



New South Wales

# Crimes Legislation Amendment (Coercive Control) Bill 2022

## Explanatory note

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

## Overview of Bill

The objects of this Bill are to amend—

- (a) the *Crimes Act 1900*, to make it an offence for an adult to engage in repeated or continuous abusive behaviour against a current or former intimate partner (the *coercive control offence*), and
- (b) the *Crimes (Domestic and Personal Violence) Act 2007*, to provide that the coercive control offence, and certain offences in relation to domestic abuse, falls within the definition of domestic violence offence for the purposes of that Act, and
- (c) the *Crimes (Sentencing Procedure) Act 1999*, to extend provisions in that Act in relation to victim impact statements to the coercive control offence, and
- (d) the *Criminal Procedure Act 1986*, to provide the coercive control offence must be dealt with summarily unless the prosecutor or person charged elects to have the offence dealt with on indictment.

## 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 Part 3, Division 6A relating to the coercive control offence.

Proposed section 54D creates the coercive control offence by making it an offence for an adult to engage in a course of conduct consisting of abusive behaviour against a current or former intimate partner. The coercive control offence applies if the adult intends the course of conduct to coerce or control the other person. The coercive control offence is punishable by a maximum penalty of imprisonment for 7 years.

Proposed section 54E includes a defence to the coercive control offence if the course of conduct was reasonable in all the circumstances. The proposed section also provides for evidentiary and other matters in relation to the defence.

Proposed section 54F defines *abusive behaviour* for the purposes of the proposed Division and provides that abusive behaviour is behaviour that consists of or involves—

- (a) violence or threats against, or intimidation of, a person, or
- (b) coercion or control of the person against whom the behaviour is directed.

Proposed section 54G defines a *course of conduct* for the purposes of the proposed Division. A course of conduct means engaging in behaviour repeatedly or continuously and may include behaviour occurring in NSW only or behaviour occurring in NSW and another jurisdiction.

Proposed section 54H sets out procedural requirements for proceedings for the coercive control offence.

Proposed section 54I provides that the Minister must review the proposed Division and table a report on the outcome of the review in each House of Parliament.

**Schedule 1[2]** inserts a transitional provision to provide that proposed Part 3, Division 6A applies only in relation to behaviour that occurred, or is alleged to have occurred, on or after the commencement of the proposed Division.

## **Schedule 2      Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80**

**Schedule 2[3]–[5]** amend the *Crimes (Domestic and Personal Violence) Act 2007* to provide that the following offences are domestic violence offences for the purposes of that Act—

- (a) the coercive control offence,
- (b) an offence, other than a personal violence offence, in which the conduct that constitutes the offence is domestic abuse.

**Schedule 2[2]** inserts a definition of *domestic abuse*. **Schedule 2[1]** makes a consequential amendment.

**Schedule 2[6]** inserts a transitional provision to provide that the amendments made to the *Crimes (Domestic and Personal Violence) Act 2007* by the proposed Act apply only in relation to behaviour or an offence that occurred, or is alleged to have occurred, on or after the commencement of the proposed amendment.

## **Schedule 3      Amendment of Crimes (Sentencing Procedure) Act 1999 No 92**

**Schedule 3** amends the *Crimes (Sentencing Procedure) Act 1999* to provide for the application of provisions of that Act in relation to victim impact statements for the coercive control offence.

## **Schedule 4      Amendment of Criminal Procedure Act 1986 No 209**

**Schedule 4** amends the *Criminal Procedure Act 1986* to provide that the coercive control offence must be dealt with summarily unless the prosecutor or person charged elects to have the offence dealt with on indictment.



New South Wales

# Crimes Legislation Amendment (Coercive Control) Bill 2022

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New South Wales

# Crimes Legislation Amendment (Coercive Control) Bill 2022

No. \_\_\_\_\_, 2022

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## A Bill for

An Act to amend the *Crimes Act 1900* to create a new offence relating to abusive behaviour towards current and former intimate partners; to amend the *Crimes (Domestic and Personal Violence) Act 2007* to provide for a new definition of domestic abuse; and to make consequential amendments.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Crimes Legislation Amendment (Coercive Control) Act 2022*.

3

**2 Commencement**

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

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(2) A provision of this Act commences on 1 July 2024 if the provision has not been commenced under subsection (1) by that day.

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(3) Schedule 1, 2[3] or [5], 3 or 4 must not commence before 1 February 2024.

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## Schedule 1 Amendment of Crimes Act 1900 No 40

### [1] Part 3 Offences against the person

Insert after section 54B—

#### Division 6A Abusive behaviour towards intimate partners

##### 54C Definitions

In this Division—

**abusive behaviour**—see section 54F.

**adult** means an individual who is 18 years of age or older.

**course of conduct**—see section 54G.

**intimate partner**, of a person (the **first person**), means a person who—

(a) is or has been married to the first person, or

(b) is or has been a de facto partner of the first person, or

**Note**—“De facto partner” is defined in the *Interpretation Act 1987*, section 21C.

(c) has or has had an intimate personal relationship with the first person, whether or not the intimate relationship involves or has involved a relationship of a sexual nature.

**intimidation**, of a person, has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

**stalking** has the same meaning as in the *Crimes (Domestic and Personal Violence) Act 2007*.

##### 54D Abusive behaviour towards current or former intimate partners

(1) An adult commits an offence if—

(a) the adult engages in a course of conduct against another person that consists of abusive behaviour, and

(b) the adult and other person are or were intimate partners, and

(c) the adult intends the course of conduct to coerce or control the other person, and

(d) a reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause any or all of the following, whether or not the fear or impact is in fact caused—

(i) fear that violence will be used against the other person or another person, or

(ii) a serious adverse impact on the capacity of the other person to engage in some or all of the person’s ordinary day-to-day activities.

Maximum penalty—Imprisonment for 7 years.

(2) For subsection (1)(a)—

(a) the course of conduct may be constituted by any combination of abusive behaviours, and

(b) whether the course of conduct consists of abusive behaviour must be assessed by considering the totality of the behaviours.

<b>54E</b>	<b>Defence</b>	1
(1)	In proceedings for an offence under section 54D(1), it is a defence if the course of conduct was reasonable in all the circumstances.	2 3
(2)	For subsection (1), that the course of conduct was reasonable in all the circumstances is taken to be proven if—	4 5
(a)	evidence adduced is capable of raising an issue as to whether the course of conduct is reasonable in all the circumstances, and	6 7
(b)	the prosecution does not prove beyond reasonable doubt that the course of conduct is not reasonable in all the circumstances.	8 9
<b>54F</b>	<b>Meaning of “abusive behaviour”</b>	10
(1)	In this Division, <i>abusive behaviour</i> means behaviour that consists of or involves—	11 12
(a)	violence or threats against, or intimidation of, a person, or	13
(b)	coercion or control of the person against whom the behaviour is directed.	14 15
(2)	Without limiting subsection (1), engaging in, or threatening to engage in, the following behaviour may constitute <i>abusive behaviour</i> —	16 17
(a)	behaviour that causes harm to a child if a person fails to comply with demands made of the person,	18 19
(b)	behaviour that causes harm to the person against whom the behaviour is directed, or another adult, if the person fails to comply with demands made of the person,	20 21 22
(c)	behaviour that is economically or financially abusive,	23
	<b>Examples for paragraph (c)—</b>	24
	• withholding financial support necessary for meeting the reasonable living expenses of a person, or another person living with or dependent on the person, in circumstances in which the person is dependent on the financial support to meet the person’s living expenses	25 26 27 28
	• preventing, or unreasonably restricting or regulating, a person seeking or keeping employment or having access to or control of the person’s income or financial assets, including financial assets held jointly with another person	29 30 31 32
(d)	behaviour that shames, degrades or humiliates,	33
(e)	behaviour that directly or indirectly harasses a person, or monitors or tracks a person’s activities, communications or movements, whether by physically following the person, using technology or in another way,	34 35 36
(f)	behaviour that causes damage to or destruction of property,	37
(g)	behaviour that prevents the person from doing any of the following or otherwise isolates the person—	38 39
(i)	making or keeping connections with the person’s family, friends or culture,	40 41
(ii)	participating in cultural or spiritual ceremonies or practice,	42
(iii)	expressing the person’s cultural identity,	43
(h)	behaviour that causes injury or death to an animal, or otherwise makes use of an animal to threaten a person,	44 45
(i)	behaviour that deprives a person of liberty, restricts a person’s liberty or otherwise unreasonably controls or regulates a person’s day-to-day activities.	46 47 48

<b>Examples for paragraph (i)—</b>	1
• making unreasonable demands about how a person exercises the person's personal, social or sexual autonomy and making threats of negative consequences for failing to comply with the demands	2 3 4
• denying a person access to basic necessities including food, clothing or sleep	5
• withholding necessary medical or other care, support, aids, equipment or essential support services from a person or compelling the person to take medication or undertake medical procedures	6 7 8
<b>54G Meaning of “course of conduct”</b>	9
(1) In this Division, a <i>course of conduct</i> means engaging in behaviour—	10
(a) either repeatedly or continuously, or	11
(b) both repeatedly and continuously.	12
(2) For subsection (1), behaviour does not have to be engaged in—	13
(a) as an unbroken series of incidents, or	14
(b) in immediate succession.	15
(3) For subsection (1), a course of conduct includes behaviour engaged in—	16
(a) in this State, and	17
(b) in this State and another jurisdiction.	18
<b>54H Procedural requirements</b>	19
(1) In proceedings for an offence under section 54D(1)—	20
(a) if a specific incident of abusive behaviour is alleged to form part of the course of conduct, the prosecution is not required to allege the particulars that would be necessary if the incident were charged as a separate offence, but	21 22 23 24
(b) the prosecution is required to allege—	25
(i) the nature and description of the behaviours that amount to the course of conduct, and	26 27
(ii) the particulars of the period of time over which the course of conduct took place.	28 29
(2) For the accused to be convicted of an offence under section 54D(1), the trier of fact—	30 31
(a) must be satisfied beyond reasonable doubt that the evidence establishes a course of conduct that consists of abusive behaviour, and	32 33
(b) is not required to be satisfied of the particulars of any specific incident of behaviour alleged to form part of the course of conduct that it would have to be satisfied of if the incident were charged as a separate offence.	34 35 36
<b>Note—</b> This Division does not affect the common law in relation to double jeopardy.	37
<b>54I Review of Division</b>	38
(1) The Minister must review this Division to determine whether—	39
(a) the policy objectives of the Division remain valid, and	40
(b) the terms of the Division remain appropriate for securing those objectives.	41 42
(2) In particular, the review must consider the following—	43
(a) whether section 54D(1)(c) should be extended to cover recklessness,	44

(b)	whether this Division should apply to relationships other than current and former intimate partner relationships,	1 2
(c)	the impact of this Division on Aboriginal people,	3
(d)	whether victims of an offence under this Division may be misidentified as perpetrators,	4 5
(e)	whether the penalty for the offence under section 54D(1) should be extended.	6 7
(3)	The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Division.	8 9
(4)	A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 3 years.	10 11
<b>[2]</b>	<b>Schedule 11 Savings, transitional and other provisions</b>	12
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	13
<b>Part</b>	<b>Crimes Legislation Amendment (Coercive Control) Act 2022</b>	14 15
	<b>Application of amendments</b>	16
	Part 3, Division 6A, as inserted by the <i>Crimes Legislation Amendment (Coercive Control) Act 2022</i> , applies only in relation to behaviour that occurred, or is alleged to have occurred, on or after the commencement of the Division.	17 18 19 20

<b>Schedule 2</b>	<b>Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80</b>	1
		2
<b>[1] Section 3 Definitions</b>		3
	Insert in alphabetical order in section 3(1)—	4
	<i>domestic abuse</i> —see section 6A.	5
<b>[2] Section 6A</b>		6
	Insert after section 6—	7
<b>6A Meaning of “domestic abuse”</b>		8
(1)	In this Act, <i>domestic abuse</i> means any of the following behaviours directed by one person (the <i>first person</i> ) against another person (the <i>second person</i> ) with whom the first person has a domestic relationship—	9 10 11
(a)	violent or threatening behaviour,	12
(b)	behaviour that coerces or controls the second person,	13
(c)	behaviour that causes the second person to fear for the person’s safety or wellbeing or the safety and wellbeing of others.	14 15
(2)	Without limiting subsection (1), engaging in, or threatening to engage in, the following behaviour may constitute domestic abuse—	16 17
(a)	behaviour that is physically abusive or violent,	18
(b)	behaviour that is sexually abusive, coercive or violent,	19
(c)	behaviour that is economically or financially abusive,	20
	<b>Examples—</b>	21
	• withholding financial support necessary for meeting the reasonable living expenses of a person, or another person living with or dependent on the person, in circumstances in which the person is dependent on the financial support to meet the person’s living expenses	22 23 24 25
	• preventing, or unreasonably restricting or regulating, a person seeking or keeping employment or having access to or control of the person’s income or financial assets, including financial assets held jointly with another person	26 27 28 29
(d)	behaviour that is verbally abusive,	30
(e)	behaviour that shames, degrades or humiliates,	31
(f)	behaviour that is intimidation,	32
(g)	behaviour that is stalking, or that directly or indirectly harasses a person, or monitors or tracks a person’s activities, communications or movements, whether by physically following the person, using technology or in another way,	33 34 35 36
(h)	behaviour that damages or destroys property,	37
(i)	behaviour that causes death or injury to an animal, or otherwise makes use of an animal to threaten a person,	38 39
(j)	behaviour that prevents the second person from doing any of the following or otherwise isolates the person—	40 41
(i)	making or keeping connections with the person’s family, friends or culture,	42 43
(ii)	participating in cultural or spiritual ceremonies or practice,	44
(iii)	expressing the person’s cultural identity,	45

(k)	behaviour that deprives the second person of liberty, restricts the second person’s liberty or otherwise unreasonably controls or regulates a person’s day-to-day activities,	1 2 3
	<b>Examples—</b>	4
•	making unreasonable demands about how a person exercises the person’s personal, social or sexual autonomy and making threats of negative consequences for failing to comply with the demands	5 6 7
•	denying a person access to basic necessities including food, clothing or sleep	8 9
•	withholding necessary medical or other care, support, aids, equipment or essential support services from a person or compelling the person to take medication or undertake medical procedures	10 11 12
(3)	Domestic abuse includes behaviour by the first person that causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour mentioned in subsection (1).	13 14 15
(4)	Domestic abuse may, in the context of the relationship, be constituted by—	16
(a)	a single act, omission or circumstance, or	17
(b)	a combination of acts, omissions or circumstances over a period of time.	18
(5)	Behaviour mentioned in subsection (1) or (2) may constitute domestic abuse even if the behaviour does not constitute a criminal offence.	19 20
<b>[3]</b>	<b>Section 11 Meaning of “domestic violence offence”</b>	21
	Insert after section 11(1)(b)—	22
(b1)	an offence under the <i>Crimes Act 1900</i> , section 54D(1), or	23
<b>[4]</b>	<b>Section 11</b>	24
	Omit section 11(1)(c). Insert instead—	25
(c)	an offence, other than a personal violence offence, in which the conduct that constitutes the offence is domestic abuse.	26 27
<b>[5]</b>	<b>Section 11(1)(c)</b>	28
	Insert “or an offence mentioned in paragraph (b1)” after “personal violence offence”.	29
<b>[6]</b>	<b>Schedule 1 Savings, transitional and other provisions</b>	30
	Insert at the end of the Schedule, with appropriate Part and clause numbering—	31
<b>Part</b>	<b>Provisions consequent on enactment of Crimes Legislation Amendment (Coercive Control) Act 2022</b>	32 33 34
	<b>Application of amendments</b>	35
	An amendment made by the <i>Crimes Legislation Amendment (Coercive Control) Act 2022</i> applies only in relation to—	36 37
(a)	behaviour that occurred, or is alleged to have occurred, on or after the commencement of the amendment, or	38 39
(b)	an offence committed, or alleged to have been committed, on or after the commencement of the amendment.	40 41

<b>Schedule 3</b>	<b>Amendment of Crimes (Sentencing Procedure)</b>	1
	<b>Act 1999 No 92</b>	2
	<b>Section 27 Application of Division</b>	3
	Insert “54D(1),” after “section” wherever occurring in section 27(2)(e) and (4)(e).	4

