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Tasmanian Council of Social Service

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*Submission on*

# Draft Reproductive Health (Access to Terminations) Bill

April 2013

## About TasCOSS

TasCOSS is the peak body for the Tasmanian community services sector. Its membership comprises individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, regulators, the media and the public. Through our advocacy and policy development, we draw attention to the causes of poverty and disadvantage and promote the adoption of effective solutions to address these issues.

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## Introduction

TasCOSS supports the right of Tasmanian women to access appropriate and timely health care, including the right to make choices about that health care according to their individual circumstances.

TasCOSS supports legislative reform on the issue of termination of pregnancy in Tasmania as proposed by the draft *Reproductive Health (Access to Terminations) Bill* (the draft Bill). TasCOSS believes that Tasmanian women should have access to safe, legal and accessible termination of pregnancy services, and that those services should be provided free within the public health system, in the same way that other medical procedures are.

The current confusion about the legal status of termination of pregnancy in Tasmania has had a negative effect on service delivery, access and equity and has resulted in both significant stigma being attached to termination and confusion amongst medical practitioners as to the legality of their role in this procedure.

TasCOSS is concerned that the impact of this stigma and confusion is experienced disproportionately by Tasmanian women already disadvantaged by factors such as low income, geographical isolation, youth, and violent or abusive relationships.

Legal impediments resulting in a lack of choice and access to termination of pregnancy further compound and entrench the disadvantage experienced by many Tasmanian women.

In conjunction with legislative reform regarding termination of pregnancy, TasCOSS recommends increased funding for preventative measures to reduce the incidence of unwanted pregnancy: universal sex and relationships education in all Tasmanian schools; increased access to safe, effective contraception and early pregnancy testing; and increased support services for young women.

*TasCOSS supports action to:*

- Remove all mention of safe, professional abortion from the *Criminal Code Act 1924* (sections 134, 135, 164 and 165);
- Enact new legislation that sits apart from criminal legislation to make the termination of pregnancy a permissible, accessible and safe alternative for unwanted pregnancies in Tasmania;
- Make it illegal to interfere with people accessing or working in clinics or hospitals providing pregnancy termination services; and
- Ensure that organisations or individuals who provide pregnancy counselling services are required to declare any bias against termination of pregnancy and refer clients accordingly.

## Concerns about the current situation in Tasmania

Termination of pregnancy is currently the only medical procedure regulated under the criminal law in Tasmania. It is also the only medical procedure on which an individual is unable to make their own informed choice regarding treatment but must defer to two medical practitioners to make the actual decision on whether they can access the procedure. TasCOSS regards this as a legal aberration that is discriminatory towards women and their autonomy in decision-making regarding appropriate health care.

TasCOSS is concerned by the confusion for both women and medical practitioners surrounding the current legal status of termination of pregnancy in Tasmania. Research by Marie Stopes International<sup>1</sup> demonstrates that there is a high level of confusion amongst general medical practitioners regarding the current law concerning the termination of pregnancy. Such confusion impedes access to clear and accurate information for Tasmanian women and presents barriers to informed decision-making and access to termination of pregnancy services.

Additionally, under the current criminal legislation governing termination of pregnancy, the legal risk posed to medical practitioners and the staff assisting them has prevented such procedures from being performed in the Tasmanian public health system. This has created a significant access and equity issue for Tasmanian women. Those women who can afford to do so access termination of pregnancy services in the private system or at private clinics, while women who can't afford these options simply cannot access terminations. Those most at risk of this include women living on low incomes or in receipt of government benefits, young women, women with low educational attainment and women in abusive relationships.

It is TasCOSS's understanding that the three private clinics providing services in Tasmania operate only around one day each per week, with clinicians flying in from interstate. The limited availability means that there can be a wait of up to three weeks for an appointment. This timeframe can be highly problematic for women seeking a termination of pregnancy where delays can increase the level of invasive procedure required and may require women to travel interstate. The out-of-pocket cost to women accessing private services is typically between \$200 and \$320, and up to \$1000 for late-term abortions which are only available interstate.

TasCOSS believes that the out-of-pocket costs and the practical barriers to accessing termination of pregnancy services in Tasmania are of particular disadvantage to low-income, young and rural women. As an access and equity issue, TasCOSS believes that all Tasmanian women should be able to receive the health care required for their individual circumstances within the public health system in Tasmania.

The current criminal laws relating to termination of pregnancy are out of step with contemporary social values and TasCOSS believes that they need to be changed to

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<sup>1</sup> Marie Stopes International, Quantum Market Research, *General Practitioners: Attitudes to Abortion*, November 2004, p. 9.

properly reflect those values. Research conducted by Family Planning in May 2012<sup>2</sup> revealed that Tasmanians strongly support reform, with 86% supporting termination of pregnancy being treated as a health issue between a woman and her doctor rather than as a criminal matter. Similarly high support (79%) was expressed for the view that a fully-informed woman should have the legal right to decide whether her unwanted pregnancy can be ended early term (up to 14 weeks).

The decision whether or not to continue a pregnancy is significant in a woman's life and is rarely taken lightly. Under the current Tasmanian legislation access to termination of pregnancy services is limited by social, economic and geographic factors, as well as by the legal factors discussed above. TasCOSS regards these access and equity issues as an unnecessary burden on vulnerable Tasmanian women and supports legislative change.

## The proposed new legislation

TasCOSS supports the proposed separate legislation concerning termination of pregnancy procedures.

The single piece of new legislation will provide the clarity and simplicity in relation to termination of pregnancy in Tasmania. It will provide certainty and security to medical practitioners and women about the legality of safe pregnancy termination services. It will also clearly state the right of Tasmanian women to choose pregnancy termination as an option to an unwanted pregnancy – a health care decision that will be theirs to make in consultation with their medical practitioner.

TasCOSS notes that the draft Bill allows for conscientious objection to termination of pregnancy from medical practitioners and counsellors, and we support the requirement that those with a conscientious objection must refer women to another practitioner who does not hold such objections.

This is important as it removes potential barriers to women accessing full and appropriate information in their decision-making regarding an unwanted pregnancy. TasCOSS also notes that it is similar to a requirement that applies to pharmacists in relation to the 'morning-after pill', whereby any pharmacist with a religious objection to supplying this pill is required to refer patients to another supplier.

In regards to terminations of pregnancy after 24 weeks, TasCOSS notes that the draft Bill places the same requirements on such procedures that apply to all terminations under the current criminal legislation – effectively rendering no change to the way

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<sup>2</sup> Family Planning Tasmania, May 2012, p.2. Commissioned survey through Enterprise Marketing and Research Services (EMRS). 1000 Tasmanian adults were surveyed between 9<sup>th</sup> and 13<sup>th</sup> May 2012 - 500 were from the south, 280 from the North and North East and 220 from the North West and West Coast of Tasmania. Survey report is available at <http://endtheconfusion.com.au/survey-stats/>

these later than 24 weeks termination procedures are dealt with, other than being located in the new piece of legislation.

The definition of 'medical practitioner' has not been included in the draft Bill and TasCOSS understands this term is defined in the *Acts Interpretation Act 1931 (Tas)* section 46. To reduce confusion or misinterpretation, TasCOSS suggests that the definitions section of the draft Bill includes the definition of 'medical practitioner' or at least refers to the other Act in which it is defined.

TasCOSS supports the proposal in the draft Bill to establish 'access zones' around all premises at which terminations are provided. TasCOSS believes that women should not be subject to harassment, intimidation or abuse when attending a public hospital or clinic for a termination. Similarly, staff at those premises should also be protected from intimidation or obstruction.

## Conclusion

TasCOSS believes that all Tasmanian women should have safe and legal access to termination of pregnancy. Terminations of pregnancy properly carried out by a medical practitioner should not be a crime and the laws governing them should not be prescribed within the *Criminal Code Act 1924*. TasCOSS is concerned that some of the most vulnerable Tasmanian women currently face substantial barriers when making decisions about unwanted pregnancy. TasCOSS sees the new legislative approach in the draft Bill as a positive step towards addressing this disadvantage.