



Associate Minister of Health

The establishment of new Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977 and Contraception, Sterilisation and Abortion (Safe Areas) Regulations 2024 – Round Three.

3 October 2024

These documents have been proactively released by the Ministry of Health on behalf of the Associate Minister of Health, Hon Casey Costello.

Titles of Cabinet papers:

- The establishment of new Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977
- Contraception, Sterilisation and Abortion (Safe Areas) Regulations 2024 - Round Three

Titles of minutes:

- Establishment of New Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977 (SOU-24-MIN-0057)
- Establishment of New Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977 (SOU-24-MIN-0064)
- Report of the Cabinet Social Outcomes Committee: Period Ended 28 June 2024 (CAB-24-MIN-0234)
- Report of the Cabinet Legislation Committee: Period Ended 23 August 2024 (CAB-24-MIN-0320)
- Contraception, Sterilisation and Abortion (Safe Areas) Amendment Regulations 2024 (LEG-24-MIN-0157)

Titles of key advice papers:

- Proposed Safe Areas under the Contraception, Sterilisation and Abortion Act (1977) - Round 3 (H2024035845)
- Cabinet paper: Establishing new Safe Areas under the Contraception, Sterilisation and Abortion Act 1977 (H2024039981)
- Third round of Safe Areas to Cabinet Legislation Committee (H2024045779)

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it. Some information has been redacted from the Cabinet minute as it is out of scope of the subject of this proactive release.



Key to redaction codes:

- S 9(2)(a) of the Act: to protect the privacy of natural persons, including deceased natural persons.
- S 9(2)(c) of the Act: to avoid prejudice to measures protecting the health or safety of members of the public.
- S 9(2)(f)(iv) to maintain the constitutional conventions that protect the confidentiality of advice tendered by Ministers and officials.
- S 9(2)(h) of the Act: to maintain legal professional privilege

Briefing

Proposed Safe Areas under the Contraception, Sterilisation and Abortion Act (1977) - Round 3

| | | | |
|------------------------|---|------------------------------|--------------|
| Date due to MO: | 26 February 2024 | Action required by: | 8 March 2024 |
| Security level: | In-Confidence | Health Report number: | H2024035845 |
| To: | Hon Casey Costello, Associate Minister of Health | | |
| Copy to: | Paul Goldsmith, Minister of Justice | | |
| Consulted: | Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/> | | |

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|--|-----------|
| Simon Medcalf | Deputy Director-General, Regulation and Monitoring, Te Pou Whakamaru | § 9(2)(a) |
| Ruihua Gu | Acting Group Manger, Quality Assurance and Safety, Regulatory Services | § 9(2)(a) |

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Proposed Safe Areas under the Contraception, Sterilisation and Abortion Act (1977)-Round 3

Security level: In-Confidence

Date: 26 February 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This report seeks your agreement to progress three proposed Safe Areas to the Cabinet Legislation Committee. It also seeks your agreement to authorise Parliamentary Counsel Office (PCO) to draft the Regulations.

Summary

2. The Minister of Health, under section 13C of the Contraception, Sterilisation and Abortion Act 1977 (the Act), and after consultation with the Minister of Justice may recommend the making of regulations for the purpose of prescribing new Safe Areas for abortion health care services. As Associate Minister of Health with responsibility for sexual and reproductive health, this falls within your delegation.
3. The purpose of any prescribed Safe Area is to address any risk to the safety and wellbeing, and respect the privacy and dignity, of any persons accessing and/or seeking advice or information about abortion services, and/or those providing and/or assisting in the provision of advice or information about such services. A provider may request a Safe Area of up to 150m from the perimeter of the service to achieve this.
4. The Act has a protective and preventative focus, and the criteria for Safe Areas emphasise addressing risks to safety and well-being of individuals accessing or providing abortion services, balanced with considerations of rights and freedoms of expression under the New Zealand Bill of Rights Act 1990 (NZBORA). People can still exercise their right to freedom of expression outside of a designated Safe Area.
5. The Ministry of Health - Manatū Hauora (the Ministry) has established an application and assessment process for abortion service providers to request a Safe Area around their premises. Each application is assessed on a case by case basis. The assessment process includes an assessment of each application, a site visit, a summary of information to the Ministry Safe Area Advisory Panel, and recommendations developed for Ministerial approval.
6. Following the Social Wellbeing Cabinet committee meeting on 8 May 2023, it was agreed that the relevant Minister of Health can directly issue instructions to authorise the PCO for the drafting of Safe Area regulations under section 13C of the Act, after consultation with the Minister of Justice, but without further reference to the Social Wellbeing Cabinet committee (see Appendix 1 - CAB-23-MIN-0164.02 Minute).
7. There are currently eleven Safe Areas enforceable around abortion health care providers in New Zealand after the first two round of applications. This accounts for about one-third of

all current abortion health care providers in New Zealand¹. Round 3 applications for Safe Areas opened in August 2023 and closed in October 2023. s 9(2)(c)

there are three providers being recommended for Safe Areas.

8. All three providers are public hospitals. They are:
 - a) Waikato Hospital – Te Whatu Ora Waikato
 - b) Wairarapa Hospital – Te Whatu Ora Wairarapa
 - c) Hutt Hospital – Te Whatu Ora Capital, Coast and Hutt Valley.
9. This briefing provides context to the assessment process and the recommendations made for each provider listed above. This includes analysis of each proposed Safe Area against the intended purpose of the legislation and the criteria to be met.
10. The Ministry recommends that you agree to progress all three proposed Safe Areas listed in this briefing. Information to support this recommendation is outlined further in this briefing.
11. If you agree to progress the applications, we will prepare a draft Cabinet paper for presentation to the Cabinet Legislation Committee and liaise with the PCO to begin drafting regulations. We anticipate that following the completion of these required government processes, the new Safe Area regulations may come into force in mid-2024.

Recommendations

We recommend you:

- a) **agree** to progress the proposed Safe Areas around the premises of the following abortion health care providers:
 1. Waikato Hospital – Te Whatu Ora Waikato **Yes /No**
 2. Wairarapa Hospital – Te Whatu Ora Wairarapa **Yes/No**
 3. Hutt Hospital – Te Whatu Ora Capital, Coast and Hutt Valley **Yes/No**
- b) **agree** to issue instructions to authorise the Parliamentary Counsel Office for the drafting of Safe Area regulations for each provider's Safe Area. **Yes/No**
- c) **agree** to the Ministry making minor amendments where necessary to the Safe Area dimensions and maps during the drafting process. **Yes /No**



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date: 23 February 2024

Hon Casey Costello
Associate Minister of Health
Date:

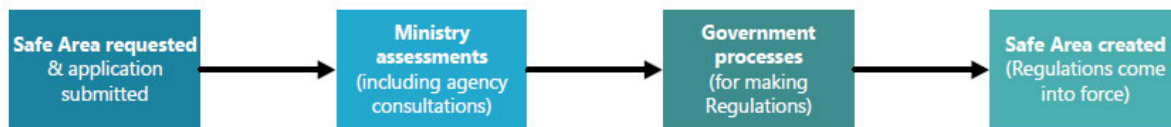
¹ See further details in [Abortion Services Aotearoa New Zealand Annual Report 2023 \(pages 7 & 8\)](#)

Proposed Safe Areas under the Contraception, Sterilisation and Abortion Act (1977)-Round 3

Background

1. The Safe Area amendment was incorporated into the Contraception, Sterilisation, and Abortion Act 1977 (the Act) as sections 13A – 13C on 19 March 2022.
2. Certain behaviour prohibited in Safe Areas, in accordance with section 13A, may include:
 - obstructing a person entering or leaving a building where abortion health care is provided.
 - visually recording someone in a manner that is likely to cause emotional distress.
 - engaging in protest activities relating to the provision of abortion health care that could be easily seen or heard by a person accessing, providing, or assisting with the provision of abortion health care.
3. A Safe Area can cover up to 150 metres from the perimeter of a premises where abortion health care is provided.
4. Section 13C of the Act provides a regulation-making power that enables the creation of Safe Areas, in which certain behaviours are prohibited. As Associate Minister of Health, with responsibility for sexual and reproductive health, under Section 13C of the Act, you may recommend the making of regulations for the purpose of prescribing new Safe Areas, if satisfied that:
 - a) it is desirable to address any risk to the safety and wellbeing, and to respect the privacy and dignity, of those persons:
 - i. accessing abortion health care and/or
 - ii. seeking advice or information about such services and/or
 - iii. providing and/or
 - iv. assisting in the provision of such services.
 - b) a Safe Area can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms.
5. The policy intent of Safe Areas is to protect the passage of the individual to and from the abortion health care facility, as well as protecting them when they are in the facility. They seek to balance the rights of staff involved with abortion health care, patients seeking abortion health care (or information about abortion health care) and those protesting against abortion health care.
6. The Ministry of Health - Manatū Hauora (the Ministry) is responsible for administering the Safe Area process. Applications are processed on a regular basis.

7. The applications are considered on a case-by-case basis and managed in a staged process which is outlined in the following diagram:



8. There are currently 11 Safe Areas enforceable around the country. The first Safe Areas were established and enforced in August 2023, and the second in October 2023. Applications for providers to request a Safe Area will now remain open from 1 February 2024, with any recommendations on future applications expected to come to you on a quarterly basis.

s 9(2)(h)

9. s 9(2)(h)

10.

11.

12.

13.

Assessment criteria

14. All proposed Safe Areas outlined in this briefing were assessed using the same criteria used for previous applications. These criteria include:
- assessing applications on a case-by-case basis, to meet regulatory requirements, and whether they are desirable to address risks (to the safety and well-being, and to

protect the dignity and privacy of persons accessing or providing abortion health care at the premises)

- b) reviewing all proposed Safe Areas against identified NZBORA vetting criteria.
 - c) determining the size of Safe Area based on premises characteristics such as location, size, accessibility, security measures, and evidence of previous protest activity (noting that protest does not need to have occurred as per Crown Law advice).
15. The NZBORA assessment involves consideration of whether:
- a) the policy objective of the Safe Area is important enough to justify some limit on rights and freedoms in a democratic society.
 - b) a rational connection exists between the limit on the right and the policy objective of ensuring safe access of an individual to the premises.
 - c) the limit on the right is no greater than reasonably necessary – that is, the Safe Area is no larger than is reasonably needed to manage the risks to safety and wellbeing, and to respect the privacy and dignity of people accessing or providing abortion health care.
 - d) the limit on the right to freedom of expression is in proportion to the policy objective of Safe Areas.
16. NZBORA protects freedom of expression, but it also allows for restrictions on protest activity in certain circumstances, such as when it is necessary to protect public safety.
17. The absence of known prohibited behaviours, such as protest activity, does not impact on the ability of an abortion health care provider to be granted a Safe Area.

Consultation on proposed new Safe Areas

Health Agencies

- 18. Māori Health Authority – Te Aka Whai Ora was consulted on the briefing. While unable to review the briefing, it reiterated their general support for the principle that women seeking abortions need Safe Areas where they can access these services without fear of harassment.
- 19. Ministry of Disabled People – Whaikaha was consulted on the briefing. Whaikaha supports the Safe Areas Regulations and subsequent Safe Areas recommendations, applications, and establishments, as Safe Areas uphold the rights of disabled people in the same way as for all New Zealanders.
- 20. Health New Zealand – Te Whatu Ora has not been consulted due to its existing responsibility for the hospitals that have applied. We keep them updated as work progresses.

Ministry of Justice

- 21. The focus of consultation with the Ministry of Justice (MoJ) primarily relates to NZBORA considerations and the requirements of the Act regarding consultation with the Minister of Justice on the making of any new Safe Area regulations.
- 22. The Ministry of Justice commented that two of the three safe areas are essentially preventative, which may make them more subject to challenge. However, MOJ also notes that the size and shape of each safe area appears to have been carefully considered, for example in relation to access points at each premises.

New Zealand Police

23. The focus of consultation with the New Zealand Police (Police) relates to the operational issues around Police enforcement of the proposed Safe Areas.
24. To expediate the process and to ensure Police awareness of proposed Safe Areas, Police joined the Ministry Safe Area Advisory Panel for consideration of these applications. This resulted in earlier consultation about proposed boundaries and earlier advice on the enforcement parameters for each of the proposed Safe Areas.
25. The Ministry will continue to liaise with Police around the establishment of any new Safe Areas to ensure Police Districts are prepared for a potential increase in anti-abortion activity.
26. In supporting this legislation, Police have a focus on Education, Engagement and Encouragement. Enforcement may be taken if necessary.

Safe Area application summary, assessment, and recommendations

27. The use of the word 'premises' throughout the document and application process, relates to the building and land that the service is located on. The use of the word 'perimeter' or 'boundary' indicates the Safe Area borders. Where a street is indicated as a Safe Area it is inclusive of the road and footpath on either side of that road.
28. During the application process, providers were encouraged to talk to other groups that may be affected by the Safe Area, for example, schools, churches, iwi, or other businesses that may fall within the proposed Safe Area.
29. Where a private premises has been included within a Safe Area, the restrictions of protest activities (especially within private properties) in practice are considered to be less limiting than they would be in other parts of the Safe Area as protest activities must be easily seen or heard from the premises. It is acknowledged there may still be impacts, for example, in limiting a person's ability to put a protest sign on their fence.
30. All Safe Areas will be reviewed within five years of being granted to ensure that they still meet the requirements of the Act and are fit for purpose (Section 13C (3)). The Ministry will remain in regular contact with each abortion health care provider to ensure this and will advise you if amendments are required.

Application summary

31. The Ministry has assessed all Safe Area applications and visited each site as part of the assessment process. All three providers meet the requirements of the Act, and a Safe Area is desirable at the premises to address risks to the safety and wellbeing of persons accessing and working at the premises.
32. The size and shapes of the recommended Safe Areas sit within a boundary of not more than 150 metres from the boundary of the premises and are set to ensure sufficient coverage of all access points.
33. Full details of the protest activity and the assessment of provider applications against Safe Area criteria is provided in Appendix 4 (Assessment of Safe Area Applications - Round 3) and Illustrative maps of each provider and corresponding Safe Area are provided in Appendix 5 (Maps of Safe Area Application – Round 3).

Waikato Hospital – Te Whatu Ora Waikato

34. The Women's Clinic at Waikato Hospital, situated centrally within the hospital premises, offers early medical abortion up to 10 weeks and surgical abortion up to 12+6 weeks gestation. The service operates each Wednesday and Friday.
35. The hospital covers an extensive area to the south of Hamilton Central and has patient and staff parking available on site. The hospital is surrounded by mostly private residences with a private hospital, dairy, hairdresser, and a day-care centre on the west and northern sides of the hospital. The hospital provides services to a large geographical area of patients.
36. Prohibited behaviour at Waikato Hospital has become increasingly persistent; particularly, as protesters continue to gather s 9(2)(c)
The presence of protesters has also notably increased in the past few months on Selwyn Street and Ohaupo Road.
37. s 9(2)(c)
38. It is proposed that a Safe Area be established around Waikato Hospital to address the ongoing risks to the safety and wellbeing on people accessing or providing abortion health care. The proposed Safe Area covers the entire hospital premises (including the patient/staff carparks, entrances and exits) and generally follows the roads surrounding the hospital, including Selwyn Street and Ohaupo Road.

Wairarapa Hospital – Te Whatu Ora Wairarapa

39. Wairarapa Hospital, situated north of the main town centre in Masterton, offers early medical abortion services up to 10 weeks, with surgical options available up to 12+6 weeks gestation.
40. The hospital provides services for the Wairarapa region, covering a relatively large geographical area. The hospital premises are bordered by green spaces on three sides, with a primary school and a rest home to the east. Opposite the main entrance is a dairy and childcare centre (along Te Ore Ore Road), while a presbyterian church marks the corner of Te Ore Ore Road and Totara Street.
41. This is a newly established abortion service and there have been no reported prohibited behaviours to date. Noting past experiences of protest activities elsewhere and likelihood of increased public awareness will bring opportunities for prohibited behaviours to occur.
42. The proposed Safe Area as a preventative measure aims to safeguard the hospital's entrances, exits, and main car parking areas, providing essential protection for individuals accessing and providing abortion services.
43. s 9(2)(c)
44. The proposed Safe Area, covering a reduced size of less than 150 metres, represents a proportionate response to potential risks while safeguarding individuals' access to the premises and minimising disruptions to nearby establishments such as schools and childcare centres.

Hutt Hospital – Te Whatu Ora Capital, Coast and Hutt Valley

45. Hutt Hospital, located along the busy High Street in Lower Hutt, primarily offers surgical abortions at later gestation for induction on an as-needed basis, with services dispersed

across multiple areas of the main hospital building (Heretaunga Block). No specific clinic days are planned currently however the hospital provides abortion health care as needed.

46. The hospital is in a largely residential area with a small number of commercial premises on High Street, and a private hospital next door. Hutt Hospital provides services to patients from the Lower and Upper Hutt areas.
47. The hospital has been providing a small number of abortion health care services for a number of years. It intends to increase its abortion health care services for patients in the area over the coming year. While the hospital has not reported any abortion-related prohibited behaviours to date, the proposed Safe Area serves as a preventative measure to safeguard the main parking area, parking building, and entrances used by staff and patients, prioritising respect, privacy, and dignity.
48. The hospital relies on Te Mahoe (Wellington Hospital) for certain pre-procedure activities and staff have indicated a heightened concern that prohibited behaviours may start at the Hutt Hospital once the service becomes more well known and utilised.
49. s 9(2)(c) the proposed Safe Area, which covers a reduced area of less than 150 metres around the hospital premises. This Safe Area, while balancing safety needs with the right to express opinions, protects key hospital entry points while allowing lawful protests outside its boundaries.
50. The proposed limit on freedom of expression, as defined by the Safe Area, is thus proportionate to the policy objective of ensuring safe access to abortion healthcare, while minimising disruptions to nearby establishments and residential areas.

Equity

51. The process of assessing and prescribing Safe Areas on a case-by-case basis ensures that full consideration can be given to any issues of equity. This includes equity of access to these essential services, as well as those that may be affected by the creation of any Safe Areas, such as iwi.
52. While it is not a requirement of the application process to consult with iwi, the Ministry has strongly encouraged providers to do so. If a Safe Area is granted, service providers will be expected to continue engagement with their local iwi on their Safe Areas, or to initiate engagement where this has not occurred already.
53. The Ministry will continue to ensure that all providers have equitable access to applying for a Safe Area around their premises, to address any risks to the safety and wellbeing of persons accessing or providing these services.

Risk management

54. During the establishment of the current 11 Safe Areas, there was no increase in prohibited behaviours around those providers premises. However, the Ministry will continue to work with the New Zealand Police to ensure a proactive response and messaging to the affected areas.
55. Experience from the previous establishment of Safe Areas has informed the Police approach to prohibited behaviours within Safe Areas. Police have developed guidance and provided this to local police districts. Police districts have shared their lessons with others and are

supported by the national headquarters. Police have, and will continue to, take an educational approach first before considering other options (such as arrest).

Next steps

56. Following your approval, the Ministry will begin the second phase which is the regulation making process. This includes you as Associate Minister of Health making recommendations to the Cabinet Legislation Committee (through a Cabinet paper that the Ministry will prepare on your behalf). The Ministry, in liaison with PCO, will draft the new regulations to be presented to this Committee. If agreed by the Cabinet Legislation Committee, the Executive Council will sign the Order in Council and the new regulations will be gazetted and made into law 28 days later.
57. The Ministry will provide further updates on the progress of these applications as available.

ENDS.

PROACTIVELY RELEASED

Appendix 1: Cabinet – Minute of Decision (CAB-23-MIN-0164.02) – Establishment of New Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977

Appendix 2: s 9(2)(h)

Appendix 3: s 9(2)(h)

Appendix 4: Assessment of Safe Area Applications - Round 3

Appendix 5: Maps of Safe Area Application – Round 3

Please note: The maps also include a red reference line to indicate the assessed maximum allowed Safe Area perimeter.

PROACTIVELY RELEASED



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Establishment of New Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977

Portfolio Health

On 8 May 2023, following reference from the Cabinet Social Wellbeing Committee, Cabinet:

- 1 **noted** that the Contraception, Sterilisation, and Abortion Act 1977 (CSA Act) allows for the creation of regulations for prescribing a safe area (of not more than 150 metres) around specified premises at which abortion services are provided;
- 2 **noted** that each application was analysed to address:
 - 2.1 whether the safe area is desirable to address risk to the safety and wellbeing of persons accessing or providing abortion services; and
 - 2.2 whether any limitations on rights and freedoms can be demonstrably justified in a free and democratic society;
- 3 **agreed** to the establishment of new safe areas regulations, under section 13C of the CSA Act, as outlined above, at and around the following abortion providers' premises:
 - 3.1 Auckland Medical Aid Centre (AMAC);
 - 3.2 Epsom Day Unit (Greenlane Clinic Centre);
 - 3.3 Te Mahoe Unit (Wellington Regional Hospital);
 - 3.4 Gynaecological Procedure Unit (GPU) and Christchurch Women's Hospital (Christchurch Hospital);
 - 3.5 Dunedin Women's Health (Dunedin Hospital);
- 4 **invited** the Associate Minister of Health (Hon Willow-Jean Prime) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above decisions;
- 5 **agreed** that in future rounds, the Associate Minister of Health can directly issue instructions to Parliamentary Counsel Office for the drafting of safe area regulations under section 13C of the CSA Act, after consultation with the Minister of Justice, but without further reference to Cabinet;

- 6 **noted** that new regulations are required to give full effect to the safe area provisions under the CSA Act, and the enforcement powers provided by these;
- 7 **noted** that the above safe areas will be the first safe areas created under the CSA Act and will be reviewed no later than five years after they come into effect.

Rachel Hayward
Secretary of the Cabinet

Secretary's Note: This minute replaces SWC-23-MIN-0042. Cabinet agreed to remove paragraph 3.4.

PROACTIVELY RELEASED

Addendum: Pages 15 to 34 of this document have been withheld under s 9(2)(h) of the Official Information Act (1982)

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|---|---|---|---|--|
| Te Whatu Ora Waikato - Waikato Hospital | <p>Anti-abortion protesters regularly gather outside Waikato Hospital on clinic days (Wednesday and Friday), displaying placards, signs on parked cars, and distributing anti-abortion pamphlets. § 9(2)(c) [REDACTED]</p> <p>and also stand outside the entrance to Braemar Hospital on Ohaupo Road.</p> <p>Some patients have noted experiencing distress to the point of causing panic attacks due to the presence of protestors. Patients have also reported stress caused by aggressive tactics, such as being stopped and handed anti-abortion information on their way to appointments. One patient expressed feeling vulnerable, while another encountered three people attempting to dissuade them from accessing abortion health care services. These incidents contribute to a significant stress burden, creating an environment that feels unsafe.</p> | <p>The ongoing protest activity at Waikato Hospital has impacted on the respect, privacy, and dignity of individuals accessing and providing abortion services. Those seeking abortion health care have reported encounters they found distressing with protesters. This has included incidents where large signs were waved in their faces, and offensive remarks were yelled.</p> <p>Reports from staff at the hospital indicate that patients have expressed feelings of worthlessness due to their decisions, attributing these emotions to the actions of protesters. Partners of those accessing abortion health care have also approached staff, inquiring about ways to mitigate the judgment and distress caused by anti-abortion protestors. This highlights the increased impact on both patients and their support networks.</p> <p>§ 9(2)(c) [REDACTED]</p> <p>These measures emphasise the need</p> | <p>The proposed Safe Area aims to balance the need for safety with the right to express opinions, aligning with the principles set out by NZBORA. We understand that by creating this Safe Area there will be a limit on freedom of expression, however this is justified due to the following analysis.</p> <p>The hospital initially requested a Safe Area covering 150 meters around the entire premises. However, after consideration of the application and a site visit, it was determined that the full 150 metres is not needed. The reduced size of the Safe Area protects those accessing and providing abortion services while maintaining a proportionate response to the identified risks.</p> <p>The proposed Safe Area covers the entire hospital (including carparking) and incorporates Selwyn Street and Ohaupo Road. This configuration closely follows the boundaries of the hospital, covers entrances, and prioritises the areas where protest activity has</p> | Yes |

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|--|--|
| | Partners of those accessing abortion health care have also communicated feelings of judgment by protestors. | to safeguard both staff and patients within the hospital premises and the request to establishing a Safe Area. | <p>previously occurred previously. This gives a rational connection between the limit on the right and the policy objective ensuring safe access to and from abortion health care.</p> <p>There will be some impact on the residential properties surrounding the hospital and the handful of businesses on Selwyn Street, but this is minimised as much as possible by focusing on the main roads surrounding the hospital. The proposed limit on the right to freedom of expression, as defined by the Safe Area, is therefore proportionate to the policy objective of ensuring safe access of an individual to the premises.</p> <p>This is the minimum area required to prevent behaviours that would otherwise be prohibited close to the hospital grounds.</p> <p>The restrictions apply only within in the Safe Area boundaries. People can still lawfully protest and engage in freedom of expression outside of the Safe Area.</p> | |

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|---|---|--|--|--|
| | | | This gives a rational connection between the limit on the right and the policy objective to ensure safe access to and from abortion health care. | |
| Te Whatu Ora Wairarapa – Wairarapa Hospital | <p>The hospital’s application for a Safe Area at Wairarapa Hospital highlights a proactive and preventative approach, as there have been no reported instances of prohibited behaviours to date.</p> <p>Protestors may also target new abortion health care services to voice their opposition to the new service.</p> <p>Given the newly established nature of the abortion health care service, the primary focus is on ensuring the safety and wellbeing of individuals accessing and providing abortion health care.</p> <p>The absence of behaviour that would otherwise be prohibited does not negate the need for a Safe Area, but rather emphasises a preventive measure to manage potential risks associated with prohibited</p> | <p>While there has been no reported abortion related prohibited behaviours at the clinic, the focus is on preventing any potential impacts on the respect, privacy, and dignity of individuals accessing abortion health care. This reflects a commitment to creating a supportive and secure environment for patients, acknowledging the sensitive nature of abortion health care.</p> <p>The application emphasises the importance of prioritising the entrances, exits, and parking areas of Wairarapa Hospital to maintain a safe and unobstructed passage by staff and patients.</p> <p>s 9(2)(c)</p> | <p>The proposed Safe Area aims to balance the need for safety with the right to express opinions, aligning with the principles set out by NZBORA. We understand that by creating this Safe Area there will be a limit on freedom of expression, however this is justified due to the following analysis.</p> <p>The hospital initially requested a Safe Area covering 150 meters around the entire premises. However, after consideration of the application and a site visit, it was determined that the full 150 metres is not needed. The reduced size of the Safe Area protects those accessing and providing abortion services while maintaining a proportionate response to the identified risks.</p> <p>The proposed Safe Area covers the area is between Colombo Road (southeast),</p> | Yes |

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|---|---|---|--|
| | <p>behaviours. This approach aligns with the principal objective of ensuring a safe environment for patients, providers, and staff.</p> | <p>s 9(2)(c)</p> | <p>Blair Street (southwest), and Te Ore Ore Road (northeast), while also covering the parts of Totara Street and Montgomery Cres on the northeast side of Te Ore Ore Road.</p> <p>The small size of the proposed Safe Area prioritises key areas such as the roundabout, entrance, parking area, pavements, and roads immediately surrounding the hospital. This demonstrates a proportionate response to the potential risks and policy objective of Safe Areas.</p> <p>There will be some impact on the residential properties, a dairy and the church on Te Ore Ore Road. However, this impact has been reduced as much as reasonably possible while also minimising the risk to the safety and wellbeing of patients and staff. The proposed limit on the right to freedom of expression, as defined by the Safe Area, is therefore proportionate to the policy objective of ensuring safe access of an individual to the premises.</p> | |

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|--|--|
| | | | <p>This is the minimum area required to prevent behaviours that would otherwise be prohibited close to the hospital grounds.</p> <p>The restrictions apply only within in the Safe Area boundaries. People can still lawfully protest and engage in freedom of expression outside of the Safe Area. This gives a rational connection between the limit on the right and the policy objective to ensure safe access to and from abortion health care.</p> | |

s 9(2)(c), s 9(2)(f)(iv)

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|---|--|
|----------|--|---|---|--|

s 9(2)(c), s 9(2)(f)(iv)



Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act


| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|---|--|
|----------|--|---|---|--|

s 9(2)(c), s 9(2)(f)(iv)



| | | | | |
|---|---|--|---|-----|
| Te Whatu Ora Capital, Coast and Hutt Valley – Hutt Hospital | The Hutt Hospital has not experienced behaviours that would be prohibited to date. However, many patients from the Lower Hutt and Upper Hutt areas receive abortion health care at Te Mahoe, Wellington Hospital. There were (prior to the establishment of their Safe Area) ongoing anti-abortion protests at Wellington Hospital. | The Hutt Hospital application highlights the absence of prohibited behaviours at the premises. However, given the previous protests at Te Mahoe (Wellington Hospital), the potential for similar activities impacting patients from the Hutt area is acknowledged. | The proposed Safe Area aims to balance the need for safety with the right to express opinions, aligning with the principles set out by NZBORA. We understand that by creating this Safe Area there will be a limit on freedom of expression, however this is justified due to the following analysis. | Yes |
|---|---|--|---|-----|

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|--|---|--|
| | <p>As a preventative measure, the application identifies the need to safeguard the main parking area, parking building, and entrances used by staff and patients.</p> <p>The potential risks include the proximity of the hospital to residential areas, the presence of construction to the East, and the absence of behaviours that would be considered prohibited at Hutt Hospital.</p> | <p>The service's reliance on Te Mahoe for certain pre-procedure activities introduces an element of vulnerability, emphasising the importance of protecting the respect, privacy, and dignity of individuals accessing or providing abortion health care at Hutt Hospital.</p> <p>The proposed Safe Area is a preventative measure to mitigate potential risks.</p> <p>s 9(2)(c)</p>  | <p>The hospital initially requested a Safe Area covering 150 meters around the entire premises. However, after consideration of the application and a site visit, it was determined that the full 150 metres is not needed. The reduced size of the Safe Area protects those accessing and providing abortion services while maintaining a proportionate response to the identified risks.</p> <p>The proposed Safe Area would protect the roundabout in front of the building, the entrance to the parking area, and the building itself, and would prioritise the safe entry, exit, and approach to the hospital grounds. This gives a rational connection between the limit on the right and the policy objective ensuring safe access to and from abortion health care.</p> <p>There will be some impact on residential properties, a kindergarten, and some small businesses in the area. However, this impact has been reduced as much as reasonably possible while</p> | |

Appendix 4: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|---|--|
| | | | <p>also minimising the risk to the safety and wellbeing of patients and staff. The proposed limit on the right to freedom of expression, as defined by the Safe Area, is therefore proportionate to the policy objective of ensuring safe access of an individual to the premises.</p> <p>This is the minimum area required to prevent behaviours that would otherwise be prohibited close to the hospital grounds.</p> <p>The restrictions apply only within in the Safe Area boundaries. People can still lawfully protest and engage in freedom of expression outside of the Safe Area. This gives a rational connection between the limit on the right and the policy objective to ensure safe access to and from abortion health care.</p> | |

PROACTIVELY RELEASED

Appendix ...: Illustrative maps for quarter four 2023 of Safe Areas

Waikato Hospital

Version:
20 October 2023



Specified Premises Safe area Land parcel



Imagery, land parcels: LINZ.
Street names: OpenStreetMap

Appendix Illustrative maps for quarter four 2023 of Safe Areas



Appendix ...: Illustrative maps for quarter four 2023 of Safe Areas

s 9(2)(c), s 9(2)(f)(iv)



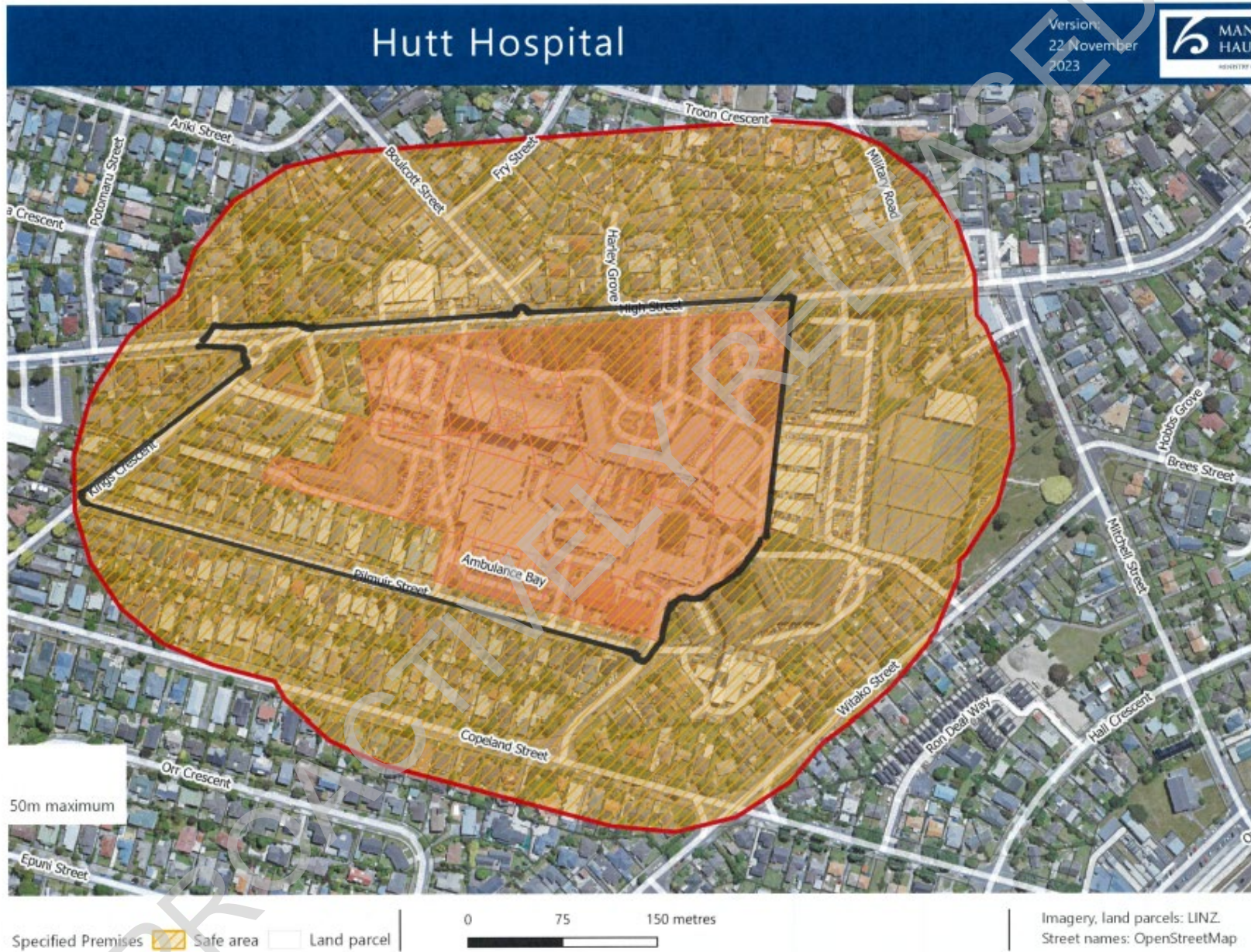
Specified Premises  Safe area  Land parcel

0 75 150 metres



Imagery, land parcels: LINZ
Street names: OpenStreetMap

Appendix ...: Illustrative maps for quarter four 2023 of Safe Areas



Briefing

Cabinet paper: Establishing new Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977

| | | | |
|------------------------|---|------------------------------|-------------|
| Date due to MO: | 29 April 2024 | Action required by: | 16 May 2024 |
| Security level: | IN CONFIDENCE | Health Report number: | H2024039981 |
| To: | Hon Casey Costello, Associate Minister of Health | | |
| Copy to: | Hon Shane Reti, Minister of Health | | |
| Consulted: | Health New Zealand: <input type="checkbox"/> Māori Health Authority: <input type="checkbox"/> | | |

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|---|-----------|
| Simon Medcalf | Deputy Director-General, Regulation and Monitoring – Te Pou Whakamaru | s 9(2)(a) |
| Ruihua Gu | Acting Group Manager, Quality Assurance and Safety, Regulation and Monitoring | s 9(2)(a) |

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Cabinet paper: Establishing new safe areas under the Contraception, Sterilisation, and Abortion Act 1977

Security level: IN CONFIDENCE **Date:** 29 April 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This briefing provides you with a Cabinet paper (Appendix 1) to establish three new Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977 (the CSA Act).
2. This paper is for your consideration and to seek Ministerial consultation.

Cabinet paper

3. The Social Outcomes Committee (SOU) paper seeks SOU agreement to establish safe areas under the CSA Act at the following providers:
 - Waikato Hospital (Te Whatu Ora Waikato)
 - Wairarapa Hospital (Te Whatu Ora Wairarapa)
 - Hutt Hospital (Te Whatu Ora Capital, Coast and Hutt Valley).
4. You have previously been provided with the assessment of the applications and maps of the proposed Safe Areas (H2024035845 refers) and you may wish to use these as part of the ministerial consultation.
5. The Cabinet paper outlines the assessment framework used, and consultation undertaken to inform the recommendations on the Safe Areas for the three providers. It details the balance of ensuring the rights of those accessing and providing abortion services, as well as the justification of the limitations imposed on others within these areas.
6. The Ministry of Justice, New Zealand Police, and the Ministry of Disabled People - Whaikaha have been consulted and were supportive of the paper.
7. Talking points have been provided (Appendix 2) for your attendance at SOU and for Ministerial consultation.

Next steps

8. Subject to your agreement, the Cabinet paper is ready for Ministerial consultation.
9. Following Ministerial consultation, we would like to lodge the Cabinet paper by 10am on Thursday 16 May 2024 for consideration at the SOU meeting on Wednesday 22 May 2024.

Recommendations

We recommend you:

- a) **note** that a Cabinet paper is attached to this briefing for you to seek Cabinet approval to establish new Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977. **Noted**
- b) **note** the talking points attached to this briefing. **Noted**
- c) **circulate** the Cabinet paper for Ministerial consultation, requesting feedback no later than 15 May 2024. **Yes/No**
- d) **approve** the Cabinet paper for lodgement with the Cabinet Office for the Social Outcome Committee on Wednesday 22 May 2024, subject to Ministerial feedback. **Yes/No**
- e) **agree** to forward a copy of this briefing to Hon Paul Goldsmith, Minister of Justice. **Yes/No**



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date: 9/05/2024

Hon Casey Costello
Associate Minister of Health
Date:

Minister's Notes

PROACTIVELY RELEASED

Addendum: the final Cabinet paper and associated minutes are released further in this pack

Appendix 2: Talking points for Cabinet paper - Establishing new Safe Areas under the Contraception, Sterilisation and Abortion Act 1977

Context

1. The ability to create Safe Areas is provided for through legislation. The intention is to address any risk to the safety and wellbeing, and to protect the privacy and dignity, of people accessing abortion services and/or seeking advice or information about abortion services and/or assisting in the provision of such services. In other words, they protect those accessing and providing abortion and abortion related services.
2. A wide range of behaviours are prohibited within a Safe Area. Including:
 - (a) obstructing a person in a safe area who is approaching, entering, or leaving any building in which abortion services are provided; or
 - (b) making a visual recording of another person in a safe area in a manner that is likely to cause emotional distress to a person accessing, providing, or assisting with providing, abortion services; or
 - (c) advising or persuading people accessing abortion services to refrain from doing so; or
 - (d) informing people seeking abortion services about matters relating to the provision of those services (unless during the course of or assisting with providing those services); or
 - (e) engaging in protest activity in relation to the provision of abortion services.
3. A Regulatory Impact Statement (RIS) was prepared ahead of the first round of applications being considered in 2023 and this is not required for any subsequent application rounds.
4. There are currently 11 Safe Areas across the country. These will be the third round of Safe Areas to be established and will bring the total Safe Areas to 14.
5. I am asking SOU to agree to the establishment of three new Safe Areas for abortion services.
6. The three providers are Waikato Hospital, Wairarapa Hospital and Hutt Hospital.
7. A NZ Bill of Rights Act 1990 (NZ BORA) consideration was undertaken against each application to ensure that any limitations on the rights of others can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms.
8. The Ministry of Justice has been consulted in relation to NZ BORA implications and the NZ Police have been consulted in relation to the operation and enforcement of Safe Areas.
9. The boundaries of the three Safe Areas have been carefully considered and each Safe Area has been recommended on its own unique merits. Waikato Hospital has ongoing and persistent prohibited behaviours. Wairarapa Hospital and Hutt Hospital have not experienced prohibited behaviours to date. However, I have determined that a Safe Area is warranted as a preventative measure as it balances the risks to people accessing or providing the service versus the limitations of people's rights and freedoms.

10. Due to the case-by-case nature of Safe Areas, all future applications will come to the Cabinet Social Outcomes Committee for decision.
11. The CSA Act requires that any Safe Areas established are reviewed every five years. The Ministry of Health will facilitate this process, in consultation with the Secretary for Justice.

ENDS.

PROACTIVELY RELEASED

Appendix 3: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|---|--|--|---|--|
| Waikato Hospital – Te Whatu Ora Waikato | <p>Anti-abortion protesters regularly gather outside Waikato Hospital on clinic days (Wednesday and Friday), displaying placards, signs on parked cars, and distributing anti-abortion pamphlets. s 9(2)(c)</p> <p>and also stand outside the entrance to Braemar Hospital on Ohaupo Road.</p> <p>Some patients have noted experiencing distress to the point of causing panic attacks due to the presence of protestors. Patients have also reported stress caused by aggressive tactics, such as being stopped and handed anti-abortion information on their way to appointments. One patient expressed feeling vulnerable, while another encountered three people attempting to dissuade them from accessing abortion health care services. These incidents contribute to a significant stress burden, creating an environment that feels unsafe.</p> | <p>The ongoing protest activity at Waikato Hospital has impacted on the respect, privacy, and dignity of individuals accessing and providing abortion services. Those seeking abortion health care have reported encounters they found distressing with protestors. This has included incidents where large signs were waved in their faces, and offensive remarks were yelled.</p> <p>Reports from staff at the hospital indicate that patients have expressed feelings of worthlessness due to their decisions, attributing these emotions to the actions of protestors. Partners of those accessing abortion health care have also approached staff, inquiring about ways to mitigate the judgment and distress caused by anti-abortion protestors. This highlights the increased impact on both patients and their support networks.</p> <p>s 9(2)(c)</p> <p>These measures emphasise the need</p> | <p>The proposed Safe Area aims to balance the need for safety with the right to express opinions, aligning with the principles set out by NZBORA. We understand that by creating this Safe Area there will be a limit on freedom of expression, however this is justified due to the following analysis.</p> <p>The hospital initially requested a Safe Area covering 150 meters around the entire premises. However, after consideration of the application and a site visit, it was determined that the full 150 metres is not needed. The reduced size of the Safe Area protects those accessing and providing abortion services while maintaining a proportionate response to the identified risks.</p> <p>The proposed Safe Area covers the entire hospital (including carparking) and incorporates Selwyn Street and Ohaupo Road. This configuration closely follows the boundaries of the hospital, covers entrances, and prioritises the areas where protest activity has</p> | Yes |

Appendix 3: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|--|--|
| | Partners of those accessing abortion health care have also communicated feelings of judgment by protestors. | to safeguard both staff and patients within the hospital premises and the request to establishing a Safe Area. | <p>previously occurred previously. This gives a rational connection between the limit on the right and the policy objective ensuring safe access to and from abortion health care.</p> <p>There will be some impact on the residential properties surrounding the hospital and the handful of businesses on Selwyn Street, but this is minimised as much as possible by focusing on the main roads surrounding the hospital. The proposed limit on the right to freedom of expression, as defined by the Safe Area, is therefore proportionate to the policy objective of ensuring safe access of an individual to the premises.</p> <p>This is the minimum area required to prevent behaviours that would otherwise be prohibited close to the hospital grounds.</p> <p>The restrictions apply only within in the Safe Area boundaries. People can still lawfully protest and engage in freedom of expression outside of the Safe Area.</p> | |

Appendix 3: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|--|--|---|--|--|
| <p>Wairarapa Hospital – Te Whatu Ora Wairarapa</p> | <p>The hospital’s application for a Safe Area at Wairarapa Hospital highlights a proactive and preventative approach, as there have been no reported instances of prohibited behaviours to date.</p> <p>Protestors may also target new abortion health care services to voice their opposition to the new service.</p> <p>Given the newly established nature of the abortion health care service, the primary focus is on ensuring the safety and wellbeing of individuals accessing and providing abortion health care.</p> <p>The absence of behaviour that would otherwise be prohibited does not negate the need for a Safe Area, but rather emphasises a preventive measure to manage potential risks associated with prohibited behaviours. This approach aligns with the principal objective of ensuring a safe environment for patients, providers, and staff.</p> | <p>While there has been no reported abortion related prohibited behaviours at the clinic, the focus is on preventing any potential impacts on the respect, privacy, and dignity of individuals accessing abortion health care. This reflects a commitment to creating a supportive and secure environment for patients, acknowledging the sensitive nature of abortion health care.</p> <p>The application emphasises the importance of prioritising the entrances, exits, and parking areas of Wairarapa Hospital to maintain a safe and unobstructed passage by staff and patients.</p> <p>s 9(2)(c) [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> | <p>The proposed Safe Area aims to balance the need for safety with the right to express opinions, aligning with the principles set out by NZBORA. We understand that by creating this Safe Area there will be a limit on freedom of expression, however this is justified due to the following analysis.</p> <p>The hospital initially requested a Safe Area covering 150 meters around the entire premises. However, after consideration of the application and a site visit, it was determined that the full 150 metres is not needed. The reduced size of the Safe Area protects those accessing and providing abortion services while maintaining a proportionate response to the identified risks.</p> <p>The proposed Safe Area covers the area is between Colombo Road (southeast), Blair Street (southwest), and Te Ore Ore Road (northeast), while also covering the parts of Totara Street and</p> | <p>Yes</p> |

Appendix 3: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|---|--|
| | | <p>s 9(2)(c) [REDACTED] [REDACTED] [REDACTED]</p> | <p>Montgomery Cres on the northeast side of Te Ore Ore Road.</p> <p>The small size of the proposed Safe Area prioritises key areas such as the roundabout, entrance, parking area, pavements, and roads immediately surrounding the hospital. This demonstrates a proportionate response to the potential risks and policy objective of Safe Areas.</p> <p>There will be some impact on the residential properties, a dairy and the church on Te Ore Ore Road. However, this impact has been reduced as much as reasonably possible while also minimising the risk to the safety and wellbeing of patients and staff. The proposed limit on the right to freedom of expression, as defined by the Safe Area, is therefore proportionate to the policy objective of ensuring safe access of an individual to the premises.</p> <p>This is the minimum area required to prevent behaviours that would</p> | |

Appendix 3: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|--|---|--|---|--|
| | | | <p>otherwise be prohibited close to the hospital grounds.</p> <p>The restrictions apply only within in the Safe Area boundaries. People can still lawfully protest and engage in freedom of expression outside of the Safe Area.</p> | |
| <p>Hutt Hospital – Te Whatu Ora Capital, Coast and Hutt Valley</p> | <p>The Hutt Hospital has not experienced behaviours that would be prohibited to date. The hospital currently offers surgical abortions at later gestation for induction, however they are hoping to increase service availability and services across lower gestations.</p> <p>As a preventative measure, the application identifies the need to safeguard the main parking area, parking building, and entrances used by staff and patients.</p> | <p>While there has been no reported abortion related prohibited behaviours at the Hutt Hospital, the focus is on preventing any potential impacts on the respect, privacy, and dignity of individuals accessing abortion health care. This reflects a commitment to creating a supportive and secure environment for patients, acknowledging the sensitive nature of abortion health care.</p> <p>The service's reliance on Te Mahoe for certain pre-procedure activities introduces an element of vulnerability, emphasising the importance of protecting the respect, privacy, and dignity of individuals accessing or</p> | <p>The proposed Safe Area aims to balance the need for safety with the right to express opinions, aligning with the principles set out by NZBORA. We understand that by creating this Safe Area there will be a limit on freedom of expression, however this is justified due to the following analysis.</p> <p>The hospital initially requested a Safe Area covering 150 meters around the entire premises. However, after consideration of the application and a site visit, it was determined that the full 150 metres is not needed. The reduced size of the Safe Area protects those accessing and providing abortion services while maintaining a</p> | <p>Yes</p> |

Appendix 3: Assessment of provider applications against Safe Area criteria – Section 13A and C of the Act

| Provider | Current/identified risks to safety and wellbeing of persons accessing and providing services at premises (A) | Current/identified impacts to the respect, privacy, and dignity of persons accessing and providing services at premises (B) | NZBORA considerations – Demonstrably justified i.e., Rights and freedoms limited to the extent necessary to address the risks | Criteria for Safe Area met [Yes/No] |
|----------|--|---|---|--|
| | | <p>providing abortion health care at Hutt Hospital.</p> <p>The proposed Safe Area is a preventative measure to mitigate potential risks.</p> <p>s 9(2)(c) ██ ██ ██ ██ ██</p> | <p>proportionate response to the identified risks.</p> <p>The proposed Safe Area would protect the roundabout in front of the building, the entrance to the parking area, and the building itself, and would prioritise the safe entry, exit, and approach to the hospital grounds. This gives a rational connection between the limit on the right and the policy objective ensuring safe access to and from abortion health care.</p> <p>There will be some impact on residential properties, a kindergarten, and some small businesses in the area. However, this impact has been reduced as much as reasonably possible while also minimising the risk to the safety and wellbeing of patients and staff. The proposed limit on the right to freedom of expression, as defined by the Safe Area, is therefore proportionate to the policy objective of ensuring safe access of an individual to the premises.</p> | |

PROACTIVELY PREPARED

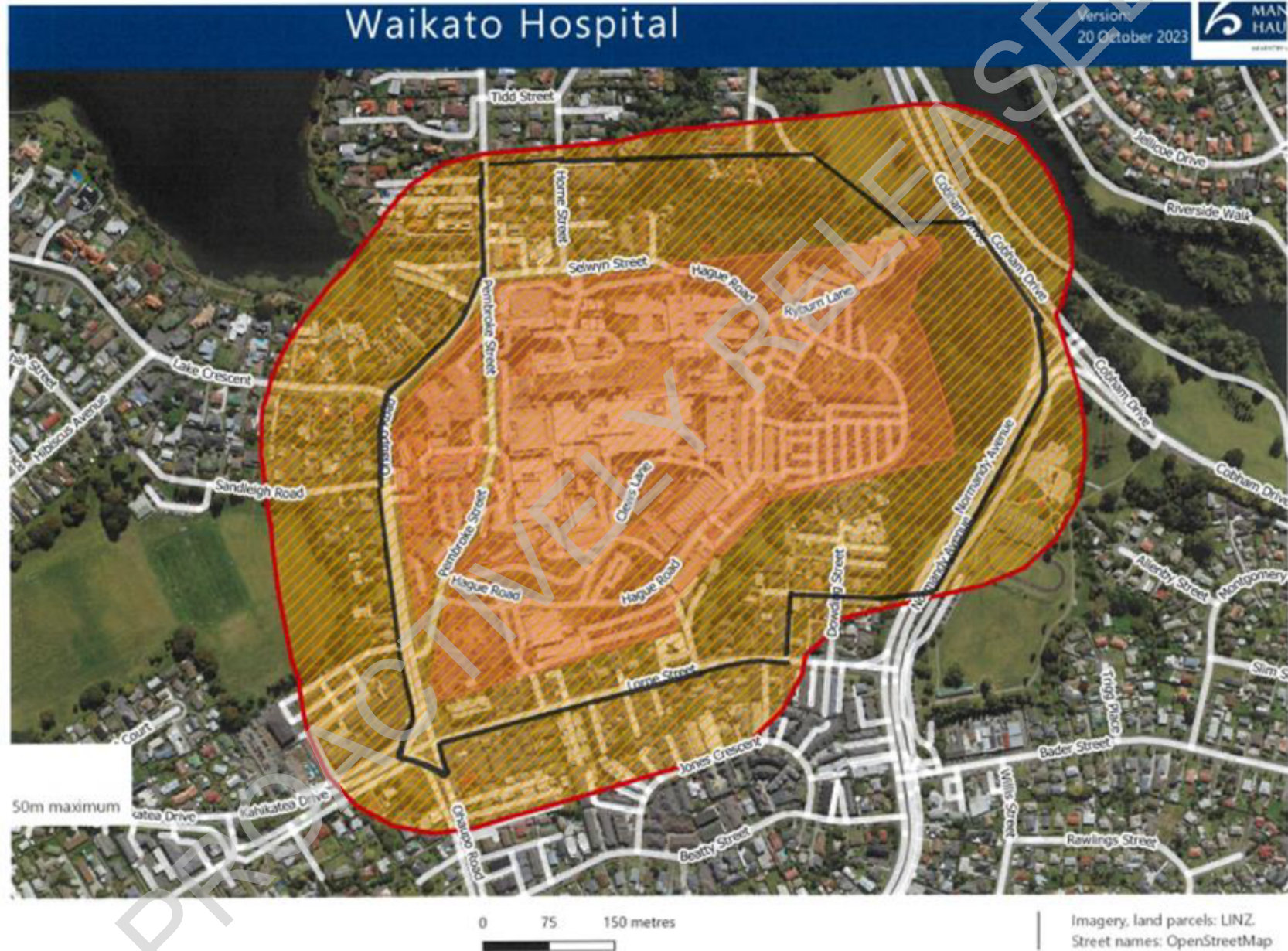
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|----------|--|---|---|--|
| | | | <p>This is the minimum area required to prevent behaviours that would otherwise be prohibited close to the hospital grounds.</p> <p>The restrictions apply only within in the Safe Area boundaries. People can still lawfully protest and engage in freedom of expression outside of the Safe Area.</p> | |

PROACTIVELY RELEASED

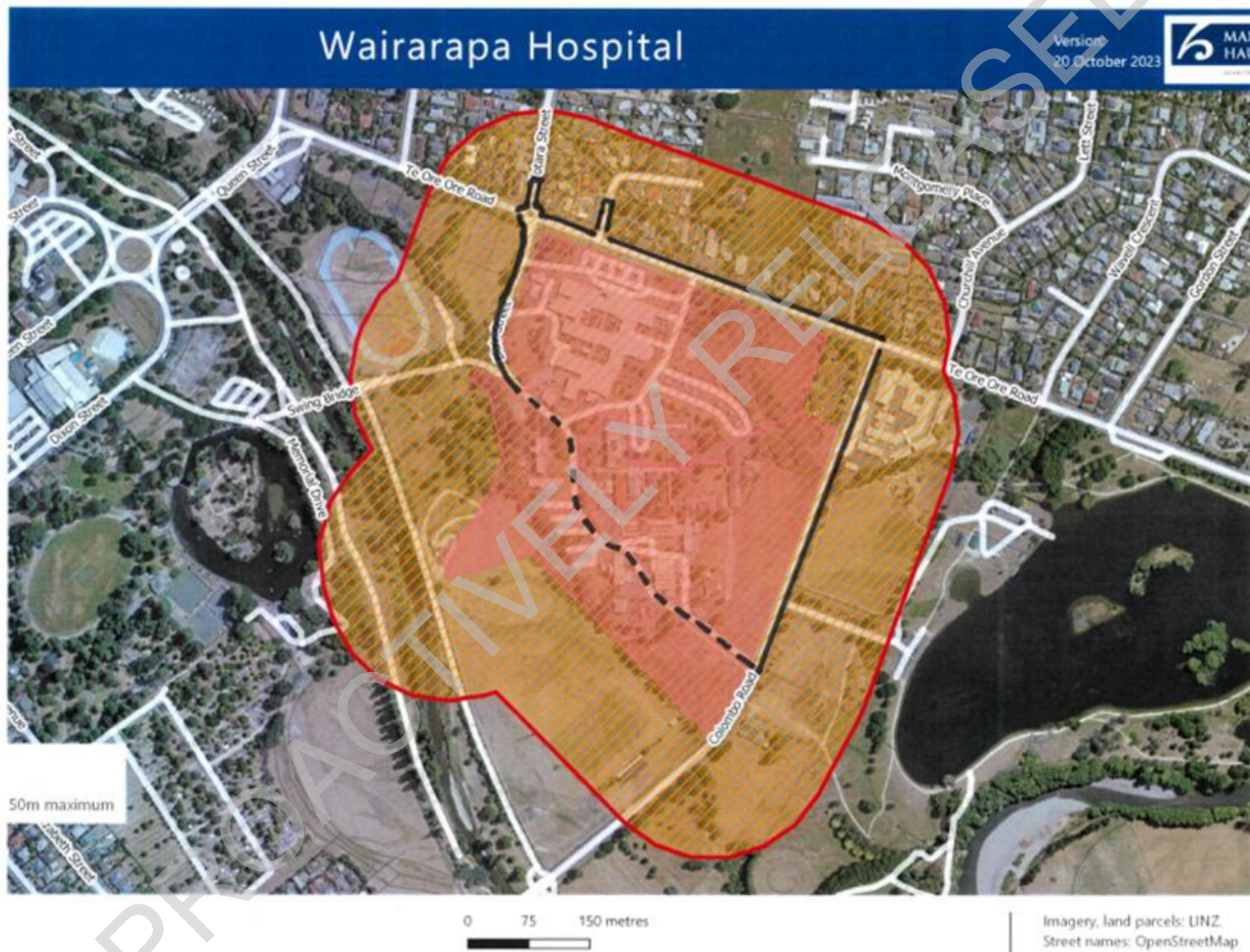
Appendix 4: Illustrative maps for Round 3 of Safe Areas.

The inner area in pink colour is the boundary of premises, the red line is 150m distance from the premises, black line is the proposed Safe Area.



Appendix 4: Illustrative maps for Round 3 of Safe Areas.

The inner area in pink colour is the boundary of premises, the red line is 150m distance from the premises, black line is the proposed Safe Area.





Cabinet Social Outcomes Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Establishment of New Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977

Portfolio Associate Health (Hon Casey Costello)

On 19 June 2024, the Cabinet Social Outcomes Committee (SOU) **deferred** consideration of the submission *Establishment of New Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977* [SOU-24-SUB-0057] to the next SOU meeting on 26 June 2024.

Jenny Vickers
Committee Secretary

Present:

Rt Hon Winston Peters
Hon David Seymour
Hon Dr Shane Reti
Hon Erica Stanford
Hon Paul Goldsmith
Hon Louise Upston (Chair)
Hon Mark Mitchell
Hon Melissa Lee
Hon Nicole McKee
Hon Casey Costello
Hon Penny Simmonds

Officials present from:

Office of the Prime Minister
Officials Committee for SOU



Cabinet Social Outcomes Committee

Minute of Decision

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Establishment of New Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977

Portfolio Associate Health (Hon Casey Costello)

On 26 June 2024, the Cabinet Social Outcomes Committee:

- 1 **noted** that the Contraception, Sterilisation, and Abortion Act 1977 (the CSA Act) allows for the creation of regulations for prescribing a Safe Area (of not more than 150 metres) around specified premises at which abortion health care services are provided;
- 2 **noted** that three applications were considered in this application round;
- 3 **noted** that each application was analysed to consider:
 - 3.1 whether the Safe Area is desirable to address risk to the safety and wellbeing of persons accessing or providing abortion health care services; and
 - 3.2 whether any limitations on rights and freedoms can be demonstrably justified in a free and democratic society;
- 4 **agreed** to the establishment of new Safe Areas regulations, under section 13C of the CSA Act, as outlined above, at and around the following abortion health care providers' premises:
 - 4.1 Waikato Hospital (Te Whatu Ora Waikato);
 - 4.2 Wairarapa Hospital (Te Whatu Ora Wairarapa);
 - 4.3 Hutt Hospital (Te Whatu Ora Capital, Coast and Hutt Valley);
- 5 **authorised** the Associate Minister of Health (Hon Casey Costello) to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 6 **noted** that, due to the case-by-case nature of Safe Areas, future applications will come to the Cabinet Social Outcomes Committee for decision.

Janine Harvey
Committee Secretary

Present: (see over)

Present:

Rt Hon Christopher Luxon
Rt Hon Winston Peters
Hon Nicola Willis (Chair)
Hon Chris Bishop
Hon Dr Shane Reti
Hon Erica Stanford
Hon Louise Upston
Hon Matt Doocey
Hon Melissa Lee
Hon Nicole McKee
Hon Casey Costello
Hon Penny Simmonds
Hon Chris Penk

Officials present from:

Office of the Prime Minister
Officials Committee for SOU

PROACTIVELY RELEASED



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Social Outcomes Committee: Period Ended 28 June 2024

On 1 July 2024, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 28 June 2024:

Out of scope



SOU-24-MIN-0064

**Establishment of New Safe Areas Under the
Contraception, Sterilisation, and Abortion Act
1977**

CONFIRMED

Portfolio: Associate Health (Hon Casey Costello)

Out of scope



Rachel Hayward
Secretary of the Cabinet

In Confidence

Office of the Associate Minister of Health

Cabinet Social Outcomes Committee

The establishment of new Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977**Proposal**

- 1 This paper seeks agreement to develop new regulations, under the Contraception, Sterilisation, and Abortion Act 1977, for the purpose of establishing new Safe Areas at and around three abortion providers' premises.

Relation to Government priorities

- 2 The establishment of Safe Areas aligns with the government's priority of providing improved health services for all New Zealanders.

Executive Summary

- 3 The Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Act 2022 introduced new provisions into the Contraception, Sterilisation and Abortion Act 1977 (the CSA Act) that allow for the creation of regulations prescribing a Safe Area (of not more than 150 metres) around specified premises at which abortion health services are provided.
- 4 The Ministry of Health (the Ministry) has established an application process for abortion health providers to request the creation of a Safe Area at their premises. Two application rounds have been completed and currently there are 11 Safe Areas in place across the country.
- 5 I am seeking Cabinet agreement to:
 - 5.1 approve three new applications for Safe Areas
 - 5.2 instruct the Parliamentary Counsel Office to draft new regulations, under section 13C of the CSA Act, establishing Safe Areas at and around the premises of these three providers.

Background

- 6 The Contraception, Sterilisation, and Abortion (Safe Areas) Amendment Act 2022 received Royal Assent on 18 March 2022 and was incorporated into the principal Act on 19 March 2022 as new sections 13A to 13C.

- 7 The provisions allow for the creation of regulations for the purposes of prescribing an area around specified premises with a boundary no more than 150 metres from the perimeter, as a Safe Area. In relation to the provision of abortion health care services, a provider's premises is the building in which the services are provided and the land on which that building sits. The protections provided by the establishment of a safe area apply to people accessing services or seeking advice/information on abortion health care services, and people providing such services or information. Within a prescribed Safe Area, under section 13A of the CSA Act, a person must not:
- obstruct a person entering or leaving a building where abortion services are provided,
 - film them in a manner that is likely to cause emotional distress,
 - try to persuade them not to seek abortion health care services,
 - or
 - protest activity in relation to abortion services.
- 8 A person who contravenes this or continues to engage in prohibited behaviour within a Safe Area may be liable on conviction to a fine not exceeding \$1,000.
- 9 Any Safe Area must be reviewed by the Director-General of Health, in consultation with the Secretary for Justice, no later than five years after it is established.
- 10 To date, 11 Safe Areas have been established around abortion health care services in New Zealand.

The process for assessing and establishing Safe Areas

- 11 The creation of Safe Areas follows a two-step process. The first step is a case-by-case assessment of provider applications developed and administered by the Ministry, to inform any Safe Area recommendation. Following this, the regulatory process to give effect to any Safe Area recommendations commences.
- 12 The Minister of Health, after consulting with the Minister of Justice, must be satisfied that the proposals can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms. Following this, the Minister of Health is responsible for recommending the making of new Safe Area regulations, in accordance with the criteria set out in sections 13C(2)(a) and 13(2)(b) of the CSA Act.

Future rounds of applications

- 13 As Associate Minister of Health, I hold delegated responsibility for the recommendations to make Safe Area regulations.
- 14 Due to the case-by-case nature of Safe Areas all future applications will come to the Cabinet Social Outcomes Committee for decision.

Analysis

- 15 Application rounds have been used to manage the assessment of requests, and the regulation-making process required. The third application round opened to providers in August 2023 and closed in October 2023. [REDACTED] s 9(2)(c), s 9(2)(f)(iv) [REDACTED] three are now presented in this paper.
- 16 In this round of applications three public hospitals are being considered for the establishment of a Safe Area. Eight public hospitals have already been granted a Safe Area. Some of these had experienced ongoing and persistent prohibited behaviours, and some were granted a Safe Area as a preventative measure.
- 17 All applications received were assessed on a case-by-case basis to ensure they meet the requirements of the CSA Act to assess the safety and wellbeing of persons accessing or working at the specified providers' premises. The Ministry also visited applicants' premises to assess risk.

Assessment framework and consultation


- 18 The requirements of section 13C of the CSA Act have been used as the primary criteria for assessing all provider applications and proposed Safe Areas.
- 19 In accordance with section 13C(2)(a) of the CSA Act, this has meant ensuring that a Safe Area is desirable:
- to address any risks to the safety and wellbeing, and
 - to respect the privacy and dignity of those persons accessing or providing abortion health care services at the specified premises.
- 20 In accordance with section 13C(2)(b) of the Act, wider analysis was conducted of each proposed Safe Area for consistency with New Zealand Bill of Rights Act 1990 (NZBORA) and justification of limitations imposed on others within the areas.
- 21 All applications were assessed against the framework noted above to inform the Safe Area recommendation set out in this proposal.
- 22 As dictated by section 13C(1) of the CSA Act, all Safe Area recommendations are for a specified premises only, and for an area around those premises within a boundary of not more than 150 metres from the perimeter of that premises. As a result of the assessments, the shape and size of each proposed Safe Area is unique.
- 23 The Ministry of Justice and New Zealand Police have been consulted on the recommendations presented in this proposal.

Recommended Safe Areas to be established from this application round

24 The Ministry assessed the applications received in this third round against the criteria listed above. Having considered the advice and analysis presented to me for each application, I am satisfied that all applications meet the criteria of the CSA Act.

25 Following the further NZBORA analysis applied to all proposed Safe Areas I am satisfied that the proposed limitation on the rights of those wishing to conduct prohibited behaviours within the proposed Safe Areas is justified and proportional.

26 s 9(2)(h)



27 I have outlined below the evidence of risk to safety and wellbeing of people accessing/providing abortion health care services (part (a) of the requirements), and then considered, for each Safe Area application, whether the Safe Area can be demonstrably justified (part (b) of the requirements).

28 The boundaries of the proposed Safe Areas have been set to ensure that others' rights and freedoms are limited only to an extent that is demonstrably justified. This includes boundaries being smaller where risks are reduced, resulting in some recommended Safe Areas being irregular in shape.


29 In instances where private residences are within a proposed Safe Area, the restrictions in practice are considered less limiting than they would be in other parts of the Safe Areas, thus demonstrably justified. That is, only prohibited behaviours as outlined in the CSA Act must be clearly seen or heard from the premises. However, I acknowledge there may still be impacts, for example, in limiting a person's ability to put a protest sign on their fence.

30 A table with information on each Safe Area, including the consideration of NZBORA implications is provided in Appendix 1. The maps of each premises with proposed Safe Area boundaries are attached as Appendix 2.

Proposed Safe Area 1 – Waikato Hospital (Te Whatu Ora Waikato)

31 Waikato Hospital has ongoing and persistent protest activity outside their premises. They have emailed the Ministry several times since their original application to indicate that activity has increased over the last few months. Prohibited behaviour occurs in the form of placards, signs on parked cars, and protesters stopping people and handing out anti-abortion pamphlets. s 9(2)(c)

s 9(2)(c)



Proposed Safe Area 2 – Wairarapa Hospital (Te Whatu Ora Wairarapa)

- 32 Wairarapa Hospital is a newly established service and has not yet experienced direct protest activity. ^{s 9(2)(c)} [REDACTED] There is a risk to safety and privacy (eg from protest activity) that might arise as community awareness of the new abortion health service increases. This Safe Area would be a preventative measure and prioritises the safe entry, exit and approach to the hospital grounds by protecting the entrances and exits of the hospital premises, as well as the main the car parking areas.

Proposed Safe Area 3 – Hutt Hospital (Te Whatu Ora Capital, Coast and Hutt Valley)

- 33 The Safe Area for Hutt Hospital is a preventative measure to ensure the safety and well-being of those accessing abortion health care at Hutt Hospital. ^{s 9(2)(c)} [REDACTED]

There is a risk to safety and privacy (eg from protest activity) that might arise as community awareness of the expanded abortion health service increases. The Safe Area is requested to ensure safe entry, exit, and approach to the hospital grounds and parking area.

Implementation

- 34 The new Safe Area regulations will be implemented and enforced by the New Zealand Police. I am advised that Police are initially taking an educational approach to Safe Areas enforcement.
- 35 The Ministry will continue to engage with all three abortion health care providers and New Zealand Police to ensure that the extent and location of all Safe Areas are clear. The Ministry will liaise with Health New Zealand | Te Whatu Ora, who have produced operational guidance for abortion health care service providers regarding all new Safe Area regulations.

Cost-of-living Implications

- 36 There are no specific cost-of-living implications directly linked to the Safe Area regulations presented in this proposal.

Financial Implications

- 37 There are no anticipated financial implications directly linked to the Safe Area regulations presented in this proposal.

Legislative Implications

- 38 New regulations are required to establish new Safe Areas. Behaviours that would be considered prohibited under the Act are happening at an increased rate at one of the applicant's premises, and it is therefore desirable that these regulations be drafted as soon as possible.

Impact Analysis

Climate Implications of Policy Assessment

39 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Population Implications

40 The priority groups this proposal has positive implications for include young people, women, disabled people, and Māori. Overall, these groups face additional barriers to accessing abortion health care services, such as systemic discrimination, stigma, and cultural barriers.

41 The Safe Areas in this proposal will reduce barriers and risks to the safety and wellbeing and protect the privacy and dignity of these groups, when accessing these essential health services. Examples of these impacts are:

| Population group | How the proposal may affect this group |
|-------------------------|--|
| Māori | Māori access abortion at relatively high rates (24% of all abortions in 2022 were for people identifying as Māori and overall Māori accessed 10% more surgical abortions than non-Māori in 2021). Māori may be more likely to benefit from reduced instances of the prohibited behaviour in a Safe Area. |
| Young people | Young people access abortion health care services and can face discrimination barriers. Safe Areas would reduce stigma faced for this group. |
| Women | The majority of people who are involved in accessing or providing abortion health care services or information about abortion services are women. The proposals in this paper will support women's access to, and provision of, these health services without interference. |
| Disabled People | Disabled people face additional barriers relating to the physical accessibility of services and the availability of accessible information. In addition, disabled people with intersectional identities (e.g tāngata whaikaha Māori wahine and Pacific disabled women) are likely to face compounding barriers to accessing abortion services. Disabled women may be at greater risk of coercion, persuasion, emotional distress, or stigmatisation, when accessing abortion health care services, than the general population. Safe Areas would reduce stigma and discrimination faced by this group. |

Human Rights

42 The creation of Safe Areas engages sections 13, 14, and 15 of the New Zealand Bill of Rights Act 1990, which relate to freedom of thought, conscience and religion, freedom of expression, and manifestation of religion and belief, respectively.

43 The provisions in these regulations are consistent with New Zealand's obligations under the United Nations Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and are a reasonable

limitation on people's rights and freedoms, demonstrably justified in a free and democratic society.

- 44 As Safe Areas are assessed individually, the rights and freedoms have been limited to the extent necessary to address the risks. As a result, each Safe Area has a unique shape, tailored to the circumstances.

Use of external Resources

- 45 No external resources have been drawn on during the preparation, collation, or writing of this proposal.

Consultation

- 46 Officials consulted with the Ministry of Justice, the New Zealand Police, and the Ministry of Disabled People | Whaikaha.
- 47 The relevant New Zealand Police districts have also been consulted on the proposed Safe Areas within their local areas and have been provided with guidance on the implementation of these.

Communications

- 48 The location and extent of Safe Areas within this proposal will be published on the New Zealand Legislation website, as secondary legislation under the CSA Act.
- 49 I do not intend to communicate the creation of new Safe Areas via a press release. Information about all new Safe Areas will be made available on the Ministry of Health website and through Ministry communication channels.

Proactive Release

- 50 This paper will be proactively released when the regulations coming into force. It is anticipated this will be within 30 working days of the new regulations being authorised by the Governor-General at the Executive Council, and will be subject to any necessary redactions justified in accordance with the Official Information Act 1982.

Recommendations

I recommend that the Committee:

- 1 **note** that the Contraception, Sterilisation and Abortion Act 1977 (CSA Act) allows for the creation of regulations for prescribing a Safe Area (of not more than 150 metres) around specified premises at which abortion health care services are provided.
- 2 **note** that three applications were considered in this application round.
- 3 **note** that each application was analysed to consider:

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- 3.1 whether the Safe Area is desirable to address risk to the safety and wellbeing of persons accessing or providing abortion health care services, and
- 3.2 whether any limitations on rights and freedoms can be demonstrably justified in a free and democratic society.
- 4 **agree** to the establishment of new Safe Areas regulations, under section 13C of the CSA Act, as outlined above, at and around the following abortion health care providers' premises:
 - 4.1 Waikato Hospital (Te Whatu Ora Waikato)
 - 4.2 Wairarapa Hospital (Te Whatu Ora Wairarapa)
 - 4.3 Hutt Hospital (Te Whatu Ora Capital, Coast and Hutt Valley)
- 5 **authorise** the Associate Minister of Health to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above recommendation.
- 6 **note** due to the case-by-case nature of Safe Areas, future applications will come to the Cabinet Social Outcomes Committee for decision.

Authorised for lodgement

Hon Casey Costello
Associate Minister of Health

Briefing

Third round of Safe Areas to Cabinet Legislation Committee

Date due to MO: 24 July 2024 **Action required by:** 9 August 2024

Security level: IN CONFIDENCE **Health Report number:** H2024045779

To: Hon Casey Costello, Associate Minister of Health

Copy to: Paul Goldsmith, Minister of Justice

Consulted: Health New Zealand: Māori Health Authority:

Contact for telephone discussion

| Name | Position | Telephone |
|----------------------|---|-----------|
| Simon Medcalf | Deputy Director-General, Regulation and Monitoring, Te Pou Whakamaru | s 9(2)(a) |
| Ruihua Gu | Acting Group Manager, Quality Assurance and Safety, Regulatory Services | s 9(2)(a) |

Minister's office to complete:

- | | | |
|---|------------------------------------|--|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Decline | <input type="checkbox"/> Noted |
| <input type="checkbox"/> Needs change | <input type="checkbox"/> Seen | <input type="checkbox"/> Overtaken by events |
| <input type="checkbox"/> See Minister's Notes | <input type="checkbox"/> Withdrawn | |

Comment:

Third round of Safe Areas to Cabinet Legislation Committee

Security level: IN CONFIDENCE **Date:** 24 July 2024

To: Hon Casey Costello, Associate Minister of Health

Purpose of report

1. This briefing provides you with a Cabinet Legislation Committee paper (Appendix 1) and talking points (Appendix 2) to establish three new Safe Areas under the Contraception, Sterilisation, and Abortion Act 1977 (the Act).
2. This paper is to support you as you undertake Ministerial consultation.

Cabinet Legislation Committee paper

3. The Cabinet paper seeks authorisation to submit to the Executive Council, the third round of Safe Area Regulations under the Contraception, Sterilisation, and Abortion Act 1977 (the Act) for:
 - Waikato Hospital – Te Whatu Ora Waikato
 - Wairarapa Hospital – Te Whatu Ora Wairarapa
 - Hutt Hospital – Te Whatu Ora Capital, Coast and Hutt Valley.
4. On 26 June 2024, the Cabinet Social Outcomes Committee agreed to progress to the next stage (making of regulations) to establish Safe Areas for the above providers [SOU-24-MIN-0064]. It was also agreed to issue instructions to authorise the Parliamentary Counsel Office (PCO) for the drafting of Safe Area regulations for each provider's Safe Area.
5. The PCO has been instructed and has drafted the regulations.
6. Talking points have been provided (Appendix 2) for your attendance at the Cabinet Legislation Committee meeting and for Ministerial consultation.

Agency consultation

7. The Ministry of Justice, New Zealand Police, and Whaikaha – Ministry of Disabled People have been consulted.
8. There was no substantial feedback received from these agencies.

Next steps

9. Subject to your agreement, the Cabinet paper is ready for Ministerial consultation.

10. Following Ministerial consultation, we would like to lodge the Cabinet paper by 10.00am on Thursday 15 August for consideration at the Cabinet Legislation Committee meeting on Thursday 22 August.
11. The draft Regulations for the Cabinet Legislation Committee meeting will be provided to you before the meeting.

Recommendations

We recommend you:

- | | |
|--|---------------|
| a) Note that a Cabinet Legislation paper is attached for you to seek Cabinet authorisation to submit Safe Area Regulations to the Executive Council. | Noted |
| b) Note the talking points attached to this briefing in Appendix 2. | Noted |
| c) Circulate the Cabinet paper for Ministerial consultation, requesting feedback no later than Friday 9 August 2024. | Yes/No |
| d) Approve the Cabinet paper for lodgement to Cabinet Office for the Cabinet Legislation Committee on Thursday 15 August 2024, subject to Ministerial feedback. | Yes/No |
| e) Agree to forward a copy of this briefing to Paul Goldsmith, Minister of Justice. | Yes/No |



Dr Diana Sarfati
Director-General of Health
Te Tumu Whakarae mō te Hauora
Date: 17 July 2024

Hon Casey Costello
Associate Minister of Health
Date:

Appendix 2

Talking points to support Cabinet Legislation Committee on Safe Areas round three

Talking Points

1. At the Cabinet Social Outcomes Committee meeting on 26 June 2024, it was agreed to progress the three providers recommended for Safe Areas [SOU-24-MIN-0064].
2. This is the third round of Safe Areas to be established and all three providers are public hospitals.
3. Once gazetted, the Safe Areas will be public and there will be a 28-day period until they are enforceable. The estimated date of enforcement is 27 September.
4. The Ministry is working with the providers to make them aware that there may be potential for increased protest activity at the proposed new sites.
5. The Ministry is also working with NZ Police, who are preparing staff to be able to enforce these Safe Areas at the end of the 28 days.
6. During the previous two rounds of Safe Areas being established, increased protest activity was noticed at some of the Safe Area locations after gazetting and prior to enforcement (i.e. within the 28-day period). Post enforcement date some activity persisted and was responded to by the NZ Police who took an educational approach. The overall response from members of the public was positive.
7. The Regulations have been drafted by the Parliamentary Counsel Office in consultation with the Ministry. They are presented in geospatial coordinates and shown in map form to provide clarity and visual representation on the precise location for each Safe Area.
8. Following the agreement of these three Safe Areas, there will be a total of 14 Safe Areas across the country.

ENDS.

Minister's Notes

PROACTIVELY RELEASED

In Confidence

Office of the Associate Minister of Health

Chair, Cabinet Legislation Committee

Contraception, Sterilisation and Abortion (Safe Areas) Regulations 2024 – Round Three**Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the Contraception, Sterilisation and Abortion (Safe Areas) Amendment Regulations 2024 establishing new Safe Areas around three abortion service providers.

Policy

- 2 Section 13C of the Contraception, Sterilisation and Abortion Act 1977 (the Act), provides that regulations may be made establishing Safe Areas around providers of abortion services. The Minister of Health (the Minister) may recommend the making of such regulations, after consulting with the Minister of Justice.
- 3 On 26 June 2024, Cabinet agreed to establish Safe Areas around abortion services at:
 - 3.1 Waikato Hospital
 - 3.2 Wairarapa Hospital
 - 3.3 Hutt Hospital.
- 4 The purpose of Safe Areas is to address any risk to the safety and well-being, and to respect the privacy and dignity, of any persons accessing abortion services, seeking advice or information about abortion services, or providing or assisting in the provision of abortion services. Within the areas, people may not obstruct, or record people, or engage in protest. This is the third round of Safe Areas that will be established. Providers can request a Safe Area at any time, and any recommendations on future applications will be on an as-needed basis.
- 5 The Ministry of Health will continue to liaise with New Zealand Police around the establishment of any new Safe Areas to ensure Police districts are prepared for a potential increase in anti-abortion activity and will work with providers on what to do if they are concerned. In supporting this legislation, Police have a focus on education, engagement, and encouragement. Enforcement action may be taken if necessary.
- 6 The Ministry will work with the providers to ensure that they are equipped to support their staff and patients should a Safe Area be established. This may include consideration with their local Council on signage, information on their website, and flyers/information sheets at providers' premises.

Timing and 28-day rule

7 These regulations will come into effect 28 days after publication in the Gazette.

Compliance

8 The Safe Area regulations comply with:

8.1 the principles of Te Tiriti o Waitangi

8.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (NZBORA) and the Human Rights Act 1993. The public is still entitled to exercise their rights under NZBORA s14 freedom of expression and s16 freedom of peaceful assembly outside of the allocated Safe Areas

8.3 the principles and guidelines set out in the Privacy Act 2020

8.4 relevant international standards and obligations

8.5 the Legislation Guidelines (2021 edition).

9 Section 13C (2) of the principal Act provides that before recommending regulations, the Minister of Health must consult the Minister of Justice, and be satisfied that any proposed Safe Area:

9.1 is desirable to address any risk to the safety and well-being of persons doing any of the following, and to respect the privacy and dignity of those persons:

9.1.1 accessing abortion services

9.1.2 providing, or assisting with providing, abortion services

9.1.3 seeking advice or information about abortion services

9.1.4 providing, or assisting with providing, advice or information about abortion services

9.2 can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms.

10 I am satisfied that the above criteria have been met.

Regulations Review Committee

11 There are no grounds for the Regulations Review Committee to draw the draft Contraception, Sterilisation, and Abortion (Safe Areas) Regulations 2024 to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

12 The Parliamentary Counsel Office (PCO) has been instructed and has certified the draft regulations are in order for presentation.

Impact Analysis

- 13 A Regulatory Impact Assessment (RIA) was submitted at the same time as Cabinet approval was sought for the policy relating to the regulations in 2023 [SWC-23-MIN-0042]. This was done as part of the establishment of the first round of Safe Areas and no further RIA is required.

Publicity

- 14 The decision about each Safe Area will be communicated publicly on the day that they are gazetted.
- 15 The new regulations will be loaded on to the Ministry of Health website. This will include information about each new Safe Area that has been created, a map, and a description outlining the parameters of the Safe Area.

Proactive release

- 16 This paper will be proactively released once the regulations come into force, subject to withholding any information required in accordance with the Official Information Act 1982.

Cost-of-living Implications

- 17 The proposals in this paper have no cost of living implications.

Use of external Resources

- 18 No external resources were used in preparing this paper.

Consultation

- 19 The following agencies have been consulted on this paper: Ministry of Justice, New Zealand Police, and Whaikaha – Ministry of Disabled People.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 26 June 2024 Cabinet [SOU-24-MIN-0064]:
- 1.1 agreed to the establishment of new Safe Area regulations under section 13C of the Contraception, Sterilisation, and Abortion Act 1977.
- 2 note that section 13C (2) of the Act provides that the Minister of Health, after consultation with the Minister of Justice, must be satisfied that any proposed Safe Area:
- 2.1 is desirable to address any risk to the safety and well-being of persons doing any of the following, and to respect the privacy and dignity of those persons:
 - 2.1.1 accessing abortion services
 - 2.1.2 providing, or assisting with providing, abortion services

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- 2.1.3 seeking advice or information about abortion services
- 2.1.4 providing, or assisting with providing, advice or information about abortion services, and
- 2.2 can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms
- 3 note the advice of the Associate Minister of Health that these requirements have been met.
- 4 note that the Contraception, Sterilisation, and Abortion (Safe Areas) Regulations 2024 will give effect to the decision referred to in the SOU-24-MIN-0064 for establishing Safe Area's for three abortion service providers:
 - 4.1 Waikato Hospital – Te Whatu Ora Waikato
 - 4.2 Wairarapa Hospital – Te Whatu Ora Wairarapa
 - 4.3 Hutt Hospital – Te Whatu Ora Capital, Coast and Hutt Valley.
- 5 authorise the submission to the Executive Council of the Contraception, Sterilisation, and Abortion (Safe Areas) Regulations 2024.

Authorised for lodgement.

Hon Casey Costello
Associate Minister of Health

Appendix 2

Talking points to support Cabinet Legislation Committee on Safe Areas round three

Talking Points

1. At the Cabinet Social Outcomes Committee meeting on 26 June 2024, it was agreed to progress the three providers recommended for Safe Areas [SOU-24-MIN-0064].
2. This is the third round of Safe Areas to be established and all three providers are public hospitals.
3. Once gazetted, the Safe Areas will be public and there will be a 28-day period until they are enforceable. The estimated date of enforcement is 27 September.
4. The Ministry is working with the providers to make them aware that there may be potential for increased protest activity at the proposed new sites.
5. The Ministry is also working with NZ Police, who are preparing staff to be able to enforce these Safe Areas at the end of the 28 days.
6. During the previous two rounds of Safe Areas being established, increased protest activity was noticed at some of the Safe Area locations after gazettement and prior to enforcement (i.e. within the 28-day period). Post enforcement date some activity persisted and was responded to by the NZ Police who took an educational approach. The overall response from members of the public was positive.
7. The Regulations have been drafted by the Parliamentary Counsel Office in consultation with the Ministry. They are presented in geospatial coordinates and shown in map form to provide clarity and visual representation on the precise location for each Safe Area.
8. Following the agreement of these three Safe Areas, there will be a total of 14 Safe Areas across the country.

ENDS.

Minister's Notes

PROACTIVELY RELEASED



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Legislation Committee: Period Ended 23 August 2024

On 26 August 2024, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 23 August 2024:

Out of scope



LEG-24-MIN-0157


**Contraception, Sterilisation and Abortion
(Safe Areas) Amendment Regulations 2024**
Portfolio: Health

CONFIRMED

Out of scope



Out of scope



Rachel Hayward
Secretary of the Cabinet

PROACTIVELY RELEASED



Cabinet Legislation Committee

Minute of Decision

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Contraception, Sterilisation and Abortion (Safe Areas) Amendment Regulations 2024

Portfolio Associate Health (Hon Casey Costello)

On 22 August 2024, the Cabinet Legislation Committee:

- 1 **noted** that in June 2024, the Cabinet Social Outcomes Committee agreed to the establishment of new Safe Area regulations under section 13C of the Contraception, Sterilisation, and Abortion Act 1977 [SOU-24-MIN-0064];
- 2 **noted** that section 13C(2) of the Act provides that the Minister of Health, after consultation with the Minister of Justice, must be satisfied that any proposed Safe Area:
 - 2.1 is desirable to address any risk to the safety and well-being of persons doing any of the following, and to respect the privacy and dignity of those persons:
 - 2.1.1 accessing abortion services;
 - 2.1.2 providing, or assisting with providing, abortion services;
 - 2.1.3 seeking advice or information about abortion services;
 - 2.1.4 providing, or assisting with providing, advice or information about abortion services; and
 - 2.2 can be demonstrably justified in a free and democratic society as a reasonable limitation on people's rights and freedoms;
- 3 **noted** the advice of the Associate Minister of Health that the above requirements have been met;
- 4 **noted** that the Contraception, Sterilisation, and Abortion (Safe Areas) Regulations 2024 will give effect to the decision under SOU-24-MIN-0064 for establishing Safe Areas for three abortion service providers:
 - 4.1 Waikato Hospital – Te Whatu Ora Waikato;
 - 4.2 Wairarapa Hospital – Te Whatu Ora Wairarapa;
 - 4.3 Hutt Hospital – Te Whatu Ora Capital, Coast and Hutt Valley;

5 **authorised** the submission to the Executive Council of the Contraception, Sterilisation, and Abortion (Safe Areas) Regulations 2024 [PCO 26530/5.0].

Tom Kelly
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Bishop (Chair)
Hon Dr Shane Reti
Hon Paul Goldsmith
Hon Judith Collins KC
Hon Mark Mitchell
Hon Brooke van Velden
Hon Tama Potaka
Hon Casey Costello
Hon Nicole McKee
Hon Simon Watts
Hon Andrew Bayly
Hon Scott Simpson, MP
Jamie Arbuckle, MP

Officials present from:

Official's Committee for LEG
Prime Minister's Office

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