



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.



New South Wales

Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016

Contents

| | Page |
|--|----------|
| 1 Name of Act | 2 |
| 2 Commencement | 2 |
| Schedule 1 Amendment of Acts relating to abortion | 3 |
| Schedule 2 Amendment of Summary Offences Act 1988 No 25 | 4 |



New South Wales

Abortion Law Reform (Miscellaneous Acts Amendment) Bill 2016

No. , 2016

A Bill for

An Act to amend certain Acts to repeal offences relating to abortion, to specify a ground of unsatisfactory professional conduct by a medical practitioner with respect to abortion and to establish exclusion zones in order to prohibit certain behaviour near premises at which abortions are provided.

The Legislature of New South Wales enacts:

1

1 Name of Act

2

This Act is the *Abortion Law Reform (Miscellaneous Acts Amendment) Act 2016*.

3

2 Commencement

4

This Act commences on the date of assent to this Act.

5

| | | |
|-------------------|---|--|
| Schedule 1 | Amendment of Acts relating to abortion | 1 |
| 1.1 | Crimes Act 1900 No 40 | 2 |
| [1] | Part 3, Division 12 Attempts to procure abortion | 3 |
| | Omit the Division. | 4 |
| [2] | Section 428B Offences of specific intent to which Part applies | 5 |
| | Omit the matter relating to sections 82 and 83 from the Table to the section. | 6 |
| [3] | Schedule 3 Abolished common law offences and rules | 7 |
| | Insert after clause 7: | 8 |
| | 8 Abortion | 9 |
| | Any rule of common law that creates an offence in relation to procuring a woman's miscarriage is abolished. | 10 11 |
| 1.2 | Criminal Procedure Act 1986 No 209 | 12 |
| | Schedule 1 Indictable offences triable summarily | 13 |
| | Omit "82, 83, 84," from clause 2 of Table 1. | 14 |
| 1.3 | Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86 | 15 16 |
| | Schedule 1 Modification of Health Practitioner Regulation National Law | 17 |
| | Insert after section 139C (c) in Schedule 1 [13]: | 18 |
| | (d) Failing to disclose conscientious objection to abortion and to refer person elsewhere | 19 20 |
| | When treating or advising any person, on becoming aware that the person is seeking an abortion or advice about an abortion or about the full range of options regarding pregnancy, otherwise than in an emergency or when a patient's life or health is at serious risk— | 21 22 23 24 |
| | (i) failing to inform the person of any conscientious objection that the medical practitioner has to abortion, before giving any advice on abortion or other options; or | 25 26 27 |
| | (ii) failing to refer the person in a timely manner 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, so as to enable the person to have full information about all of the person's options in relation to the pregnancy. | 28 29 30 31 32 33 34 |

| | | |
|----------------------------|--|--|
| Schedule 2 | Amendment of Summary Offences Act 1988 | 1 |
| | No 25 | 2 |
| Part 2, Division 1A | | 3 |
| Insert after section 11A: | | 4 |
| Division 1A | Prohibited behaviour around premises at which abortions are provided | 5 |
| | | 6 |
| 11AA | Purpose and operation of Division | 7 |
| (1) | The purpose of this Division is to prohibit behaviour that is detrimental to the health, safety, well-being, privacy and dignity of people seeking to access reproductive health services, including behaviour that threatens the health and safety of health professionals, staff and other persons who need to access premises so as to provide those health services. | 8 9 10 11 12 |
| (2) | This is achieved by: | 13 |
| (a) | preventing the physical obstruction of the entrance to premises in order to ensure that people seeking to access abortions or advice on abortions, health and medical staff and other people who are attempting to access or leave the premises can do so safely, free from intimidation, harassment and abuse, and | 14 15 16 17 18 |
| (b) | prohibiting conduct that is damaging to any person's rights (in particular, the rights to medical autonomy, to give informed consent, to privacy and confidentiality around medical decisions and treatments and to freely make important decisions concerning reproductive health autonomously and without undue influence or coercion) by ensuring that health services can be accessed free from unreasonable intrusions on privacy and dignity and free from other unjustified interference, including the questioning of decisions. | 19 20 21 22 23 24 25 26 |
| 11AB | Meaning of "exclusion zone" | 27 |
| | In this Division: | 28 |
| | <i>exclusion zone</i> means an area within a 150 metre radius of: | 29 |
| (a) | premises at which abortions are provided, or | 30 |
| (b) | a pedestrian access point to a building that houses premises at which abortions are provided. | 31 32 |
| 11AC | Protection of patient and staff safety—prohibition on impeding access to premises | 33 34 |
| | A person who is in an exclusion zone must not 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. | 35 36 37 38 |
| | Maximum penalty: 150 penalty units or imprisonment for 6 months. | 39 |
| 11AD | Protection of patient and staff privacy and dignity—prohibition on making distressing communications | 40 41 |
| (1) | A person who is in an exclusion zone must not communicate disapproval of abortion by any means in a manner that: | 42 43 |
| (a) | 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 | 44 45 |

| | | |
|-------------|---|----------------------|
| (b) | is reasonably likely to cause distress or anxiety to any such person. | 1 |
| | Maximum penalty: 150 penalty units or imprisonment for 6 months. | 2 |
| (2) | This section prohibits disapproval by any means, including disapproval communicated by graphic, oral or written means or by any other means. | 3 4 |
| (3) | This section does not limit section 11AC. | 5 |
| 11AE | Protection of patient and staff privacy—prohibition on capturing or distributing visual or audio data in exclusion zone | 6 7 |
| (1) | A person must not intentionally, by any means, capture visual or audio data of another person without that person’s consent if the other person is: | 8 9 |
| (a) | in an exclusion zone and is accessing, leaving, or attempting to access or leave, premises at which abortions are provided, or | 10 11 |
| (b) | inside premises at which abortions are provided. | 12 |
| | Maximum penalty: 150 penalty units or imprisonment for 6 months. | 13 |
| (2) | A person must not distribute, or attempt to distribute, visual or audio data of another person that was captured without that person’s consent when the other person was: | 14 15 16 |
| (a) | in an exclusion zone and accessing, leaving, or attempting to access or leave, premises at which abortions are provided, or | 17 18 |
| (b) | inside premises at which abortions are provided. | 19 |
| | Maximum penalty: 150 penalty units or imprisonment for 6 months. | 20 |
| (3) | This section does not apply to the capture or distribution of data captured by a security camera by or on behalf of a person operating premises at which abortions are provided, or premises adjacent to or near such premises if: | 21 22 23 |
| (a) | the camera is operated for security reasons only, and | 24 |
| (b) | the camera’s use is limited to the capturing of data of the premises being secured and of entries to, or exits from, those premises for that purpose, and | 25 26 27 |
| (c) | any capturing of visual or audio data of the premises at which abortions are provided, of the surrounds of those premises or of persons accessing, leaving or attempting to access or leave those premises, is both incidental and unavoidable. | 28 29 30 31 |
| (4) | This section also does not apply to: | 32 |
| (a) | a person employed or contracted to provide services at the premises at which abortions are provided, or | 33 34 |
| (b) | a person otherwise acting for or on behalf of a person operating premises at which abortions are provided, but only if the visual or audio data is provided either to the person operating the premises or to a police officer, or | 35 36 37 38 |
| (c) | a person who has another reasonable excuse, or | 39 |
| (d) | a police officer acting in the course of the officer’s duties as a police officer if the officer’s conduct is reasonable in the circumstances for the performance of those duties. | 40 41 42 |

| | | |
|-------------|---|----|
| (5) | In this section: | 1 |
| | <i>capture visual or audio data</i> of another person means to capture moving or still images, or audio, of the other person by a camera or any other means in such a way that: | 2 |
| | (a) a recording is made of the images or audio, or | 3 |
| | (b) the images or audio are capable of being transmitted in real time with or without retention or storage in a physical or electronic form, or | 4 |
| | (c) the images or audio are otherwise capable of being distributed. | 5 |
| | <i>distribute</i> means transmit or communicate visual or audio data in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the visual or audio data, and includes: | 6 |
| | (a) communicate, exhibit, send, publish, supply or transmit, whether to a particular person or not, and | 7 |
| | (b) make available for access, whether by a particular person or not, and | 8 |
| | (c) enter into an agreement or arrangement to do any thing mentioned in this definition. | 9 |
| 11AF | Police powers | 10 |
| (1) | 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 this Division. | 11 |
| (2) | If a person is convicted or found guilty of an offence under this Division, any item seized under this section is forfeited to the Crown and is to be destroyed or disposed of in a manner approved by the Minister. | 12 |
| 11AG | Application of Division | 13 |
| (1) | This Division does not apply so as to prohibit conduct occurring in the forecourt of, or on the footpath or road outside, Parliament House in Macquarie Street, Sydney. | 14 |
| (2) | This Division applies despite anything to the contrary in: | 15 |
| | (a) Part 4 of this Act, or | 16 |
| | (b) Part 14 of the <i>Law Enforcement (Powers and Responsibilities) Act 2002</i> . | 17 |