

---

# Contraception, Sterilisation and Abortion (Safe Areas) Amendment Bill

---

27 April 2021

**National Office**

Level 2  
205 Victoria Street  
**Wellington 6011**

T: (04) 384 4349  
F: (04) 382 8356  
[familyplanning.org.nz](http://familyplanning.org.nz)

*Charities # CC11104*

## **Submission on the Contraception, Sterilisation and Abortion (Safe Areas) Amendment Bill**

### **Recommendations**

Family Planning strongly supports this legislation. We recommend:

- a. Modifying the legislation so that a protected person is defined as a person who is in a safe area for the purpose of visiting a health service at which abortions are provided.
- b. Making safe areas automatic instead of requiring them to be established on a case by case basis.

### **Introduction**

1. Family Planning welcomes the opportunity to provide comment on the Contraception, Sterilisation and Abortion (Safe Areas) Amendment Bill.
2. We strongly support the Bill, and the intention to protect the right of all people to access health care without being harassed, judged or intimidated. We make a few recommendations that we believe could improve the legislation.
3. This Bill is timely. With the passage of the Abortion Legislation Act 2020, the landscape of abortion provision is beginning to change. Historically, abortion has been provided primarily in a hospital setting. The new abortion legislation has enabled abortion to be more easily provided in a community setting. Increasingly, there will be – if the intention of the law is realised - abortion provision at community clinics and some general practices. For example, since the legislative change, Family Planning has expanded our provision of early medical abortion to another one of our clinics.
4. Unlike hospitals, which are large facilities on a large section of land, many community clinics and GP practices are small buildings or offices on a small section. In this new environment, anti-abortion protest activity could become even more problematic to people visiting clinics and health practitioners who are providing abortion. For example, public areas where protestors may stand are likely closer to a community clinic entrance as compared to the entrance to a hospital. This Bill is important for addressing current protest activity, but also for future proofing the right to access abortion services as the provision of abortion shifts into communities.

5. Family Planning is New Zealand's largest provider of sexual and reproductive health services and information. We are a non-governmental organisation (NGO) operating 29 clinics throughout Aotearoa New Zealand as well as services in schools and through community partnerships. We offer accredited clinical courses and workshops for doctors, nurses, midwives and other clinicians working in sexual and reproductive health. We are an abortion provider and provide early medical abortion (EMA) at two of our clinics.

### **General comment**

6. Unfortunately, there is a small but vocal group of New Zealanders who engage in protest activity outside of abortion services. While these protests are sometimes described as quiet prayer vigils, people seeking abortion and providing abortion do not experience them as such. It is intimidating and upsetting to see a group of people standing near an abortion provider showing their opposition to abortion. By their own admission, the protesters are there to try influence people seeking and providing abortion.
7. Anti-abortion protests have been taking place for decades in New Zealand and around the world. There is no indication that they will stop in the near future. Some countries report increasing protest activity<sup>1</sup> which is likely the result of anti-abortion organisations being more connected globally in their efforts, and because of the wide dissemination of extremist views through social media.
8. Protests outside of abortion services are intimidating and can be upsetting. The presence of protestors in front of an abortion provider adds to the significant stigma that people seeking abortion may already be experiencing at home or in their community. Abortion stigma can make people seeking abortion feel shame and guilt. Research has found that people who report experiencing negative feels around their abortion – like shame, guilt and sadness - are more likely to also report abortion stigma in their community.<sup>2</sup>
9. Protests outside of abortion services also raise questions around privacy and confidentiality when accessing a health service. Family Planning cannot think of another example where people accessing a health service are watched by another group of people when trying to access the service.
10. Many jurisdictions around the world have laws that create safe areas around abortion services. The recent changes to abortion law in New Zealand means that abortion is now

---

<sup>1</sup> Lowe P, and Hayes G (2019) Anti-Abortion Clinic Activism, Civil Inattention and the Problem of Gendered Harassment. *Sociology*. Vol. 53(2) 330–346.

<sup>2</sup> Roccaa CH et al (2020) Emotions and decision rightness over five years following an abortion: An examination of decision difficulty and abortion stigma. *Social Science and Medicine*. Volume 248. March. <https://www.sciencedirect.com/science/article/pii/S0277953619306999>

treated as a health issue and will increasingly be provided by a range of health practitioners in a range of settings. As discussed previously, it is timely that New Zealand take steps to protect people's right to access this health care without harassment, judgement or intimidation.

11. Family Planning strongly supports the rights guaranteed by the New Zealand Bill of Rights Act 1990<sup>3</sup> including freedom of thought, conscience and religion; freedom of expression; and freedom of peaceful assembly.
12. Family Planning does not believe safe areas infringe upon these rights as people are free to protest, assemble and express themselves in most public places. The legislation is about ensuring that people who are expressing themselves and protesting are not infringing on the human rights of others by impeding their access to health care. The Human Rights Commission states:<sup>4</sup> The right to health is also protected by the New Zealand Bill of Rights Act 1990 (BoRA) through the right to freedom from discrimination...."

#### **Clause 5: New sections 13A to 13C**

13. Family Planning notes that the Attorney General has presented a report to Parliament<sup>5</sup> expressing some concern about the expansiveness of the definition of prohibited behaviour in the Bill [13A (3)].
14. We note that the Abortion Supervisory Committee was brought to court nearly continually by anti-choice organisations and individuals,<sup>6</sup> and the Abortion Legislation Act 2020 is already being challenged in court by a group of anti-choice medical practitioners.<sup>7</sup> It is therefore likely that there would be legal challenges to this legislation.

---

<sup>3</sup> New Zealand Bill of Rights Act 1990. <https://www.legislation.govt.nz/act/public/1990/0109/latest/whole.html>

<sup>4</sup> Human Rights Commission (2010) Human Rights in New Zealand. Chapter 11: Right to Health. Tika ki te Whai Oranga [https://www.hrc.co.nz/files/9714/2388/0506/HRNZ\\_10\\_Right\\_to\\_health.pdf](https://www.hrc.co.nz/files/9714/2388/0506/HRNZ_10_Right_to_health.pdf)

<sup>5</sup> Report of the Attorney-General under the New Zealand Bill of Rights Act 1990 on the Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Bill Presented to the House of Representatives pursuant to Section 7 of the New Zealand Bill of Rights Act 1990 and Standing Order 269 of the Standing Orders of the House of Representatives. <https://www.justice.govt.nz/assets/Documents/Publications/20210218-Contraception-Sterilisation-and-Abortion-Safe-Areas-Amendment-Bill.PDF>

<sup>6</sup> Stuff (2017) Abortion law 'offensive' says chair of committee charged with governing it <https://www.stuff.co.nz/national/politics/90500763/abortion-law-offensive-says-chair-of-committee-charged-with-governing-it>

<sup>7</sup> RNZ (2021) Health practitioners sue Crown over abortion legislation <https://www.rnz.co.nz/news/national/437917/health-practioners-sue-crown-over-abortion-legislation>

## *Protected person*

15. The proposed Bill states that the prohibited behaviour applies to a protected person in a safe area.

A protected person is defined as follows:

***protected person*** means a person who is in a safe area for the purpose of—

(a) *accessing abortion services; or*

(b) *providing, or assisting with providing, abortion services; or*

(c) *seeking advice or information about abortion services; or*

(d) *providing, or assisting with providing, advice or information about abortion services.*

16. Family Planning suggests that this definition is too narrow. Family Planning recommends that a protected person should be defined as a person who is in a safe area for the purpose of visiting a health service at which abortions are provided.

17. Family Planning provides abortion services at two of our clinics but also provides a range of other services at the clinics. It is impossible for someone other than Family Planning staff to know the reason why a person is entering one of our clinics. It could be for abortion, contraception, a pregnancy test, sexually transmitted infection testing or treatment or another reason. If other primary care providers like midwives or GPs begin offering abortion services, it may also be the case for these providers that people will be entering their service for a range of reasons.

18. Additionally, it is unclear whether a support person and whānau are included in the definition of a protected person. Support people and whānau of a person seeking abortion services should not be subjected to harassment, judgement or intimidation.

19. It is unacceptable that a person visiting a Family Planning clinic, or another health care provider, would be subjected to harassment, judgement or intimidation simply because they are seeking health care at a service that also provides abortion. No one should experience protestors at a health service, regardless of what service they are seeking.

20. Laws in most other jurisdictions focus on any person visiting the abortion service, not people specifically seeking an abortion. For example, the Queensland Termination of Pregnancy Act 2018<sup>8</sup> defines its purpose as follows:

*“The purpose of this part is to protect the safety and well-being, and respect the privacy and dignity, of—*

---

<sup>8</sup> <https://www.legislation.qld.gov.au/view/pdf/asmade/act-2018-023>

- (a) persons accessing services provided at termination services premises; and*
- (b) persons who are employed to provide services at termination services premises or otherwise need to access the premises in the course of their duties or responsibilities."*

The Bill does not specify that the person needs to be accessing a termination themselves or providing a termination.

The New South Wales Public Health Act 2010, Part 6A<sup>9</sup> states:

*A person who is in a safe access zone must not interfere with any person accessing, leaving, or attempting to access or leave, any reproductive health clinic at which abortions are provided.*

Again, it does not specify that the person themselves must be seeking or providing an abortion.

#### *Establishing safe areas*

21. Under the proposed legislation, in order to establish a safe area, the Governor General would need to prescribe a safe area based on the recommendation of the Minister of Health, who must consult the Minister of Justice.
22. The Minister of Health would recommend a safe area if it was deemed necessary to respect the safety and wellbeing, and respect the privacy, of people providing abortions, seeking abortions, or seeking information about abortions.
23. Family Planning recommends automatic safe areas for New Zealand. An automatic safe area would only serve to stop the prohibited behaviour outlined in this legislation, and would not otherwise infringe on the rights of New Zealanders. In other words, an automatic safe area would only be applied if someone was engaging in prohibited behaviour within the area. Otherwise people's behaviour in a safe area would not be impacted.
24. Automatic safe areas would remove any administrative burden and uncertainty for abortion providers experiencing protest activity. If safe areas are decided on a case by case basis, not only do services need to request the establishment of a safe area, which presumably would require monitoring and documenting protestor activity, the safe area

---

<sup>9</sup> <https://www.legislation.nsw.gov.au/view/html/inforce/current/act-2010-127>

would only be in place for 5 years before it would need to be reviewed. For small providers, these administrative steps could be challenging.

25. As the safe area would be established through regulation, it is our understanding that there would need to be a public consultation process, which again, could be prove challenging for small providers.
26. Additionally, there is a possibility that there could be Ministers of Health and Justice who do not support the right to have an abortion, which could present a challenge to services seeking to establish a safe area.
27. Automatic safe areas are common in other jurisdictions. For example, five Australian states<sup>10</sup> and some Canadian providences<sup>11</sup> have automatic safe areas. Many US states<sup>12</sup> have laws to prevent entrances to all abortion or health services from being obstructed and to stop excessive noise near any provider. A few states have automatic safe areas or bubbles around people entering a clinic.
28. Family Planning notes that in our submission on the Abortion Legislation Bill, we did not recommend automatic safe areas. Our experience of protest activity in front of Parliament while the Bill was being debated, including the gruesome images displayed, and the comments made by protestors, caused us to rethink this position. While protestors are within their right to stand in front of Parliament to express their opposition to abortion, no person trying to access health care should have to experience this sort of intimidation, harassment and judgement.

## **Conclusion and Recommendations**

29. Family Planning strongly supports this legislation and the intention to protect the rights of people to access abortion services. Family Planning recommends:
  - a. Modifying the legislation so that a protected person is defined as a person who is in a safe area for the purpose of visiting a health service at which abortions are provided.

---

<sup>10</sup> Marie Stopes Australia (2020) *Safe access zones in Australia. Legislative Considerations.* <https://www.mariestopes.org.au/wp-content/uploads/Safe-Access-Zones-in-Australia.pdf>

<sup>11</sup> Abortion Rights Coalition of Canada (2021) *Safe Access Zone Laws and Court Injunctions in Canada (to protect abortion access).* <https://www.arcc-cdac.ca/wp-content/uploads/2020/06/Bubble-Zones-Court-Injunctions-in-Canada.pdf>

<sup>12</sup> Guttmacher Institute (2021) *Protecting Access to Clinics.* <https://www.guttmacher.org/state-policy/explore/protecting-access-clinics#>

- b. Making safe areas automatic instead of requiring them to be established on a case by case basis.

Thank you for the opportunity to comment. We would welcome the opportunity to provide oral evidence before the Committee.

Nāku noa, nā

A handwritten signature in black ink, appearing to read 'Jackie Edmond', written in a cursive style.

Jackie Edmond  
Chief Executive