

TASMANIA

**REPRODUCTIVE HEALTH (ACCESS TO
TERMINATIONS) BILL 2013**

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REPRODUCTIVE HEALTH (ACCESS TO TERMINATIONS) BILL 2013

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

P. R. ALCOCK, *Clerk of the House*
17 April 2013

*(Brought in by the Minister for Health, the Honourable
Michelle Anne O'Byrne)*

A BILL FOR

An Act to regulate the termination of pregnancies by medical practitioners and to amend the *Criminal Code Act 1924* and the *Guardianship and Administration Act 1995*

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Reproductive Health (Access to Terminations) Act 2013*.

2. Commencement

This Act commences on a day to be proclaimed.

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Part 1 – Preliminary

3. Interpretation

- (1) In this Act, unless the contrary intention appears –

nurse means a registered nurse or an enrolled nurse;

terminate means to discontinue a pregnancy so that it does not progress to birth by –

- (a) using an instrument or a combination of instruments; or
- (b) using a drug or a combination of drugs; or
- (c) any other means –

but does not include the supply or procurement of any thing for the purpose of discontinuing a pregnancy;

woman means a female person of any age.

- (2) A note in the text of this Act does not form part of this Act.

PART 2 – ACCESS TO TERMINATIONS

4. Terminations by medical practitioner at not more than 16 weeks

The pregnancy of a woman who is not more than 16 weeks pregnant may be terminated by a medical practitioner with the woman's consent.

5. Terminations by medical practitioner after 16 weeks

- (1) The pregnancy of a woman who is more than 16 weeks pregnant may be terminated by a medical practitioner with the woman's consent if the medical practitioner –
 - (a) reasonably believes that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated; and
 - (b) has consulted with another medical practitioner who reasonably believes that the continuation of the pregnancy would involve greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated.
- (2) In assessing the risk referred to in subsection (1), the medical practitioners must have regard to the woman's current and future physical,

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psychological, economic and social circumstances.

- (3) At least one of the medical practitioners referred to in subsection (1) is to be a medical practitioner who specialises in obstetrics or gynaecology.

Note The *Criminal Code* sets out the circumstances in which a person is guilty of a crime in relation to a termination.

6. Conscientious objection and duty to treat

- (1) Subject to subsection (2), no individual has a duty, whether by contract or by any statutory or other legal requirement, to participate in treatment authorised by section 4 or 5 of this Act if the individual has a conscientious objection to terminations.
- (2) Subsection (1) does not apply to an individual who has a duty set out in subsection (3) or (4).
- (3) A medical practitioner has a duty to perform a termination in an emergency if a termination is necessary to save the life of a pregnant woman or to prevent her serious physical injury.
- (4) A nurse has a duty to assist a medical practitioner in performing a termination in an emergency if a termination is necessary to save the life of a pregnant woman or to prevent her serious physical injury.

7. Obligations on medical practitioners and counsellors

(1) In this section –

counsellor means a person who holds himself or herself out as a provider of a counselling service, or conducts himself or herself in a manner consistent with a provider of a counselling service, whether or not that service or conduct is engaged in, or provided, for fee or reward;

pregnancy options advice means advice or information relating to pregnancy options including continuing a pregnancy or terminating it.

(2) Subject to subsection (4), if a woman seeks a termination or pregnancy options advice from a medical practitioner and the practitioner has a conscientious objection to terminations, the practitioner must refer the woman to another medical practitioner who the first-mentioned practitioner reasonably believes does not have a conscientious objection to terminations.

(3) If a woman seeks pregnancy options advice from a counsellor and the counsellor has a conscientious objection to terminations, the counsellor must refer the woman to another counsellor who the first-mentioned counsellor reasonably believes does not have a conscientious objection to terminations.

Penalty: Fine not exceeding 250 penalty units.

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- (4) Subsection (2) does not apply to a medical practitioner who has a duty set out in section 6(3).

8. Woman not guilty of crime or offence

Notwithstanding any other Act or law, a woman who consents to, assists in or performs a termination on herself is not guilty of a crime or any other offence.

9. Access zones

- (1) In this section –

access zone means an area within a radius of 150 metres from premises at which terminations are provided;

distribute includes –

- (a) communicate, exhibit, send, supply or transmit to someone, whether to a particular person or not; and
- (b) make available for access by someone, whether by a particular person or not; and
- (c) enter into an agreement or arrangement to do anything mentioned in paragraph (a) or (b); and
- (d) attempt to distribute;

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prohibited behaviour means –

- (a) in relation to a person, besetting, harassing, intimidating, interfering with, threatening, hindering, obstructing or impeding that person; or
 - (b) a protest in relation to terminations that is able to be seen or heard by a person accessing, or attempting to access, premises at which terminations are provided; or
 - (c) footpath interference in relation to terminations; or
 - (d) recording, by any means, a person accessing or attempting to access premises at which terminations are provided without that person's consent; or
 - (e) any other prescribed behaviour.
- (2) A person must not engage in prohibited behaviour within an access zone.
- Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.
- (3) A person must not publish or distribute a recording of another person accessing or attempting to access premises at which

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terminations are provided without that other person's consent.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (4) If a police officer reasonably believes a person is committing or has committed an offence –
- (a) under subsection (2) that involves recording, by any means, a person accessing or attempting to access premises at which terminations are provided without that person's consent; or
 - (b) under subsection (3) –
- the police officer may –
- (c) detain and search that person; and
 - (d) seize and retain the recording and any equipment used to produce, publish or distribute the recording found in the possession of that person.
- (5) If a person is convicted or found guilty of an offence under subsection (2) or (3), any item seized under subsection (4) is forfeited to the Crown and is to be destroyed or disposed of in a manner approved by the Minister administering the *Police Service Act 2003*.
- (6) If a police officer reasonably believes a person is committing or has committed an offence under

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subsection (2) or (3), the police officer may require that person to state his or her name and the address of his or her place of abode.

- (7) A person must not fail or refuse to comply with a requirement under subsection (6) or, in response to such a requirement, state a name or address that is false.

Penalty: Fine not exceeding 2 penalty units.

- (8) A police officer making a requirement under subsection (6) may arrest, without warrant, a person who fails or refuses to comply with that requirement or who, in response to the requirement, gives a name or address that the police officer reasonably believes is false.

10. Proceedings

- (1) Proceedings for an offence against this Part may only be instituted by –
- (a) a police officer; or
 - (b) the Secretary of the Department or a person authorised in writing to institute proceedings by the Secretary of the Department.
- (2) Proceedings for an offence under this Part must be instituted within 12 months after the date on which an offence is alleged to have been committed.

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Part 2 – Access to Terminations

11. Infringement notices

(1) In this section –

infringement offence means an offence against this Part that is prescribed by the regulations made under this Act to be an infringement offence.

(2) A person referred to in section 10(1) may issue and serve an infringement notice on a person if he or she reasonably believes that the person has committed an infringement offence.

(3) An infringement notice may not be served on an individual who has not attained the age of 16 years.

(4) An infringement notice is to be in accordance with section 14 of the *Monetary Penalties Enforcement Act 2005*.

(5) The regulations made under this Part –

(a) may prescribe, for infringement offences, the penalties payable under infringement notices; and

(b) may prescribe different penalties for bodies corporate and individuals.

12. Regulations

(1) The Governor may make regulations for the purposes of this Part.

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- (2) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may authorise any matter to be from time to time determined, applied or regulated by any person or body specified in the regulations.

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Part 3 – Criminal Code Act 1924 Amended

PART 3 – CRIMINAL CODE ACT 1924 AMENDED

13. Principal Act

In this Part, the *Criminal Code Act 1924** is referred to as the Principal Act.

14. *Criminal Code* amended

Schedule 1 to the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of *ship* in section 1:

terminate, except in section 64, means to discontinue a pregnancy so that it does not progress to birth by –

- (a) using an instrument or a combination of instruments; or
- (b) using a drug or a combination of drugs; or
- (c) any other means –

but does not include the supply or procurement of any thing for the purpose of discontinuing a pregnancy;

- (b) by inserting the following subsections after subsection (1) in section 51:

*No. 69 of 1924

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Part 3 – Criminal Code Act 1924 Amended

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- (1A) Subject to section 149, and despite section 51(1), a termination can be lawfully performed on a woman by a medical practitioner if it is performed in good faith, with reasonable care and skill and with the woman's consent.
- (1B) For the purposes of subsection (1A), **woman** means a female person of any age.
- (c) by omitting subsection (3) from section 51 and substituting the following subsection:
- (3) If a person is in such a condition as to be incapable of giving consent under subsection (1) or (1A), the operation may be performed without such consent if the operation is –
- (a) performed in good faith and with reasonable care and skill; and
 - (b) for the person's benefit; and
 - (c) reasonable having regard to all the circumstances.
- (d) by omitting sections 134 and 135;
- (e) by omitting sections 164 and 165;

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Part 3 – Criminal Code Act 1924 Amended

(f) by inserting the following sections after section 178C:

178D. Termination by person other than medical practitioner or pregnant woman

(1) A person who performs a termination on a woman and who is not –

(a) a medical practitioner; or

(b) the pregnant woman –

is guilty of a crime.

Charge: Termination by person other than medical practitioner or pregnant woman.

(2) For the purposes of subsection (1), *woman* means a female person of any age.

178E. Termination without woman's consent

(1) A person who intentionally or recklessly performs a termination on a woman without the woman's consent, whether or not the woman suffers any other harm, is guilty of a crime.

Charge: Termination without woman's consent.

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- (2) No prosecution is to be instituted against a medical practitioner who performs a termination on a woman if the woman is incapable of giving consent and the termination is –
- (a) performed in good faith and with reasonable care and skill; and
 - (b) is for the woman's benefit; and
 - (c) is reasonable having regard to all the circumstances.
- (3) For the purposes of this section, **woman** means a female person of any age.

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Part 4 – Guardianship and Administration Act 1995 Amended

**PART 4 – GUARDIANSHIP AND ADMINISTRATION
ACT 1995 AMENDED**

15. Principal Act

In this Part, the *Guardianship and Administration Act 1995** is referred to as the Principal Act.

**16. Section 37 amended (Part 6 to prevail over
Criminal Code)**

Section 37 of the Principal Act is amended by omitting “section 51 of the *Criminal Code*” and substituting “sections 51 and 178E of the *Criminal Code*”.

*No. 44 of 1995

PART 5 – MISCELLANEOUS

17. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Health; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.