

TASMANIA

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

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

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.

#### 3. Interpretation

In this Act, unless the contrary intention  
appears –

*nurse* means a registered nurse or an enrolled  
nurse;

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***terminate*** means to discontinue a woman's pregnancy 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;

***woman*** means a female person of any age.

**PART 2 – ACCESS TO TERMINATIONS**

**4. Terminations by medical practitioner at not more than 24 weeks**

The pregnancy of a woman who is not more than 24 weeks pregnant may be terminated by a medical practitioner.

**5. Terminations by medical practitioner after 24 weeks**

(1) In this section –

*informed consent* means consent given by a woman where a medical practitioner has provided her with counselling about the medical risk of termination of pregnancy and of carrying a pregnancy to term.

(2) The pregnancy of a woman who is more than 24 weeks pregnant may be terminated by a medical practitioner –

(a) if –

(i) two medical practitioners have certified, in writing, 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

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- (ii) the woman has given informed consent unless it is impracticable for her to do so; or
- (b) in an emergency if the termination is necessary to save the life of the pregnant woman or to prevent her serious physical injury.
- (3) In assessing the risk referred to in subsection (2)(a)(i), the medical practitioners must have regard to the woman's current and future physical, psychological, economic and social circumstances.
- (4) If it is impracticable for the woman to give informed consent, the two medical practitioners referred to in subsection (2)(a)(i) are to make a declaration in writing detailing the reasons why it was impracticable for the woman to give informed consent.
- (5) At least one of the medical practitioners referred to in subsection (2)(a)(i) is to be a medical practitioner who specialises in obstetrics or gynaecology.

**6. Conscientious objection and duty to treat**

- (1) Subject to subsection (2), no individual is under a duty, whether by contract or by any statutory or other legal requirement, to participate in treatment authorised by sections 4 and 5 of this Act if the individual has a conscientious objection to terminations.

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- (2) Subsection (1) does not apply to an individual who is under a duty set out in subsection (3) or (4).
  - (3) Despite any conscientious objection to terminations, a medical practitioner is under 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) Despite any conscientious objection to terminations, a nurse is under 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 provides a service that involves counselling whether or not 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

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practitioner must refer the woman to another medical practitioner who the first-mentioned practitioner knows does not have a conscientious objection to terminations.

Penalty: Fine not exceeding 500 penalty units.

- (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 knows does not have a conscientious objection to terminations.

Penalty: Fine not exceeding 500 penalty units.

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

**8. Woman not guilty of crime or offence**

Notwithstanding any other Act or written 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) 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.



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(2) In this section –

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

***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, or sidewalk interference, in relation to terminations; or
- (c) graphically recording, by any means, a person accessing or attempting to access premises at which terminations are provided; or
- (d) any other prescribed behaviour.

## **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.

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- (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.

**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.
- (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

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**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 the pregnancy of a woman 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;
- (b) by inserting the following subsection after subsection (1) in section 51:

(1A) For the purposes of subsection (1), a termination of the pregnancy of a woman performed in accordance with the

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*Reproductive Health (Access to Terminations) Act 2013* is taken to be for the benefit of the woman and the performance of the termination is taken to be reasonable.

- (c) by omitting sections 134 and 135;
- (d) by omitting sections 164 and 165;
- (e) by inserting the following sections after section 178C:

**178D. Terminations by persons other than medical practitioners**

A person who is not a medical practitioner and who terminates the pregnancy of a woman is guilty of a crime.

Charge: Termination of pregnancy by person other than medical practitioner.

**178E. Termination without woman's consent**

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

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Charge: Termination of pregnancy  
without woman's consent.

- (2) No prosecution is to be instituted against a medical practitioner who terminates the pregnancy of a woman if 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.

**PART 4 – MISCELLANEOUS**

**15. 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.

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