



Mark Speakman
Attorney General

MEDIA RELEASE

Wednesday, 10 November 2021

REFORMS TO BETTER RECOGNISE THE LOSS OF AN UNBORN CHILD DUE TO CRIMINAL ACTS

Expectant parents who lose an unborn child due to another person's criminal act will be better supported and offenders will face tougher sentences under a suite of reforms proposed by the NSW Government.

Attorney General Mark Speakman said creating new criminal offences will expressly recognise the loss of an unborn child as a unique injury and loss for the pregnant woman and other family members.

"Currently, there is no stand-alone offence of causing the loss of an unborn child. These proposed changes will better acknowledge the heartbreak suffered by families and punish offenders appropriately," Mr Speakman said.

The Crimes Legislation Amendment (Loss of Foetus) Bill 2021 proposes to strengthen the law by creating two new offences in the *Crimes Act 1900*:

- A stand-alone offence of '*Causing the loss of a foetus*', which will apply to a wide range of criminal acts and carry a maximum penalty of 5 to 28 years imprisonment depending on the type of act (such as dangerous driving or grievous bodily harm with intent to the pregnant woman). The combined maximum sentence for this offence and the existing criminal offence will be 3 years higher than currently available for this conduct under existing law.
- An offence of '*Causing the loss of a foetus (death of pregnant woman)*' which can be charged with a homicide offence (such as murder, manslaughter, dangerous driving occasioning death) where the foetus is lost and the pregnant woman is killed due to a third party criminal act. This offence will carry a maximum penalty of 3 years imprisonment and apply in addition to the maximum penalty for the homicide offence.

These can be charged where the foetus was at least 20 weeks or 400 grams weight.

The reforms will also improve support and recognition available to parents who have lost an unborn child of any age as a result of a third party criminal act. The reforms will enable:

- family members to make victim impact statements that may be taken into account by the courts when sentencing offenders;
- the name of an unborn child lost as a result of a criminal offence to be included in the formal wording of charges against an accused (the indictment);
- family members to claim funeral costs for the loss of an unborn child caused by a car accident.

When either of these new offences are charged, families may also be eligible for a one-off \$3,000 payment when the accused is charged with one of the new offences. This bereavement payment will assist families to seek counselling and other support services.

Mr Speakman said the proposed amendments do not affect reforms introduced by the *Abortion Law Reform Act 2019*. The offences will expressly exclude any act or omission by the pregnant woman.

Significantly, these reforms are not intended to displace the centuries old 'born alive rule', which provides that a crime of violence such as homicide can only be committed on a legally recognised person – a status attained when someone is born and takes their first breath.

"The reforms recognise the loss that parents and families go through in these cases, without undoing longstanding legal principles," Mr Speakman said.

"The NSW Government has consulted community and stakeholders, listened carefully to the variety of views, and developed reform that is proportionate and appropriate to better recognise the loss of expectant parents and their families in these tragic circumstances."

NSW Government's proposed reforms to recognise the loss of an unborn child due to crime

Factsheet

Families who lose an unborn child as a result of criminal acts will be better supported under reforms proposed by the NSW Government.

Why is the NSW Government reforming laws to better recognise the loss of a foetus caused by a criminal act?

In recent years there have been several tragic cases involving pregnant women losing their unborn child as a result of the criminal actions of third parties. Most – but not all – of these cases have involved dangerous driving by the third party.

These distressing incidents have led to increased community interest in whether the criminal law in NSW gives adequate recognition to circumstances where a third party criminal act causes the loss of a foetus.

Currently, there is no stand-alone offence of causing the loss of an unborn child.

In November 2018, the NSW Government committed to seek expert advice and community feedback on how the loss of a foetus as a result of a third party criminal act might be better recognised in NSW law.

The NSW Government has subsequently considered reform options in consultation with stakeholders and members of the community.

What are the key changes the NSW Government is proposing?

The Crimes Legislation Amendment (Loss of Foetus) Bill 2021 will create two new offences in the *Crimes Act 1900*:

- A stand-alone offence of '*Causing the loss of a foetus*', which will apply to a wide range of criminal acts and carry a maximum penalty of 5 to 28 years imprisonment depending on the type of act (such as dangerous driving or grievous bodily harm with intent to the pregnant woman). The combined maximum sentence for this offence and the existing criminal offence will be 3 years higher than currently available for this conduct under existing law.
- An offence of '*Causing the loss of a foetus (death of pregnant woman)*' which can be charged with a homicide offence (such as murder, manslaughter, dangerous driving occasioning death) where the foetus is lost and the pregnant woman is killed due to a third party criminal act. This offence will carry a maximum penalty of 3 years imprisonment and apply in addition to the maximum penalty for the homicide offence.

The new offences can be charged where the foetus had reached a gestational age of at least 20 weeks, or 400 grams weight.

The reforms will also improve support and recognition available to parents who have lost an unborn child of any age as a result of a third party criminal act.

The reforms will amend:

- the *Criminal Procedure Act 1986* to allow the name a foetus lost due to a criminal offence to be included on an indictment in the particulars of a criminal charge. The indictment is the formal document, which sets out the details of the alleged offence and is read out in court.
- the *Crimes (Sentencing Procedure) Act 1999* to expand the eligibility for making a Victim Impact Statement to the immediate family members of a pregnant woman whose foetus was lost, and to enable family members to express the impact of the loss on them. The statements may be read out or tendered in court and are taken into account by the courts when sentencing offenders.
- the *Motor Accident Injuries Act 2017* to allow grieving families to claim funeral expenses where a foetus is lost due to a motor accident.

In addition, families who lose an unborn child where one of the new offences is charged may be eligible for a one-off \$3,000 payment under the reforms.

This bereavement payment scheme will assist these families to access support services, including counselling.

What do the reforms aim to achieve?

The reforms aim to:

- strengthen the criminal law to better recognise the loss of a foetus; and
- improve support and recognition available to parents who have lost an unborn child as a result of a third party criminal act.

The NSW Government has committed to ensuring the reforms avoid encroaching on women's reproductive rights.

The proposed amendments do not affect reforms introduced by the *Abortion Law Reform Act 2019*. The offences will expressly exclude any act or omission by the pregnant woman.

Significantly, these reforms are not intended to displace the centuries old 'born alive rule'.

The rule is a legal principle which provides an infant attains legal personhood, including the capacity to be the victim of a criminal offence independently of their mother, when they are born and take their first breath.

When will the reforms be implemented?

The NSW Parliament is considering the Crimes Legislation Amendment (Loss of Foetus) Bill 2021 after its introduction in November 2021.

How will the reforms work?

This flowchart illustrates how the reforms are intended to operate. As with any criminal offence, which offence(s) is ultimately charged in any given circumstance will turn on the facts of that individual case and will be a matter for the prosecutor to determine, in accordance with the [Prosecutorial Guidelines](#).

