list of premises with the police is something that has been considered and is still being considered. That will happen before the bill commences. It will take into consideration any operational needs identified by the Western Australia Police Force. I am advised that police are already aware of the clinics where protests have been occurring to date. The approach we are taking here is similar to the approach that was taken by other states, particularly Victoria, when they implemented their legislation. The police do not have to take this bill into consideration in issuing their permits. However, this bill states that it is an offence to engage in prohibited behaviour within safe access zones. It is likely that the police would look at and understand this bill. In issuing a permit, they would assess it properly and consider where the protest was taking place: "Is it taking place outside one of the clinics that provide abortions? If that's so, there are these penalties for doing various things." I draw the member's attention to page 4 the bill and proposed section 202P, which lists that —

- (1) A person must not engage in prohibited behaviour within a safe access zone.

There is a penalty. It states that "For the purposes of subsection (1), a person engages in prohibited behaviour if" they do certain things or if they communicate by any means in relation to abortion in a manner that is —

- (i) able to be seen or heard by a person accessing, attempting to access or leaving premises at which abortions are provided; and
- (ii) reasonably likely to cause distress or anxiety;

The police have their process. We have this bill. The police would likely take this bill into consideration.

Hon MARTIN ALDRIDGE: I am nearly finished on this line of questioning. I think we have a problem with this issue. As the minister said, there are limited grounds for police to refuse a permit under the Public Order in Streets Act 1984. I agree with him. As I said in my contribution to the second reading debate, I read the act for the first time this morning and there are limited grounds. That is why it is not an effective framework for managing what is termed in this bill as "prohibited behaviours". I agree. The problem we have is that section 7(2) of the Public Order in Streets Act 1984 states —

The Commissioner or an authorised officer shall not refuse to grant a permit —

I emphasise, "shall not refuse" —

for a public meeting or procession in respect of which notice has been given unless he has reasonable ground for apprehending that the proposed public meeting or procession may —

- (a) occasion serious public disorder, or damage to public or private property;
- (b) create a public nuisance;
- (c) give rise in any street to an obstruction that is too great or too prolonged in the circumstances; or
- (d) place the safety of any person in jeopardy.

They are the limited grounds on which police can refuse a permit. My concern is that I think this bill should have also amended the Public Order in Streets Act 1984 to make a ground of refusal if a permit was to offend the Public Health

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Amendment (Safe Access Zones) Act. The reason is that people are going to apply to the Western Australia Police Force for a permit to protest, effectively. According to the Public Order in Streets Act, unless it meets one of those four categories in section 7(2), there are no grounds to refuse a permit. It says that the commissioner “shall not refuse”. We are going to have a situation in which the Commissioner of Police will potentially be issuing a permit to protest, which is clearly an offence under the bill before us, but he will have to issue that permit because he has no right to refuse it. Somebody will ring the police and say that they believe an offence is being committed under the Public Health Amendment (Safe Access Zones) Act. When the police turn up, the protesters will have a permit from the WA police saying that they have a right to protest. I think this is an oversight, minister. I would like the minister to contemplate the scenario I have just envisioned and ask whether the government agrees that it is a problem and whether we should, as part of this bill, make a very simple amendment to the Public Order in Streets Act 1984.

Hon STEPHEN DAWSON: I am advised that the police have been engaged in the legislative process to put together this legislation. Not the police, the State Solicitor’s Office, the Parliamentary Counsel’s Office or anybody else has suggested that we would need to make an amendment to the Public Order in Streets Act.

Hon Martin Aldridge: But did they contemplate that problem?

Hon STEPHEN DAWSON: I cannot comment on what other agencies contemplated as part of their decision-making process, but I can say that they were engaged in the process, either in drafting legislation or they were consulted. The issue has not been raised. I am further advised that the issue has not been raised in other jurisdictions either. We believe that the legislation before us will do what it needs to do.

Hon MARTIN ALDRIDGE: I appreciate that has not been raised; that is what worries me. It worries me that we will potentially be passing, tonight, an inferior piece of legislation.

Hon STEPHEN DAWSON: Section 7 of the Public Order in Streets Act 1984, “Permits” reads —

- (2) The Commissioner or an authorised officer shall not refuse to grant a permit for a public meeting or procession in respect of which notice has been given unless he has reasonable ground for apprehending that the proposed public meeting or procession may —
 - (a) occasion serious public disorder, or damage to public or private property;
 - (b) create a public nuisance;

My advisers tell me that if there were a protest outside one of these clinics and people were putting things in people’s faces or providing material that is offensive, that would cause a public nuisance, so that would be captured by this provision.

Hon MARTIN ALDRIDGE: The minister is clutching at straws now; he cannot have it both ways. I have accepted the minister’s argument that the Public Order in Streets Act 1984 is an inferior regulatory framework for dealing with these prohibited behaviours. I cannot then accept the minister’s argument that the Western Australia Police Force will, all of a sudden, stop issuing 40 permits a year because these prohibited behaviours will create a public nuisance. If they are a public nuisance now, they will be a public nuisance after the bill passes. The government is setting up a situation that it has not contemplated. The police will be required to issue a permit on 40 occasions a year because, as the minister said, they have no ability to refuse because there is a limited right to refusal in the Public Order in Streets Act 1984; therefore, they have to grant 40 permits. The minister cannot then say, “It’s a public nuisance and we’re going to stop issuing the permits.” If the bill does not pass this evening, the minister ought to get some urgent advice from the Solicitor-General about this specific matter or at least ascertain whether this problem was contemplated. The minister knows my position on the bill. I do not want to pass an inferior piece of legislation when a relatively simple amendment—it will not be that simple because we will have to amend the long title and clause 1, but we can do so—could resolve this matter by introducing to section 7(2) of the Public Order in Streets Act 1984 an immediate right to refuse a permit if issuing a permit would likely contravene the Public Health Amendment (Safe Access Zones) Act 2021.

Hon STEPHEN DAWSON: I say at the outset that the government will not entertain that change. I draw the member’s attention to the purpose of the bill. Under proposed part 12C, proposed section 202N, “Purpose”, states —

The purpose of this Part is —

- (a) to provide for safe access zones around premises at which abortions are provided so as to protect the safety and wellbeing, and respect the privacy and dignity, of —
 - (i) persons accessing the services provided at those premises; and
 - (ii) employees and other persons who need to access those premises in the course of their duties and responsibilities;

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Proposed section 202P on page 4 of the bill makes it clear that in relation to abortion, it is an offence to communicate by any means 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 stress or anxiety. This sets out essentially what is offensive, which will be captured by the bill.

Hon MARTIN ALDRIDGE: I agree, minister; it sets out an offence under the Public Health Amendment (Safe Access Zones) Bill 2021. That is not my issue. My issue is that according to the minister's argument, the police will have to issue a permit to protest under the Public Order in Streets Act 1984 because it is not the right of refusal of a permit that will create an offence in the bill that we are considering now. I understand the minister's arguments about the bill. The deficiency that I think is in the bill, the issue, is the interoperability between the Public Health Act 2016 and the Public Order in Streets Act 1984. The Public Health Act says, "You cannot do this", yet the Public Order in Streets Act says, "We're going to give you a permit to do it." If the minister does not accept that that is a problem, we will have to differ on that point of view, but I urge the government to seek some advice about this overnight and provide a clear explanation to the chamber about how these two pieces of state law will operate with one another.

Hon STEPHEN DAWSON: Member, I am not taking up your offer, thank you; we will have to agree to disagree. I make the point again that the Public Order in Streets Act refers to creating a public nuisance. The bill before us tonight gives the police confidence that should people be outside these facilities protesting, being offensive, harassing people and giving people offensive documents with pictures of babies on them or whatever, they are allowed to use section 7(1)(b) of the Public Order in Streets Act and not issue a permit.

Hon NICK GOIRAN: I have a number of matters arising at this time. In response to Hon Martin Aldridge, the minister mentioned that the WA Police Force has advised that it has never refused one of these applications under the Public Order in Streets Act 1984. What is the source of that information? The minister indicated earlier that police advisers are not available. Where do we get that information from?

Hon STEPHEN DAWSON: The Department of Health has been advised by WA police that WA police has checked its records but could not see any evidence of a permit having been refused.

Hon NICK GOIRAN: I will say at this point that that is consistent with what I also understand of this matter but with this caveat. Does the minister have information about whether the Western Australia Police Force has failed to respond to an application as distinct from refused?

Hon STEPHEN DAWSON: No, we do not have that information.

Hon NICK GOIRAN: For the record, I understand that in recent times, the Western Australia Police Force has failed to respond. There is an argument that there has been a constructive refusal. Although I accept, certainly on the information that I have been provided, that there has never been an outright refusal, I specify at this time that the information I have been provided in recent times is that Western Australian police have simply failed to respond to an application.

The minister indicated that the Department of Health has been in contact with the WA Police Force and it has checked its records and says that police have never refused. How readily available is information of this sort; that is, when was the last time an application was received by WA police?

Hon STEPHEN DAWSON: With the greatest respect, honourable member, this is not estimates or another parliamentary process. The issuing of permits falls under another piece of legislation; it is not in the bill before us tonight. With the greatest respect, I do not think it is appropriate to seek that information on tangential issues while canvassing the bill before us. I do not have it. I am not sure. The member knows that I try to be helpful in these debates and when appropriate seek to find other information. I do not think that information is germane to the bill before us tonight. It will certainly not change the member's view and I do not believe it will change the view of any other member who is here tonight because it is not in the bill before us.

Hon NICK GOIRAN: That may well be the case, minister, but I make a couple of points. I am not the one who told the house that WA police have never refused that information.

Hon Stephen Dawson: I am, honourable member, but it was certainly asked of me.

Hon NICK GOIRAN: The minister is the person who said that; that is right. He provided that information on the basis of the best information available to him, which I recognise. I am simply identifying that I understand on information provided to me that that is not correct in the sense of a constructive refusal and in the sense of failure to respond. That is why I took up the issue; it was not originally one of the questions I had pursued. In response to the suggestion by the minister that it is not germane to the bill, we have a regulatory framework in Western Australia that involves the Public Order in Streets Act 1984. The contention by the government is that that regulatory framework is inadequate and insufficient to address the mischief that the government would like to see fixed. One of the ways in which that can be done is by way of this bill. But at the heart of it is the question: is there a problem at first

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instance? In order to know that, we need to be able to ask some constructive questions around the Public Order in Streets Act 1984. I accept that the minister is not in a position tonight to be able to assist us with that, but I refute the contention that it is not germane to the issue. If it is not germane to the issue, why are we here? If there is no problem with the Public Order in Streets Act 1984—I do not think there is a problem; the government says there is a problem and the onus is on it to provide information to support its contention—there is no need for this bill. Apparently, the government says this bill is necessary.

That said, I heard the minister indicate earlier to Hon Martin Aldridge that it was the government's intention, as I understand it, to advise the Western Australia Police Force on the locations. I want to take up two issues here. There was a discussion between the minister and the honourable member of a figure of 45 and then one of 50. A breakdown was then provided of 15 hospitals, 35 general practices and one other. Is there potentially a way that we could be supplied with a document? I recognise that the minister has already indicated that he cannot supply—not necessarily cannot supply, but at this point is not inclined to provide—a list of the 35 general practices. I accept the reason the minister indicated for that. Irrespective of whether I agree with it, that is where we are at. Is there some form of document that can be provided to the house that sets out the actual number and perhaps the classes or categories that make up the number of locations?

Hon STEPHEN DAWSON: On the conversation I had with Hon Martin Aldridge earlier, I advised the chamber that if the legislation had been in force in 2020, it would have applied to 50 premises that notified the Department of Health that they perform abortions. The honourable member had recalled a figure of, I think, 40, which was the previous figure. I am further advised that the numbers can change from year to year. In fact, in 2019, there were 46 premises that provided the services. I also advised that there were 15 hospitals and 34 general practices where termination services were provided and one other. I am not clear what that “one other” is. I am sure we can investigate that. In terms of a list, though, I am not going to provide a list of the general practices where terminations are provided.

I will also go back to the issue and the fact that 80 per cent of terminations provided two services —

Hon Nick Goiran: Are the two clinics part of the 35 general practices or is one of them one half, and, obviously, there are the 15 hospitals.

Hon STEPHEN DAWSON: We can check that. It may not be.

Hon Nick Goiran: It's not urgent.

Hon STEPHEN DAWSON: We can check what is captured by that. The hospitals are probably an easy list. The member could guess which hospitals provide this service currently. But I do not want to create another problem from this debate by providing a list when I do not have one.

Hon NICK GOIRAN: There is no problem there. For the purposes of this question, let us say that there are approximately 50 locations. I accept that it can change for the reasons that the minister has just identified. The minister mentioned to Hon Martin Aldridge that it was the intention of government, as I heard it, that the Western Australia Police Force would be advised of those locations. If that were to occur, WA Police would have to be provided with some form of list. That is not what I am seeking at this time. The minister mentioned that the intention was to do so before the bill commences. I ask the minister to take further advice about that because, as I understand it, the intention is that the bill will commence on the day after assent. Is it really the case that we are intending to advise police of the locations as quickly as this week?

Hon STEPHEN DAWSON: If I can just be clear, the police have already been advised of the facilities where protests take place. That has happened. Whether a further list can be provided is under active consideration at the moment. There have not been protests outside any of these places so far, so it is a question of whether a list needs to be provided given that it has not been an issue.

Hon NICK GOIRAN: In a sense, it is a little pointless to say that the Western Australia Police Force has been advised of the location of the two clinics because, of course, we recognise that WA police are the ones issuing the penalties where the protests are taking place. It follows that it is already aware and has been aware for quite some time about that. With regard to the consultation that has occurred with WA police, can any document be provided to the house that summarises or provides some information on what the WA police has advised the authors of this bill? The minister indicated five categories of stakeholders were consulted in the construction and drafting and preparation of this bill. One of them was the Western Australia Police Force. What has it said to the government that has assisted in the construction of this bill? Can that be provided in documentary form?

Hon STEPHEN DAWSON: Unfortunately, member, it cannot. Any engagement with government agencies as part of this process is captured by cabinet-in-confidence rules, so I cannot provide a document. I will check whether a submission was made as part of the process so that I can bring it to the member's attention. Hold that thought for a second.

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I am trying to tease this out, but I think the honourable member is looking for a document about comments that WA police made about the substance of the bill or, indeed, how the bill was constructed. No, I do not have that information. My advisers have again brought to my attention *Safe access zones—A proposal for reform in Western Australia: Report 2020* and page 20, which refers to the police providing information on breaches of permits and giving the Department of Health details of police attendance and tasks and offences recorded at the two facilities. I bring that to the member's attention, but if he is asking for a submission from the police as part of the process, I do not have that and it would be captured by cabinet-in-confidence.

Hon NICK GOIRAN: For example, page 20 refers to “WA Police gave DOH details of 75 police attendance tasks”. The Department of Health has that in its possession. Can that be tabled?

Hon STEPHEN DAWSON: We are not in a position to share the correspondence with the honourable member. What has been shared is the interaction with police, and in this document it lists the numbers, but I cannot go into any further detail than that.

Hon NICK GOIRAN: The reason I ask is that following on from that, there is specific reference to —

...14 offences recorded at Marie Stopes WA clinics and Nanyara Medical Group between 2014 and 2019.

That just seems potentially inconsistent with an answer that was provided earlier that there have been no charges laid under section 9 of the Public Order in Streets Act 1984. What was the nature of these 14 offences?

Hon STEPHEN DAWSON: I can tell the member the types of things that were deemed offences. They were things such as public disorder, disturbance of the peace and assault. However, the member is correct in pointing out, as I have previously, that there was no charge as a result. The police talk about them as offences, but no-one was brought to charge as a result of the behaviour at the time. The next sentence states —

It was noted that some of these tasks may not be related to demonstrator behaviour.

That is a further qualification. It is kind of unusual and difficult to understand; however, the member is correct: there have been no charges laid as a result of the offending behaviour or “tasks”, if we are using that term.

Hon NICK GOIRAN: It is really peculiar, minister, because it then goes on to state —

The number of tasks recorded —

That, of course, is in reference to the 75 tasks —

is also higher than the number of offences recorded; —

Which is, of course, a reference to the 14 offences —

where no criminal activity is uncovered, the incident may be resolved without an offence being recorded.

I read that to mean that the 14 offences are ones for which criminal activity has been uncovered, and the difference between the 75 and the 14 is when criminal activity has not been uncovered. The Department of Health has this information, because the document states that the Western Australia Police Force gave the Department of Health details of this information. I accept that we cannot bring forth —

Hon Stephen Dawson: Just by way of interjection, what police gave Health was a chart, essentially, with numbers on it. There was no detail listed about specific cases or anything, so it is kind of high-level stuff—what they term in this document as an “offence”, and those are the things I alluded to earlier on: public disorder, disturbance of the peace and assault. However, we have both canvassed the fact that there were no charges laid as a result, so it is obviously a case of terminology that the police use, but they did not actually charge someone as a result of that offence.

Hon NICK GOIRAN: Yes. Further to that, is this chart available?

Hon STEPHEN DAWSON: No, it is not. It was provided to the agency in confidence, knowing that some of the numbers in it could be put into this document, but it is not available publicly. As we know from this place, ordinarily—I think there were some questions in question time today—the operational detail of the Western Australia Police Force is not disclosed to Parliament, but the high-level stuff often is.

Hon NICK GOIRAN: Reference is then made, of course, to the capacity of police to issue move-on notices, or what is referred to as a move-on order. Does the Department of Health have at its disposal information from the Western Australia Police Force on the extent to which move-on orders have been provided?

Hon STEPHEN DAWSON: We do not have the granular detail to answer the member's question. I am advised, however, that DOH are aware that in the last year, for example, no move-on notices were issued. I can provide some information on why police cannot use move-on notices. I am told the anti-abortion protest activity is a weekly occurrence outside the main abortion services in WA. Move-on powers under the Criminal Investigation Act 2008 provide the police with only very limited ability to deal with that type of behaviour outside those health services—the behaviour that we heard about from so many people during the community consultation process. Therefore,

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those powers do not provide protection from harassment for women and staff as they try to enter or leave an abortion clinic. It is our understanding that the police rarely issue move-on notices outside those services, which demonstrates that although this enforcement power can be used in some circumstances, it currently is not suitable to address the broad range of anti-abortion activity that targets patients and staff at abortion clinics. Move-on notices are valid for only a period of 24 hours or less. Also, this tool is a reactive one. By the time notices can be given by a police officer, the specific harassment of some patients or staff has already been done. There is a clear need for efficient regulatory tools to deter those behaviours.

Hon NICK GOIRAN: Is it not the intention of this bill to give police the capacity to deal with a person who is hindering or obstructing?

Hon STEPHEN DAWSON: The honourable member is not referring solely to move-on notices, is he?

Hon Nick Goiran: No. If this bill comes in, it will give the police, I presume, capacity.

Hon STEPHEN DAWSON: Obviously, police can use move-on notices, if this bill passes or whatever. I draw the member's attention back to proposed section 202P on page 4, which refers to a person engaging in prohibited behaviour within the zone et cetera. For the purposes of that, a person engages in prohibitive behaviour if they do certain things. The bill makes clear that certain things can happen. It states —

... if the person ...

without reasonable excuse, interferes with or impedes a footpath, road or vehicle in relation to abortion; or

(d) without reasonable excuse, makes a recording by any means of another person accessing, attempting to access or leaving premises at which abortions are provided, without the other person's consent;

The move-on notices stuff stays the same. This makes clear what the new offence will be.

Hon NICK GOIRAN: Perhaps the best way to consider it is this: if somebody at the front of an abortion clinic is hindering or obstructing a person going about their otherwise lawful business, will that behaviour be captured by this bill?

Hon STEPHEN DAWSON: Yes, it would be, honourable member.

Hon NICK GOIRAN: I take it that that is because the definition of prohibited behaviour includes, at proposed section 202P(2)(a), the notion of hindering and obstructing?

Hon STEPHEN DAWSON: The answer is yes, honourable member.

Hon NICK GOIRAN: Is it the case that WA police can currently issue a move-on order for a person hindering and obstructing?

Hon STEPHEN DAWSON: Yes, the honourable member is correct. The member is probably quoting from the Criminal Investigation Act 2006. I know what the problem is, but the bill before us makes it clear what the obstruction is. The bill clarifies that when somebody is seeking to lawfully access an abortion service and somebody does X, Y, Z in front of them or tries to stop them, that will be an offence.

Hon NICK GOIRAN: Let us look at proposed section 202P(2). It says —

For the purposes of subsection (1), —

That is, a person must not engage in prohibited behaviour —

a person engages in prohibited behaviour if the person —

(a) besets, harasses, intimidates, interferes with, threatens, hinders, obstructs —

We are dealing with the last two terms at the moment —

or impedes a person accessing, attempting to access or leaving premises at which abortions are provided;

It goes on to say “or” and provides a whole range of other things. Proposed subsections (b), (c), (d) and (e) are of no relevance to this discussion. If police under the existing law, or under this law, come to the conclusion that a person has hindered or obstructed, the only place to which they can go is proposed section 202P(2)(a). They cannot go anywhere else; that is the only place under which they can prosecute the offence.

My point, minister, is that WA Police had told the Department of Health that it has not issued any move-on orders. That is despite the fact that WA police can issue a move-on order if a person has been hindering or obstructing. That makes me think that there are two scenarios here. Most charitably to the people who are involved in this activity outside of abortion clinics, it could mean that there have been no instances of hindering or obstructing. I have to say that from the information I have been provided with, I lean heavily towards that interpretation of things. Nevertheless,

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let us say that I am wrong about that and there have been, on one or more occasions, instances in which people have been hindering or obstructing. I emphasise at this point what I said during the second reading debate. I believe it is a right of every Western Australian to go about their lawful business unimpeded by other people. I have no interest—none whatever—in defending anyone who is busy hindering or obstructing another Western Australian from going about their lawful business. My point is that if WA police at the moment is not using move-on orders, as it has said to the Department of Health, that suggests that no hindering or obstructing is going on; or, worse, it suggests that there is a problem, because if WA police cannot prove that people are hindering or obstructing, this law will not make any difference.

My question to the minister is: what confidence can we have, when it comes to the hindering or obstructing of people going about their lawful business, that this particular bill will make any difference? I want to avoid a discussion about the range of other things that this bill will do. I am not talking about that; I am talking only about hindering or obstructing. The heart of my question is: to what extent is this provision necessary, and will it make any difference when it comes to preventing people from hindering or obstructing?

Hon STEPHEN DAWSON: I like to think I am an eternal optimist, honourable member. I, too, rely on the advisers when they give me advice about certain legislation. Certainly, the bill before us makes clear that it is an offence if a person hinders or obstructs a person who is attempting to access or leave premises at which abortions are provided. I was not here, and the member probably was not here either, when the legislation that we have referred to previously was debated in this place. Society, up until now, has deemed that these things are okay. Someone could lawfully stand in the way of somebody else and hand them something or talk to them or give them information before they went to access an abortion service. We want to make clear in the bill before us that in future, should a person hinder or obstruct a person who is trying to access or leave an abortion clinic and going about their business, it will be an offence. That was not clear or spelt out in the previous acts that we have referred to.

Hon NICK GOIRAN: Minister, I might take this up when we get to clause 4.

Hon Stephen Dawson: Can I say I genuinely look forward to clause 4!

Hon NICK GOIRAN: I think I will take it up when we get to clause 4, and maybe that will also give the government the opportunity to consider whether there are any ancillary advisers who might be able to assist on these matters.

Hon Stephen Dawson: That is a very generous suggestion. Is there any chance that we might move on to clause 4 forthwith?

Hon NICK GOIRAN: I just want to, if you like, provide effectively a question on notice. The concern I have, minister, is that the existing Western Australian law—the Criminal Investigations Act 2006—already deals with this issue of hindering or obstructing. I am not at all clear how this will make any difference. That said, when we get to clause 4, the minister might be in a position to take us through what will be the difference between a police officer deciding to proceed with an offence under proposed section 202P, or choosing to issue a move-on order. The minister has indicated that the police will still be able to issue a move-on order, so why would a police officer proceed with a prosecution under proposed section 202P(2), which, frankly, will take much more time and be much costlier than issuing a move-on order? That is the kind of information that I will be looking for when we get to clause 4.

That said, let us return forthwith to clause 1. A number of other issues in the discussion paper were raised in the submissions. The minister addressed one of those issues with the honourable Leader of the Daylight Saving Party earlier. The minister indicated to him that it had been the decision of the government to proceed along the lines of the Victorian legislation. I think, in fact, according to my notes, the minister referred to it being modelled on the Victorian legislation. I notice in this report that the minister kindly tabled earlier, at page 2—interestingly, it does not have a page number, but it is page 2—it references that the definition of “prohibited behaviour” should be modelled on Victoria’s definition of “prohibited behaviour” in its Public Health and Wellbeing Act 2008. I do not want to have a discussion now at clause 1 about prohibited behaviour; we will deal with that under clause 4. But my question is: is that the extent to which this legislation is modelled on Victorian law; is the modelling of our law limited to the definition of “prohibited behaviour”, or is it more than that?

Hon STEPHEN DAWSON: I am told that the bill is generally based on the Victorian model, so the purpose of and definition in the bill are the same. Obviously, we spoke previously in the chamber about the Victorian legislation being subject to a High Court challenge in *Clubb v Edwards*, and that in April 2019 the High Court delivered its decision on two challenges to the constitutional validity of legislation establishing safe access zones in Victoria and Tasmania. The majority of the High Court dismissed the constitutional challenge to the Victorian legislation. The High Court held that both the Victorian and Tasmanian legislation burdened the implied freedom of political communication; however, in both cases, it was considered that the burden was justified by reference to the legitimate purposes of the legislation.

Our bill has been carefully drafted to minimise any risk of being inconsistent with the Constitution, and therefore the Victorian bill was the one that was modelled.

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Hon NICK GOIRAN: The purpose and definition in particular have been modelled on the Victorian legislation. To what extent has there been any guidance taken from the other jurisdictions? When the minister listed categories of stakeholders that had been consulted, he mentioned the Western Australia Police Force, government departments and clinics. He mentioned a discussion paper and the other jurisdictions. What has been learnt from the other jurisdictions that has then been incorporated into the drafting of this bill?

Hon STEPHEN DAWSON: I again draw the member's attention to the report I tabled earlier this evening, *Safe access zones—A proposal for reform in Western Australia: Report 2020*. Appendix 1 on page 43 of the report gives an Australian jurisdictional comparison of the legislation in the different states. We have looked at the legislation and conversed with the jurisdictions about their legislation. We have also spoken to the other jurisdictions about the effect of their legislation and whether it has had an impact on these protests that were taking place before. At this stage, we have been advised that the protests had stopped. The legislation in those jurisdictions has caused the protests to stop in those states. As I said, we have modelled our legislation on the Victorian one, but there are similarities in some of the areas. Without going through all the detail, the member can see in each of those jurisdictions that a range of issues have been established. He can go across the list and see the similarities between each of the pieces of legislation.

Hon NICK GOIRAN: When we say that in the other jurisdictions the protests have stopped, it gets to the heart of the type of behaviour that might be captured by this bill and other behaviour that might not be captured by it. Has any document been provided by these other jurisdictions that might be tabled at this time so we can clarify exactly what they mean when they say the protests have stopped? For example, if when we talk about protests we are talking about despicable behaviours like spitting, I am glad that those things have stopped. They should never have happened in the first place. I still think there are other laws, such as the law against assault, that could capture those things. Nevertheless, if the other jurisdictions are saying that the mere presence of this legislation has ensured that that type of behaviour has stopped, it is welcome news. I do not consider spitting to be protesting; I think it is a completely different set of circumstances. That is why I seek some clarification about what the other jurisdictions are saying about protesting. The type of people I am concerned about in this whole debate are the peaceful individuals who are there to genuinely provide compassionate support in the event that there is a Western Australian woman with an unwanted or unexpected pregnancy who just wants somebody to walk the journey with them. That is the only type of person I am concerned about with this legislation. I would like to have some confidence that that type of person will not be captured by this legislation. I am interested to know to what extent that discussion has occurred between the Department of Health and the other jurisdictions, if at all, and whether there is the capacity to table anything that has come out of the other jurisdictions.

Hon STEPHEN DAWSON: I cannot comment on the particular circumstance the member raised, but I draw his attention to the fact that this bill will capture communications about abortion in a manner that is able to be seen or heard by a person accessing, attempting to access or leaving a premises at which abortions are provided and is reasonably likely to cause distress or anxiety. If the situation that the member described did not cause anxiety or distress, it would not be captured by the legislation before us. It needs to meet that threshold.

We do not have that type of documentation from the other states and territories, but there have been conversations between the jurisdictions. In terms of the "protests", that is the word the advisers gave me, but I think what was meant by it was the offending behaviour that is captured by the legislation that is before us. "Offending behaviour" is probably better terminology to use rather than "protest", which, when used, I think connotes particular things.

Hon NICK GOIRAN: The minister makes an excellent point because I think there is a spectrum of views about what offending behaviour is, from the most abhorrent behaviour—we discussed some examples of that earlier—to that which I would describe as genuine, caring and compassionate support. Regrettably, there is a spectrum, and I think that one side of that spectrum needs to be protected. I want to make sure that is not considered offending behaviour or, indeed, offensive behaviour in any way. I suspect we will be able to unpack that further at clause 4.

I have only a couple more questions on clause 1. Has the government been, or will the government be, providing any additional resources for the enforcement of these new laws?

Hon STEPHEN DAWSON: The police have not indicated that they need extra resources to police this legislation, should it pass. Of course, it is worth reminding the chamber about the McGowan government's significant increase in the number of police officers at WAPOL. An extra 950 police have started to and will enter the system over the next few years. We do not believe that extra resources will be required, bearing in mind that in at least some of these cases, the police would be attending the situation anyway. However, it will be monitored and should there be a need to provide additional resources, obviously the police would seek extra resources through the normal course of the budgetary process, through the Expenditure Review Committee.

Hon NICK GOIRAN: Is there a particular unit within WA police that handles these types of matters or is it dealt with as a local station matter? When we talk about the two clinics, obviously Midland and Belmont spring to mind. Are they expected to deal with these particular laws or is there a unit within WA police that will handle it?

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Hon STEPHEN DAWSON: My understanding is that the local stations deal with this, but I am happy to take the issue on notice and perhaps I can provide an answer to the chamber about that tomorrow, just to clarify that that is exactly the case.

Hon NICK GOIRAN: That would be helpful, because certainly those people who are enthusiasts for this legislation will want to have confidence that it will be enforced. If WA police are already saying that they are not using some of the existing mechanisms—for example, move-on orders, which would be enforced by local police stations—it is not clear why there will suddenly be this confidence that those same police officers and those same police stations will now proceed with these matters. The minister has indicated that he might be able to get some information about that overnight, so we can consider that again tomorrow.

The other matter I want to ask the minister relates to a number of things that flow from the initial discussion paper that led to the *Safe access zones—A proposal for reform in Western Australia: Report 2020*. Obviously, one of those things is this bill. Does the government have plans to address or implement some of the other matters that arise from this review?

Hon STEPHEN DAWSON: Can the member give an example of some of those issues he thinks have been flagged and that need action?

Hon NICK GOIRAN: The minister will recall the language that the Department of Health used throughout this document. It stated —

Approximately 500 submissions discussed how some women are forced, manipulated or coerced into the decision to have an abortion.

And further —

Approximately 250 submissions suggested better holistic counselling and support for patients ... to be available ...

They are a couple of examples that I wonder whether the department has addressed or is planning to address in due course.

Hon STEPHEN DAWSON: Obviously, those submissions have been received and noted, and the various issues in those submissions continue to be considered by the department.

Hon NICK GOIRAN: I will move to the next area. I make the observation that the department has had plenty of time to consider these things.

Hon Stephen Dawson: With the greatest respect, honourable member, we have had an extraordinary 18 months and this agency has been responsible for dealing with the COVID-10 pandemic. I hear what you're saying and I hear your frustration, but a few other things have been happening at the same time.

Hon NICK GOIRAN: I would accept that if I had confidence that the same people who are responsible for these things are the same ones dealing with COVID-19.

Hon Stephen Dawson: What has happened is that people from across government have been dragged from all sorts of areas into focusing on COVID-19. It has happened in the Department of Health and a variety of agencies.

Hon NICK GOIRAN: As I said, if I had confidence that the same people who are dealing with this matter are also the people who have been seconded elsewhere for COVID-19 purposes, that is fair enough. Personally, I do not have that confidence. Nevertheless, I accept that that is where things sit for the purposes of this evening's debate.

With regard to the consultation, the minister helpfully set out the five groups of stakeholders that were involved. I thought it curious that there was no discussion around the people this is trying to address. I do not like calling them demonstrators because the people who I know and have seen are not what I would describe as demonstrators. I accept that some of the language that has been used has also been referenced to protesters and the like. As I said, the people who I know are caring, compassionate individuals who just want to provide support if there is an interest in a person journeying with them. I find it curious that there does not appear to have been any consultation with those people. Is there a particular reason there has been no consultation or might they have been consulted but been overlooked from the earlier list?

Hon STEPHEN DAWSON: The member has made his point. There was an opportunity during the consultation process for those people—I will not call them demonstrators or protesters—who stand outside clinics and try to discourage people from accessing abortion services or whatever to make a submission. Many organisations are probably reliant on these people. Those submissions were canvassed and considered, as was every other submission that was made. The government made a decision that when those people were affecting someone else who was trying to access lawful services and it was distressing those people, that was wrong and it needed to change. Fundamentally,

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we are opposed to activity when the effect is to cause anxiety for someone who is lawfully seeking to access services. There was no further element of consultation.

I turn to the member's earlier comment. I have been provided with further information. I refer to the Western Australian women's health and wellbeing policy. Priority area B—health and wellbeing impacts of gender-based violence—includes any act of violence that causes physical, sexual or psychological harm or suffering to women, including threats of harm or coercion, in public or in private life. The policy includes several actions to address the issue. The Department of Health also provides guidance, resources and training to WA Health staff in the area of family and domestic violence and gender-based violence or honour-based violence, including coercion. The Department of Health is also updating its guidelines on abortion care for medical practitioners and information and legal obligations to include advice that medical practitioners performing abortions should consider an appropriate environment for assessing the pregnant woman to ensure as far as possible that no coercion or pressure is being applied.

Hon NICK GOIRAN: On the face of it, from what I heard quickly, that sounds excellent. Is the minister able to table that policy document, if it is a policy document? Is there a way that we can access that? The idea that there will now be an obligation on abortion providers to ask and make sure that there is no coercion, frankly, is long overdue. If this is a new development, it is welcome but I would like the opportunity to be able to assess it if it is in a format that can be tabled.

Hon STEPHEN DAWSON: I am advised that the WA women's health and wellbeing policy is a public document. I will seek to get a copy of that and provide it to the member tomorrow.

Hon JAMES HAYWARD: It has been a long night. I ask for the minister's grace to continue a little longer if possible.

Hon Stephen Dawson: I am not feeling very gracious.

Hon JAMES HAYWARD: I bet! In the second reading debate, Hon Martin Pritchard said that the idea was to not beset, harass, intimidate, interfere with, threaten, hinder, obstruct, impede et cetera, which is all captured in proposed section 202P(2)(a). Proposed section 202P(2)(b) states that the prohibited behaviour cannot be communicated by any means in relation to abortion in a manner that is seen or heard, which seems to be a bit different from what is outlined in paragraph (a). I know that we are not referring to the specifics of clauses, but in terms of the principle, is it the case—I think the minister outlined the government's position in a previous answer—that even a person who is not seen to be what is generally known as harassing, besetting, intimidating, hindering or obstructing will be breaching the law if they are standing there with a pamphlet?

Progress reported and leave granted to sit again, on motion by Hon Stephen Dawson (Minister for Mental Health).