



New South Wales

Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows:

- (a) to repeal the offences under the *Crimes Act 1900* relating to abortion,
- (b) to abolish any rule of common law that creates an offence relating to abortion,
- (c) to provide that it constitutes unsatisfactory professional conduct for a medical practitioner who has a conscientious objection to abortion to fail to advise a person requesting an abortion, or advice about abortions, of the objection and to fail to refer the person to another health practitioner who does not have such a conscientious objection or to a local Women's Health NSW (WHNSW) Centre,
- (d) to provide for exclusion zones (also known as safe access zones) around premises at which abortions are provided to ensure the safety, well-being, privacy and dignity of people accessing the services provided at the premises, their partners, health professionals and other staff.

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 the date of assent to the proposed Act.

Schedule 1 Amendment of Acts relating to abortion

Abolition of offences in Crimes Act 1900 No 40

The *Crimes Act 1900* creates offences relating to “unlawfully” taking or administering drugs or noxious things, or using any instrument or other means, with intent to procure a miscarriage. Those offences may be committed by the pregnant person, by the person performing or assisting in the abortion or by any person who supplies or procures the drug, thing or instrument.

The legal test for determining the circumstances in which an abortion would not be unlawful are not set out in the Act and have been entirely derived from court decisions, most notably a 1971 decision of a District Court judge in *R v Wald* (1971) 3 DCR (NSW) 25.

Schedule 1.1 amends the *Crimes Act 1900*:

- (a) to repeal the offence of a woman unlawfully administering to herself any drug or noxious thing, or using any instrument or other means, with intent to procure her miscarriage, and
- (b) to repeal the offence of unlawfully administering to, or causing to be taken by, any woman, any drug or noxious thing, or unlawfully using any instrument or other means, with intent to procure her miscarriage, and
- (c) to repeal the offence of unlawfully supplying or procuring any drug or noxious thing, or any instrument or thing, knowing that it is intended to be unlawfully used with intent to procure the miscarriage of any woman, and
- (d) to abolish any rule of common law that creates an offence in relation to procuring a woman’s miscarriage.

Schedule 1.1 also makes a minor amendment consequent on the repeal of those offences.

Consequential amendment of Criminal Procedure Act 1986 No 209

Schedule 1.2 amends the *Criminal Procedure Act 1986* to omit provisions relating to the prosecution of the repealed offences.

Unsatisfactory professional conduct under Health Practitioner Regulation National Law (NSW)

Schedule 1.3 modifies the *Health Practitioner Regulation National Law (NSW)* to specify that it constitutes unsatisfactory professional conduct for a medical practitioner who has a conscientious objection to abortion to fail to:

- (a) advise a person who has requested an abortion, or sought advice on a proposed abortion, that the practitioner has such an objection, or
- (b) refer the person to another health practitioner, in the same profession, whom the health practitioner knows or reasonably believes does not have a conscientious objection to abortion or to a local Women’s Health NSW (WHNSW) Centre, to enable the person to have full information about the options in relation to pregnancy.

Schedule 2 Amendment of Summary Offences Act 1988 No 25

Schedule 2 amends the *Summary Offences Act 1988* to create summary offences prohibiting certain conduct in an exclusion zone around premises where abortions are provided (which is an area within a 150 metre radius of such premises).

Proposed section 11AA provides that the purpose of the proposed provisions is to prohibit behaviour detrimental to the health, safety, well-being, privacy and dignity of people seeking to access reproductive health services or of health professionals and staff of those health services.

Proposed section 11AB defines *exclusion zone* as an area within a 150 metre radius of premises at which abortions are provided or of a pedestrian access point to a building that houses premises at which abortions are provided.

Proposed section 11AC makes it an offence for a person who is in an exclusion zone to bother, beset, harass, intimidate, interfere with, impede, obstruct or threaten, by any means, a person who is accessing, leaving, or attempting to access or leave, premises at which abortions are provided.

Proposed section 11AD protects patient and staff privacy and dignity from distressing communications by making it an offence for a person who is in an exclusion zone to communicate disapproval of abortion by any means (including posters or spoken words) in a manner that is able to be seen or heard by a person accessing, leaving, attempting to access or leave, or inside, premises at which abortions are provided and that is reasonably likely to cause distress or anxiety to any such person.

Proposed section 11AE protects patient and staff privacy by making it an offence to photograph, film or record, or otherwise capture visual or audio data (for instance, by transmitting it over a phone) of a person without the person's consent if that person is in an exclusion zone and is accessing, leaving, or attempting to access or leave, premises at which abortions are provided or is inside such premises. A further offence of distribution of such visual or audio data is created.

Proposed section 11AF provides that a police officer may seize all or part of a thing that the officer suspects on reasonable grounds may provide evidence of the commission of an offence under the proposed provisions and that, if a person is convicted or found guilty of such an offence, the thing is forfeited to the Crown.

Proposed section 11AG provides that the proposed restrictions do not apply so as to prohibit conduct near Parliament House and that they apply despite other legislative provisions regarding protests.