



New South Wales

Crimes Legislation Amendment (Loss of Foetus) Bill 2021

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the following—

- (a) the *Crimes Act 1900*, to create offences in relation to causing the loss of a foetus of a pregnant woman,
- (b) the *Crimes (Sentencing Procedure) Act 1999*, to extend provisions relating to the preparation and consideration of victim impact statements to include statements prepared by an immediate family member of the primary victim of an offence relating to the loss of the primary victim's foetus about the impact of that loss,
- (c) the *Criminal Procedure Act 1986*, to provide that stating the name of a foetus does not affect an indictment for an offence under the *Crimes Act 1900* relating to the destruction or loss of the foetus,
- (d) the *Motor Accident Injuries Act 2017*, to provide for the payment of statutory benefits for reasonable funeral expenses following the loss of a foetus of a pregnant woman that results from a motor accident.

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.

Schedule 1 Amendment of Crimes Act 1900 No 40

Schedule 1[1] inserts proposed sections 54A and 54B that create offences in relation to causing the loss of a foetus.

For the purposes of the proposed sections, a *foetus* is defined as a foetus—

- (a) of at least 20 weeks' gestation, or
- (b) if it is not possible to reliably establish the period of gestation—that has a body mass of at least 400 grams.

A person commits an offence against proposed section 54A if the person's act or omission constitutes an offence involving physical elements of causing grievous bodily harm to a person and the act or omission causes the loss of a foetus of a pregnant woman. The maximum penalty under proposed section 54A is the total of the maximum penalty for the relevant grievous bodily harm provision and 3 years' imprisonment (the *total maximum penalty*).

In a proceeding for an offence under proposed section 54A, there is no requirement for the prosecution to prove the defendant knew, or ought reasonably to have known, the woman was pregnant, unless the knowledge is an element of the relevant grievous bodily harm provision.

In addition to the offence of causing the loss of a foetus, the person may be charged and convicted of another offence under the *Crimes Act 1900* if the act or omission caused other injuries to the pregnant woman. A court, in sentencing a defendant for an offence under proposed section 54A and another offence committed against the pregnant woman arising from the same act or omission, may take into account any other injuries caused to the pregnant woman by the act or omission, but may not impose a sentence that is more than the total maximum penalty.

A person commits an offence against proposed section 54B if—

- (a) the person's act or omission constitutes an offence under certain sections of the *Crimes Act 1900* relating to homicide, and
- (b) the victim of the offence is a pregnant woman, and
- (c) the act or omission includes causing the loss of the pregnant woman's foetus.

A person is only able to be charged with an offence under proposed section 54B if the person is also charged with an offence under a specified homicide provision in relation to the same act or omission. The maximum penalty under proposed section 54B is 3 years' imprisonment. In a proceeding for an offence under proposed section 54B, there is no requirement for the prosecution to prove the defendant knew, or ought reasonably to have known, the woman was pregnant.

Proposed sections 54A and 54B do not apply to—

- (a) the termination of a pregnancy under the *Abortion Law Reform Act 2019*, or
- (b) an act or omission of a pregnant woman that results in the loss of the woman's foetus.

Schedule 1[2] provides proposed sections 54A and 54B only apply to an offence alleged to have been committed on or after the commencement of the sections.

Schedule 2 Amendment of Crimes (Sentencing Procedure) Act 1999 No 92

Schedule 2[1] amends the definition of *family victim* for the purposes of the *Crimes (Sentencing Procedure) Act 1999*, Part 3, Division 2 to include an immediate family member of a pregnant woman who was the primary victim of an offence relating to the loss of the pregnant woman's foetus, regardless of the gestational age of the foetus.

Schedule 2[2] extends the particulars that may be included in a victim impact statement by a family victim to include, in relation to an offence relating to the loss of a foetus of a pregnant woman, the impact of the loss of the foetus on the family victim and other members of the immediate family of the primary victim.

Schedule 2[3] provides that the amendments made to the *Crimes (Sentencing Procedure) Act 1999* only apply to proceedings commenced after the commencement of the amendments.

Schedule 3 Amendment of Criminal Procedure Act 1986 No 209

Schedule 3[1] provides that an indictment for an offence under the *Crimes Act 1900* relating to the destruction or loss of a foetus, regardless of the gestational age of the foetus, is not bad, insufficient, void, erroneous or defective on the ground the indictment stated the name of the foetus.

Schedule 3[2] provides that the amendment made to the *Criminal Procedure Act 1986* does not apply to proceedings commenced before the commencement of proposed Schedule 3.

Schedule 4 Amendment of Motor Accident Injuries Act 2017 No 10

Schedule 4[1] extends a provision in relation to the payment of statutory benefits for reasonable funeral expenses to include reasonable funeral expenses for the loss of a foetus of a pregnant woman, if the loss results from a motor accident. The benefits are payable whether or not the pregnant woman died and regardless of the gestational age of the foetus.

Schedule 4[2] provides that the amendment made to the *Motor Accident Injuries Act 2017* only applies in relation to a motor accident that happens after the commencement of the amendment.