

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Crimes Legislation (Offences Against Pregnant Women) Bill 2020

Explanatory note

Overview of Bill

The object of this Bill txt

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.

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

**Crimes Legislation (Offences Against
Pregnant Women) Bill 2020**

Contents

		Page
	1 Name of Act	3
	2 Commencement	3
Schedule 1	Amendment of Crimes Act 1900 No 40	4
Schedule 2	Amendment of Crimes (Sentencing Procedures) Act 1999 No 92	5
Schedule 3	Amendment of Criminal Procedure Act 1986 No 209	6
Schedule 4	Amendment of Motor Accident Injuries Act 2017 No 10	7

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

**Crimes Legislation (Offences Against
Pregnant Women) Bill 2020**

No , 2020

A Bill for

An Act to amend the *Crimes Act 1900* in relation to the destruction of the foetus of a pregnant woman; to amend the *Crimes (Sentencing Procedure) Act 1999* to allow for immediate family members to provide impact statements about the harm suffered as the result of the destruction of a foetus of a pregnant woman; to amend the *Criminal Procedure Act 1986* to provide that an indictment may include the name of the foetus of a pregnant woman in certain circumstances; to amend the *Motor Accident Injuries Act 2017* to provide for the payment of statutory benefits for reasonable funeral expenses for the destruction of a foetus of a pregnant woman; and for related purposes.

public consultation draft

Crimes Legislation (Offences Against Pregnant Women) Bill 2020 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Crimes Legislation (Offences Against Pregnant Women) Act 2020*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Crimes Act 1900 No 40

Sections 9 and 10

Insert after section 8—

9 Circumstance of aggravation—offences against pregnant women

- (1) It is a circumstance of aggravation for an offence against this Act (the *relevant offence*) if—
 - (a) the relevant offence is committed against a pregnant woman, and
 - (b) the act or omission that constitutes the relevant offence causes the destruction of the foetus of the woman.
- (2) To remove any doubt—
 - (a) the destruction of the foetus is a circumstance of aggravation whether or not the pregnant woman survives or dies as a result of the act or omission that constitutes the relevant offence, and
 - (b) it is not necessary for the prosecution to prove that the defendant knew, or ought reasonably to have known, that the woman was pregnant.
- (3) The maximum penalty for a relevant offence committed in the circumstance of aggravation in this section is increased by an additional 3 years imprisonment.
- (4) The circumstance of aggravation in this section applies in addition to any other circumstances of aggravation that may apply to the relevant offence.
- (5) The increase in the maximum penalty under subsection (3) is in addition to any other increase in the maximum penalty caused by any other circumstance of aggravation.
- (6) This section does not apply to an offence against section 82(1) or (2).

10 Alternative verdict—offences against pregnant women

If, in a trial for an offence against a section (a *relevant section*) that is an offence to which a circumstance of aggravation applies because of section 9 (an *aggravated offence*), the jury is not satisfied the defendant is guilty of the aggravated offence, the jury may—

- (a) find the defendant not guilty of the aggravated offence but guilty of an offence against the relevant section, or
- (b) find the defendant not guilty of the aggravated offence but guilty of an alternative statutory offence available for the relevant section, or
- (c) find the defendant not guilty of the aggravated offence but guilty of an alternative statutory offence available for the relevant section in a circumstance of aggravation because of section 9.

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

[1] **Section 26 Definitions**

Omit the definition of *family victim*. Insert instead in alphabetical order—

family victim means any of the following persons, whether or not the person suffered personal harm as a result of the offence—

- (a) in relation to an offence as a direct result of which a primary victim has died—a person who was, at the time the offence was committed, a member of the primary victim's immediate family,
- (b) in relation to an offence against a pregnant woman—a person who was, at the time the offence was committed, a member of the immediate family of the pregnant woman who is the primary victim in relation to the offence.

offence against a pregnant woman means an offence—

- (a) committed against a primary victim who was pregnant at the time the offence was committed, and
- (b) as a direct result of which the foetus was destroyed, whether or not the primary victim died.

[2] **Section 28 Contents of victim impact statements**

Omit section 28(2), Insert instead—

- (2) A family victim in relation to an offence may prepare a statement (a *victim impact statement*) that contains—
 - (a) in relation to an offence as a direct result of which a primary victim has died—particulars of the impact of the primary victim's death on the family victim and other members of the primary victim's immediate family, and
 - (b) in relation to an offence against a pregnant woman—particulars of the impact of the destruction of the foetus on—
 - (i) the family victim, and
 - (ii) other members of the immediate family of the pregnant woman who is the primary victim in relation to the offence

**Schedule 3 Amendment of Criminal Procedure Act 1986
No 209**

Section 16 Certain defects do not affect indictment

Insert after section 16(1)(d)—

- (d1) if the indictment is for an offence under the *Crimes Act 1900* relating to the destruction of a foetus of a pregnant woman—for stating the name of the foetus of the pregnant woman,

Schedule 4 Amendment of Motor Accident Injuries Act 2017 No 10

Section 3.4 Statutory benefits for funeral expenses

Insert after section 3.4(3)—

- (4) A reference in this section to the death of a person includes a reference to the destruction of a foetus of a pregnant woman, whether or not the pregnant woman died.
- (5) For the purposes of subsection (4), the usual place of residence of a foetus of a pregnant woman is taken to be the pregnant woman's usual place of residence.