

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Crimes Legislation Amendment (Coercive Control) Bill 2022

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NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Crimes Legislation Amendment (Coercive Control) Bill 2022

No. _____, 2022

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.

public consultation draft

Crimes Legislation Amendment (Coercive Control) Bill 2022 [NSW]

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

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

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
- (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—
 - (i) intends the course of conduct to cause physical or mental harm to the other person, or
 - (ii) is reckless as to whether the course of conduct may cause physical or mental harm to the other person, and
 - (d) a reasonable person would consider the course of conduct would be likely, in all the circumstances, to cause either or both 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,
 - (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 looking at the totality of the behaviours.

54E Defence

- (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) For subsection (1), that the course of conduct was reasonable in all the circumstances is taken to be proven if—
 - (a) evidence adduced is capable of raising an issue as to whether the course of conduct is reasonable in all the circumstances, and
 - (b) the prosecution does not prove beyond reasonable doubt that the course of conduct is not reasonable in all the circumstances.

54F Meaning of “abusive behaviour”

- (1) In this Division, *abusive behaviour* means 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.
- (2) Without limiting subsection (1), abusive behaviour may include engaging in, or threatening to engage in, the following—
 - (a) behaviour directed at, or making use of, a child of a person to threaten the person,
 - (b) stalking,
 - (c) directly or indirectly monitoring or tracking a person’s activities, communications or movements, whether by physically following the person, using technology or in another way,
 - (d) repeated derogatory taunts,
 - (e) damaging property,
 - (f) causing injury or death to an animal,
 - (g) depriving a person of liberty, restricting a person’s liberty or otherwise unreasonably controlling or regulating a person’s day-to-day activities.

Examples for paragraph (g)—

- making unreasonable demands on how a person exercises the person’s financial, personal, sexual or social autonomy and making threats of negative consequences for failing to comply with the demands,
- denying a person access to basic necessities including food, clothing or sleep, whether or not the person would, in fact, have had access to the basic necessities,
- withholding necessary medication, medical equipment, medical treatment or essential support services from a person or compelling the person to take medication or undertake medical procedures,
- 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 their living expenses,
- preventing or unreasonably regulating a person from having access to the person’s financial assets, including financial assets held jointly with another person,
- preventing a person from making or keeping connections with the person’s family, friends or culture, from participating in cultural or spiritual ceremonies or practices, or from expressing the person’s cultural identity.

54G Meaning of “course of conduct”

- (1) In this Division, a *course of conduct* means engaging in behaviour repeatedly or continuously.
- (2) For subsection (1), the behaviour does not need to be engaged in—
 - (a) as an unbroken series of incidents, or
 - (b) in immediate succession.
- (3) For subsection (1), a course of conduct includes behaviour engaged in—
 - (a) in this State, and
 - (b) in this State and another jurisdiction.

54H Procedural requirements

- (1) In proceedings for an offence under section 54D(1)—
 - (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
 - (b) the prosecution is required to allege—
 - (i) the nature of the behaviours that amount to the course of conduct, and
 - (ii) the particulars of the period of time over which the course of conduct took place.
- (2) For the accused to be convicted of an offence under section 54D(1), the trier of fact—
 - (a) must be satisfied beyond reasonable doubt that the evidence establishes a course of conduct that consists of abusive behaviour, and
 - (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.

Note— This Division does not affect the common law in relation to double jeopardy.

54I Review of Division

- (1) The Minister is to review this Division to determine whether—
 - (a) the policy objectives of the Division remain valid, and
 - (b) the terms of the Division remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 3 years from the commencement of this Division.
- (3) 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.

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

[1] Section 3 Definitions

Insert in alphabetical order in section 3(1)—
domestic abuse—see section 6A.

[2] Section 6A

Insert after section 6—

6A Meaning of “domestic abuse”

- (1) In this Act, *domestic abuse* means behaviour, directed by one person (the *first person*) against another person (the *second person*) with whom the first person has a domestic relationship, that—
 - (a) is physically abusive or violent, or
 - (b) is sexually abusive, coercive or violent, or
 - (c) is economically abusive, or
 - (d) is verbally or emotionally abusive, or
 - (e) is intimidation or stalking, or
 - (f) is intended to cause the second person to fear for the person’s safety or wellbeing, or the safety or wellbeing of others, or
 - (g) coerces or controls the second person.
- (2) Without limiting subsection (1), domestic abuse may include the following—
 - (a) assault,
 - (b) sexual assault or other sexually abusive behaviour,
 - (c) repeated derogatory taunts,
 - (d) damaging or destroying property,
 - (e) causing death or injury to an animal,
 - (f) unreasonably denying the second person the financial autonomy the person would otherwise have,
 - (g) unreasonably withholding financial support needed to meet the reasonable expenses of the second person, or the person’s child, at a time when the person is entirely or predominantly dependent on the first person for financial support,
 - (h) preventing the second person from—
 - (i) making or keeping connections with the person’s family, friends or culture, or
 - (ii) participating in cultural or spiritual ceremonies or practice, or
 - (iii) expressing the person’s cultural identity,
 - (i) unlawfully depriving the second person, or a person with whom the second person has a domestic relationship, of their liberty,
 - (j) use of technology or other means to unreasonably monitor or track the second person’s activities, communication or movement.
- (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).

public consultation draft

Crimes Legislation Amendment (Coercive Control) Bill 2022 [NSW]
Schedule 2 Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80

- (4) Domestic abuse may, in the context of the relationship, be constituted by—
 - (a) a single act, omission or circumstance, or
 - (b) a combination of acts, omissions or circumstances over a period of time.
- (5) Behaviour mentioned in subsection (1) may constitute domestic abuse even if the behaviour does not constitute a criminal offence.

[3] Section 11 Meaning of “domestic violence offence”

Omit section 11(1)(c). Insert instead—

- (c) an offence under the *Crimes Act 1900*, section 54D(1), or
- (d) an offence, other than a personal violence offence or an offence mentioned in paragraph (c), in which the conduct that constitutes the offence is domestic abuse.

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

Section 27 Application of Division

Insert “54D(1),” after “section” wherever occurring in section 27(2)(e) and (4)(e).

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

Schedule 1 Indictable offences triable summarily

Insert “54D(1),” after “51B,” in Table 2, item 1.