



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.



New South Wales

Crimes Legislation Amendment (Loss of Foetus) Bill 2021

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New South Wales

Crimes Legislation Amendment (Loss of Foetus) Bill 2021

No. , 2021

A Bill for

An Act to amend the *Crimes Act 1900* to create new offences in relation to causing the loss of a foetus of a pregnant woman; and to make consequential amendments to other Acts.

The Legislature of New South Wales enacts—

1

1 Name of Act

2

This Act is the *Crimes Legislation Amendment (Loss of Foetus) Act 2021*.

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2 Commencement

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

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Schedule 1 Amendment of Crimes Act 1900 No 40

[1] Sections 54A and 54B

Insert after section 54—

54A Offence of causing loss of a foetus

- (1) A person commits an offence against this section (an *offence of causing the loss of a foetus*) if—
 - (a) the person's act or omission constitutes an offence under a GBH provision (the *relevant GBH provision*), and
 - (b) the act or omission consists of, or includes, causing the loss of a foetus of a pregnant woman.
- (2) To avoid doubt, if the act or omission that caused the loss of the foetus of the pregnant woman caused other injuries to the pregnant woman, the person may, in addition to the offence of causing the loss of a foetus, be charged and convicted of another offence under this Act in relation to the pregnant woman's other injuries.
- (3) A person who commits an offence of causing the loss of a foetus is liable for a maximum penalty that equals the total of the following—
 - (a) the maximum penalty for the relevant GBH provision,
 - (b) 3 years' imprisonment.
- (4) In sentencing a defendant for an offence of causing the loss of a foetus and another offence committed against the pregnant woman arising from the same act or omission, a court—
 - (a) may take into account any other injuries caused to the pregnant woman by the defendant's act or omission, but
 - (b) may not impose a total sentence that is more than the maximum penalty referred to in subsection (3).
- (5) In a proceeding for an offence of causing the loss of a foetus it is not necessary for the prosecution to prove that the defendant knew, or ought reasonably to have known, that the woman was pregnant, unless that knowledge is an element of the relevant GBH provision.
- (6) This section does 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.
- (7) In this section—

foetus means 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.

GBH provision means a provision of this Act that creates an offence involving physical elements of causing grievous bodily harm to a person.

54B	Offence of causing loss of a foetus (death of pregnant woman)	1
(1)	A person commits an offence against this section (an <i>offence of causing the loss of a foetus (death of pregnant woman)</i>) if—	2
		3
(a)	the person’s act or omission constitutes an offence under a homicide provision (the <i>relevant homicide provision</i>), and	4
		5
(b)	the victim of the offence is a pregnant woman, and	6
		7
(c)	the act or omission includes causing the loss of the pregnant woman’s foetus.	8
(2)	A person may be charged with an offence of causing the loss of a foetus (death of pregnant woman) in relation to an act or omission of the person only if the person is also charged with an offence under the relevant homicide provision in relation to the same act or omission.	9
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(3)	A person who commits an offence of causing the loss of a foetus (death of pregnant woman) is liable for a maximum penalty of 3 years’ imprisonment.	13
		14
(4)	In a proceeding for an offence of causing the loss of a foetus (death of pregnant woman) it is not necessary for the prosecution to prove that the defendant knew, or ought reasonably to have known, that the woman was pregnant.	15
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(5)	This section does not apply to—	18
(a)	the termination of a pregnancy under the <i>Abortion Law Reform Act 2019</i> , or	19
		20
(b)	an act or omission of a pregnant woman that results in the loss of the woman’s foetus.	21
		22
(6)	In this section—	23
	<i>foetus</i> means a foetus—	24
(a)	of at least 20 weeks’ gestation, or	25
		26
(b)	if it is not possible to reliably establish the period of gestation—that has a body mass of at least 400 grams.	27
		28
	<i>homicide provision</i> means the following provisions—	28
(a)	section 18,	29
(b)	section 25A(1),	30
(c)	section 25A(2),	31
(d)	section 25C,	32
(e)	section 52A(1),	33
(f)	section 52A(2),	34
(g)	section 52AB(1),	35
(h)	section 52B(1),	36
(i)	section 52B(2),	37
(j)	section 93O.	38
[2]	Schedule 11 Savings, transitional and other provisions	39
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	40

Part	Crimes Legislation Amendment (Loss of Foetus) Act 2021	1
		2
	Application of amendments	3
	Sections 54A and 54B, as inserted by the <i>Crimes Legislation Amendment (Loss of Foetus) Act 2021</i> , apply only to an offence alleged to have been committed on or after the commencement of the sections.	4
		5
		6

Schedule 2	Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	1
		2
[1] Section 26 Definitions		3
	Omit the definition of <i>family victim</i> . Insert in alphabetical order—	4
	<i>family victim</i> means any of the following persons, whether or not the person suffered personal harm as a result of the offence—	5
		6
	(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,	7
		8
		9
	(b) in relation to an offence committed against a primary victim who was pregnant at the time the offence was committed and as a result of which the foetus was lost, regardless of the gestational age of the foetus—a person who was, at the time the offence was committed, a member of the primary victim’s immediate family, whether or not the primary victim died.	10
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[2] Section 28 Contents of victim impact statements		16
	Omit section 28(2). Insert instead—	17
	(2) A family victim in relation to an offence may prepare a statement (a <i>victim impact statement</i>) that contains—	18
		19
	(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	20
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		23
	(b) in relation to an offence committed against a primary victim who was pregnant at the time the offence was committed and as a result of which the foetus was lost, regardless of the gestational age of the foetus—particulars of the impact of the loss of the foetus on—	24
		25
		26
		27
	(i) the family victim, and	28
	(ii) other members of the primary victim’s immediate family.	29
[3] Schedule 2 Savings, transitional and other provisions		30
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	31
Part	Provision consequent on enactment of Crimes Legislation Amendment (Loss of Foetus) Act 2021	32
		33
	Application of amendments	34
	(1) Section 28(2) and the new definition of family victim apply only to proceedings that are commenced on or after the commencement of the amendment Act, Schedule 2.	35
		36
		37
	(2) In this clause—	38
	<i>amendment Act</i> means the <i>Crimes Legislation Amendment (Loss of Foetus) Act 2021</i> .	39
		40
	<i>new definition</i> means the definition inserted in section 26 by the amendment Act.	41
		42

Schedule 3	Amendment of Criminal Procedure Act 1986	1
	No 209	2
[1]	Section 16 Certain defects do not affect indictment	3
	Insert after section 16(1)(d)—	4
	(d1) if the indictment is for an offence under the <i>Crimes Act 1900</i> relating to the destruction or loss of a foetus, regardless of the gestational age of the foetus—for stating the name of the foetus,	5 6 7
[2]	Schedule 2 Savings, transitional and other provisions	8
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	9
Part	Provision consequent on enactment of Crimes Legislation Amendment (Loss of Foetus) Act 2021	10 11
	Application of amendments	12
	The amendment made by the <i>Crimes Legislation Amendment (Loss of Foetus) Act 2021</i> , Schedule 3[1] does not apply to proceedings that commenced before the commencement of the Schedule.	13 14 15

Schedule 4	Amendment of Motor Accident Injuries Act 2017	1
	No 10	2
[1]	Section 3.4 Statutory benefits for funeral expenses	3
	Insert after section 3.4(3)—	4
	(4) A reference in this section to the death of a person includes a reference to the loss of a foetus of a pregnant woman, whether or not the pregnant woman died and regardless of the gestational age of the foetus.	5 6 7
	(5) For the purposes of subsection (2) or (3), the usual place of residence of a foetus of a pregnant woman is taken to be the pregnant woman's usual place of residence.	8 9 10
[2]	Schedule 4 Savings, transitional and other provisions	11
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	12
Part	Provision consequent on enactment of Crimes Legislation Amendment (Loss of Foetus) Act 2021	13 14
	Statutory benefits for funeral expenses	15
	The amendment made to section 3.4 by the <i>Crimes Legislation Amendment (Loss of Foetus) Act 2021</i> applies only in relation to a motor accident that happens on or after the commencement of the amendment.	16 17 18