



New South Wales

Crimes Amendment (Zoe's Law) Bill 2013 (No 2)

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

At present, a person against whom a criminal offence can be committed does not include the foetus of a pregnant woman. Under the *Crimes Act 1900*, *grievous bodily harm* is defined to include the destruction (other than in the course of a medical procedure) of the foetus of a pregnant woman, whether or not the woman suffers any other harm. Accordingly, proceedings can be instituted under the *Crimes Act 1900* against a person who unlawfully causes the destruction of the foetus of a pregnant woman if the proceedings are brought for the offence of causing grievous bodily harm to the pregnant woman—for example, the offence of dangerous driving causing grievous bodily harm to a woman (section 52A (3)) or the offence of causing grievous bodily harm to a woman unlawfully or negligently (section 54).

The object of this Bill is to amend the *Crimes Act 1900* to recognise the separate existence of the foetus of a pregnant woman that is of at least 20 weeks' gestation (as a living person) so that proceedings for certain offences relating to grievous bodily harm may be brought against an offender who causes the unlawful destruction of or harm to any such foetus as proceedings for grievous bodily harm to the foetus rather than proceedings for grievous bodily harm to the pregnant woman. In the case of the unlawful destruction of a foetus of less than 20 weeks' gestation, the Bill retains the existing provision that enables proceedings to be brought for grievous bodily harm to the woman.

The Bill does not apply to anything done in the course of a medical procedure or to anything done by or with the consent of the pregnant woman that causes the destruction of or harm to a foetus.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1 [2] inserts proposed section 8A into the Act to give effect to the object set out in the above Overview.

For the purposes of the proposed section, an *unborn child* (that is taken to be a living person for the purposes of applicable offences) is defined as a foetus of at least 20 weeks' gestation or, if that cannot be reliably established, a foetus that weighs at least 400 grams (proposed section 8A (1) and (2)). Accordingly, separate proceedings may be brought for causing grievous bodily harm to an unborn child (including in a case where the harm results in the destruction of the unborn child).

In the case of any other foetus, the proposed section continues to treat the destruction of the foetus as grievous bodily harm to the pregnant woman for the purposes of applicable offences (proposed section 8A (3)).

Proposed section 8A (1) defines *applicable offences* for the purposes of the proposed section. The offences are as follows:

- (a) section 33 (1) (Intentionally causing grievous bodily harm),
- (b) section 33A (1) (Discharging firearm etc with intent to cause grievous bodily harm),
- (c) section 35 (Recklessly causing grievous bodily harm),
- (d) section 46 (Intentionally or recklessly causing grievous bodily harm by gunpowder etc),
- (e) section 51A (Predatory driving),
- (f) section 52A (3) or (4) (Dangerous driving causing grievous bodily harm),
- (g) section 52B (3) or (4) (Dangerous navigation causing grievous bodily harm),
- (h) section 54 (Causing grievous bodily harm unlawfully or negligently),
- (i) section 95 (Robbery or stealing from the person in circumstances of aggravation),
- (j) section 110 (Breaking and entering dwelling and infliction of grievous bodily harm therein).

Proposed section 8A (4) excludes from the proposed section anything done in the course of a medical procedure or anything done by or with the consent of the pregnant woman that causes the destruction of or harm to a foetus.

Schedule 1 [1] makes a consequential amendment to the definition of *grievous bodily harm* for the purpose of the Act.