



New South Wales

Crimes (Domestic and Personal Violence) Amendment (Coercive and Controlling Behaviour) Bill 2020

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 *Crimes (Domestic and Personal Violence) Act 2007* to create an offence of engaging in abusive behaviour of another person within a domestic relationship.

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 that is 12 months after the date of assent to the proposed Act.

Schedule 1 **Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80**

Schedule 1[3] creates an offence of engaging in a course of behaviour that is abusive of another person with whom the person has, or has had, a domestic relationship (*abusive behaviour offence*). The offence carries a maximum penalty of imprisonment for 10 years or a fine of \$5,500, or both.

For the purposes of the proposed offence, a person engages in a course of behaviour that is abusive of another person if—

- (a) the behaviour—
 - (i) is violent, menacing or intimidating, or

- (ii) has, or is reasonably likely to have, one or more of the following effects—
 - (A) making the other person dependent on, or subordinate to, the person,
 - (B) isolating the other person from friends, relatives or other sources of support,
 - (C) controlling, regulating or monitoring the other person’s day-to-day activities,
 - (D) depriving the other person of, or restricting the other person’s, freedom of action,
 - (E) frightening, humiliating, degrading or punishing the other person, and
- (b) the person intends to cause, or is reckless as to whether the course of behaviour causes, the other person to suffer physical, emotional or psychological harm, including fear, alarm or distress, and
- (c) behaviour of a type referred to in paragraph (a) occurs on 2 or more occasions, and
- (d) a reasonable person would consider the course of behaviour to be likely to cause the other person to suffer physical, emotional or psychological harm, including fear, alarm or distress.

Behaviour may have, or be reasonably likely to have, an effect on a person even if the conduct is directed at—

- (a) a third person, including a child, relative or friend of the person, or
- (b) the property of the person, or
- (c) a companion animal or any other domesticated animal.

Schedule 1[1] and [2] enable a court, when determining whether a person’s conduct amounts to stalking, to have regard to any pattern of violence in the person’s behaviour constituting an abusive behaviour offence.

Schedule 1[4] provides that all apprehended violence orders are taken to specify that the defendant is prohibited from engaging in behaviour that would constitute an abusive behaviour offence. **Schedule 1[5]** requires a court to make an interim apprehended violence order against a defendant charged with an abusive behaviour offence for the protection of the person against whom the offence appears to have been committed.

Schedule 2 Amendment of other Acts

Schedule 2.1 makes a consequential amendment to the *Crimes (Sentencing Procedure) Act 1999*.

Schedule 2.2 makes consequential amendments to the *Criminal Procedure Act 1986*.



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New South Wales

Crimes (Domestic and Personal Violence) Amendment (Coercive and Controlling Behaviour) Bill 2020

No. _____, 2020

A Bill for

An Act to amend the *Crimes (Domestic and Personal Violence) Act 2007* with respect to abusive conduct in domestic relationships.

The Legislature of New South Wales enacts—

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1 Name of Act

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This Act is the *Crimes (Domestic and Personal Violence) Amendment (Coercive and Controlling Behaviour) Act 2020*.

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2 Commencement

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This Act commences on the date that is 12 months after the date of assent to this Act.

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Schedule 1	Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80	1
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[1] Section 8 Meaning of “stalking”		3
	Insert “or an abusive behaviour offence” after “domestic violence offence” in section 8(2).	4
[2] Section 8(3)		5
	Insert after section 8(2)—	6
	(3) In this section, <i>abusive behaviour offence</i> means an offence against section 14A(1).	7
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[3] Sections 14A and 14B		9
	Insert after section 14—	10
14A Abusive behaviour in domestic relationship		11
(1)	A person must not engage in a course of behaviour that is abusive of another person with whom the person has, or has had, a domestic relationship.	12
	Maximum penalty—Imprisonment for 10 years or 50 penalty units, or both.	13
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(2)	For the purposes of subsection (1), a person engages in a course of behaviour that is abusive of another person if—	15
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(a)	the behaviour—	17
	(i) is violent, menacing or intimidating, or	18
	(ii) has, or is reasonably likely to have, one or more of the following effects—	19
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	(A) making the other person dependent on, or subordinate to, the person,	21
		22
	(B) isolating the other person from friends, relatives or other sources of support,	23
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	(C) controlling, regulating or monitoring the other person’s day-to-day activities,	25
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	(D) depriving the other person of, or restricting the other person’s, freedom of action,	27
		28
	(E) frightening, humiliating, degrading or punishing the other person, and	29
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(b)	the person intends to cause, or is reckless as to whether the course of behaviour causes, the other person to suffer physical, emotional or psychological harm, including fear, alarm or distress, and	31
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(c)	behaviour of a type referred to in paragraph (a) occurs on 2 or more occasions, and	34
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(d)	a reasonable person would consider the course of behaviour to be likely to cause the other person to suffer physical, emotional or psychological harm, including fear, alarm or distress.	36
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(3)	Behaviour may have, or be reasonably likely to have, an effect referred to in subsection (2)(a)(ii) on a person even if the conduct is directed at—	39
		40
(a)	a third person, including a child, relative or friend of the person, or	41
(b)	the property of the other person, or	42
(c)	a companion animal, within the meaning of the <i>Companion Animals Act 1998</i> , or any other domesticated animal.	43
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(4)	Without limiting subsection (2)(a), control of a person’s finances or a restriction on access to financial or economic resources may constitute the behaviour of a type referred to in the paragraph.	1 2 3
(5)	To determine whether a person has engaged in a course of behaviour against another person, a court may have regard to behaviour occurring when either the person or the other person was present in the State or either person was ordinarily resident in the State.	4 5 6 7
(6)	In proceedings for an offence against this section, there is a rebuttable presumption that the accused person has or has had a domestic relationship with the other person.	8 9 10
(7)	A presumption under subsection (6) is rebuttable by proof on the balance of probabilities.	11 12
(8)	This section extends to a course of behaviour that began before the commencement of this section, but only if the behaviour occurred on at least one occasion after the commencement.	13 14 15
(9)	Proceedings for an offence against this section may be dealt with—	16
	(a) summarily before a Local Court, or	17
	(b) summarily before the Supreme Court in its summary jurisdiction.	18
(10)	If proceedings are brought summarily before the Local Court or in the Supreme Court in its summary jurisdiction, the maximum penalty that the Court may impose for the offence is imprisonment for 2 years or 50 penalty units, or both.	19 20 21 22
(11)	In this section—	23
	behaviour includes, but is not limited to, the following—	24
	(a) saying or otherwise communicating,	25
	(b) an omission,	26
	(c) asking or otherwise causing another person to do a thing.	27
	violent behaviour includes physically violent behaviour and sexually violent behaviour.	28 29
14B	Review of amendments	30
(1)	The Minister is to undertake reviews of this Act to determine whether the policy objectives of the <i>Crimes (Domestic and Personal Violence) Amendment (Coercive and Controlling Behaviour) Act 2020</i> remain valid and whether the terms of the amendments remain appropriate for securing those objectives.	31 32 33 34
(2)	The reviews are to be undertaken—	35
	(a) for the first review—as soon as possible after the period of 3 years from the date of assent to this Act, and	36 37
	(b) for subsequent reviews—at intervals of not less than 3 years and not more than 5 years.	38 39
(3)	A report on the outcome of each review is to be tabled in each House of Parliament within 12 months after the end of the review.	40 41
[4]	Section 36 Prohibitions taken to be specified in every apprehended violence order	42
	Insert after section 36(c)—	43
	(d) engaging in a course of behaviour that is abusive of the protected person within the meaning of section 14A.	44 45

[5] Section 40 Interim apprehended violence order must be made on charge for certain offences

Insert “or 14A” after “section 13” in section 40(5), definition of *serious offence*, paragraph (e).

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Schedule 2	Amendment of other Acts	1
2.1	Crimes (Sentencing Procedure) Act 1999 No 92	2
	Section 25AB	3
	Insert after section 25A—	4
25AB	Sentencing for abusive behaviour offences	5
(1)	When sentencing an offender for an abusive behaviour offence, a court must have regard to—	6
	(a) the trauma of abusive behaviour as understood at the time of sentencing, which may include recent psychological research or the common experience of courts, and	7
	(b) the risk of the victim being subjected to further abusive behaviour offences by the offender.	8
(2)	In this section—	9
	<i>abusive behaviour offence</i> means an offence against section 14A of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> .	10
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2.2	Criminal Procedure Act 1986 No 209	16
[1]	Section 290 Application	17
	Omit section 290(1). Insert instead—	18
(1)	This Division applies to proceedings in respect of the following—	19
	(a) a prescribed sexual offence, including committal proceedings,	20
	(b) an offence against section 14A of the <i>Crimes (Domestic and Personal Violence) Act 2007</i> (an <i>abusive behaviour offence</i>).	21
		22
[2]	Sections 290(2), 290A(1) (definitions of “accused person” and “complainant”), 291(1), 291A(1), 291C(1) and (2), 294A(1), 294B(1) and (1A)(a), 294C(1) and (6)	23
	Insert “or an abusive behaviour offence” after “prescribed sexual offence” wherever occurring.	24
		25
		26
[3]	Sections 294A and 294B, headings	27
	Insert “or abusive behaviour offence” after “prescribed sexual offence” wherever occurring.	28
		29