

Passed by both Houses



New South Wales

Crimes Legislation Amendment (Coercive Control) Bill 2022

Contents

		Page
	1 Name of Act	2
	2 Commencement	2
Schedule 1	Amendment of Crimes Act 1900 No 40	3
Schedule 2	Amendment of Crimes (Domestic and Personal Violence) Act 2007 No 80	9
Schedule 3	Amendment of Crimes (Sentencing Procedure) Act 1999 No 92	11
Schedule 4	Amendment of Criminal Procedure Act 1986 No 209	12

I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Crimes Legislation Amendment (Coercive Control) Bill 2022

Act No _____, 2022

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.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

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

2 Commencement

- (1) The provisions of this Act, other than Schedule 1, 2[3] and [5], 3 and 4, commence on the earlier of the following—
 - (a) 1 February 2024,
 - (b) a day or days appointed by proclamation.
- (2) Schedule 1[1], to the extent it inserts section 54I, commences on the earlier of the following—
 - (a) 12 December 2022,
 - (b) a day appointed by proclamation.
- (3) Schedule 1 (other than Schedule 1[1] to the extent it inserts section 54I), 2[3] and [5], 3 and 4 commence on the earlier of the following—
 - (a) 1 July 2024,
 - (b) the day or days, not earlier than 1 February 2024, 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
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.

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), engaging in, or threatening to engage in, the following behaviour may constitute *abusive behaviour*—
 - (a) behaviour that causes harm to a child if a person fails to comply with demands made of the person,
 - (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,
 - (c) behaviour that is economically or financially abusive,
Examples for paragraph (c)—
 - 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
 - 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
 - (d) behaviour that shames, degrades or humiliates,
 - (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,
 - (f) behaviour that causes damage to or destruction of property,
 - (g) behaviour that prevents the person from doing any of the following or otherwise isolates the person—
 - (i) making or keeping connections with the person’s family, friends or culture,
 - (ii) participating in cultural or spiritual ceremonies or practice,
 - (iii) expressing the person’s cultural identity,
 - (h) behaviour that causes injury or death to an animal, or otherwise makes use of an animal to threaten a person,
 - (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.

Examples for paragraph (i)—

- 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
- denying a person access to basic necessities including food, clothing or sleep
- 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

54G Meaning of “course of conduct”

- (1) In this Division, a *course of conduct* means engaging in behaviour—
 - (a) either repeatedly or continuously, or
 - (b) both repeatedly and continuously.
- (2) For subsection (1), behaviour does not have 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 and description 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 Coercive Control Implementation and Evaluation Taskforce

- (1) The Minister must establish a Coercive Control Implementation and Evaluation Taskforce.
- (2) The taskforce is to include the following members appointed by the Minister—
 - (a) the Secretary of the department in which this Act is administered, who is to be the chairperson of the taskforce,
 - (b) a representative of the NSW Police Force,

- (c) the chair of the Domestic and Family Violence and Sexual Assault Council,
 - (d) a member from the domestic and family violence sector with substantial expertise and experience in domestic and family violence service delivery.
- (3) The main purposes of the taskforce are as follows—
- (a) to consult with stakeholders, including reference groups established under this section, about the offence under section 54D (the *coercive control offence*) and related matters,
 - (b) to provide advice about, and monitor, training, education and resourcing in relation to the coercive control offence,
 - (c) to provide advice about the commencement dates of, and interaction between, the definition of *domestic abuse* in the *Crimes (Domestic and Personal Violence) Act 2007*, section 6A and the coercive control offence,
 - (d) to evaluate implementation of the coercive control offence and resourcing in relation to the coercive control offence,
 - (e) to monitor the operation of this Division, including—
 - (i) the practical application of defences to the coercive control offence, and
 - (ii) resourcing in relation to the operation of the Division,
 - (f) to provide advice to the Minister about other matters related to a matter in paragraph (a)–(e) or the coercive control offence.
- (4) The chairperson of the taskforce must convene the first meeting of the taskforce within 1 month after the commencement of this section.
- (5) The taskforce must establish reference groups to consider, and provide advice and recommendations to the taskforce about any of the following matters—
- (a) the impact of this Division on specific communities,
Examples— Aboriginal persons, the LGBTIQ+ community
 - (b) particular elements of the Division.
- (6) A reference group must consist of members who have expertise in, or legal knowledge of, the subject matter for which the reference group is established.
Examples of sectors, groups and organisations from which members of reference groups might be drawn— the domestic and family violence sector, the legal profession, the Judicial Commission of NSW, Aboriginal organisations and groups, the culturally and linguistically diverse sector, LGBTIQ+ groups, the disability sector, youth and childrens groups, victims and survivors of sexual or domestic and family violence and the families of victims and survivors
- (7) In carrying out its purposes, the taskforce must consult with any reference group that is relevant to the particular purpose.
- (8) The taskforce must give the Minister a report in relation to its main purposes—
- (a) at least once in each 6 months during the period between the commencement of this provision and the commencement of the coercive control offence, and
 - (b) at least every 12 months after the commencement of the coercive control offence.
- (9) The Minister must ensure a report under subsection (8) is tabled in each House of Parliament within 21 days after receiving it.

- (10) The taskforce ceases to operate, and this section is repealed, on the day on which, under section 54J(5)(c), the report about the third review about this Division is tabled in the Legislative Assembly.

54J Review of Division

- (1) The Minister must 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) Without limiting subsection (1), a review under this section must consider the following—
- (a) whether section 54D(1)(c) should be extended to cover recklessness,
 - (b) whether this Division should apply to relationships other than current and former intimate partner relationships,
 - (c) the impact of this Division on Aboriginal people, culturally and linguistically diverse people and LGBTIQI+ people,
 - (d) whether victims of an offence under this Division may be misidentified as perpetrators,
 - (e) whether the penalty for the offence under section 54D(1) should be extended,
 - (f) the types of behaviour in relation to which prosecutions for an offence under section 54D(1) are proceeding, including whether charges are being laid in relation to non-physical forms of abusive behaviour,
 - (g) the extent to which the offence under section 54D(1) is being charged on its own or in combination with other charges,
 - (h) the use of the defence under section 54E, including how often and the circumstances in which the defence is being used,
 - (i) whether there are variations in the use of the offence under section 54D(1) in different police regions, commands and districts,
 - (j) the operation of the *Crimes (Domestic and Personal Violence Act 2007*, section 6A to assess whether the definition of domestic abuse in that section—
 - (i) has had an impact on the education of the community about domestic abuse, and
 - (ii) has improved police practice in responding to domestic and family abuse,
 - (k) in relation to particular areas in the State and types of courts—
 - (i) the number of cases for which proceedings for an offence under section 54D(1) have been commenced, and
 - (ii) the number of convictions for an offence under section 54D(1), and
 - (iii) the average period between service of a complaint or an indictment for an offence under section 54D(1) and a finding or verdict as to guilt, including a plea guilty.
- (3) In conducting a review under this section, the Minister must have regard to—
- (a) the transcripts of criminal trials, conducted during the period to which the review relates (the *review period*), that relate to an offence under section 54D(1), and

- (b) the training that has occurred during the review period in relation to the offence under section 54(1), including—
 - (i) the type of training, and
 - (ii) the number and kinds of persons to whom the training has been provided, including police officers, judicial officers and legal practitioners, and
 - (iii) the effectiveness of the training.
- (4) A review under this section is to be undertaken—
 - (a) for the first review—as soon as possible after the period of 2 years from the commencement of this Division, and
 - (b) for the second and third reviews—as soon as possible after the period of 2 years from the last review under this section.
- (5) A report on the outcome of a review under this section is to be tabled in each House of Parliament within—
 - (a) for a report about the first review—within 3 years after the commencement of this Division, and
 - (b) for a report about the second review—within 3 years after the report about the first review was required to be tabled under paragraph (a), and
 - (c) for a report about the third review—within 3 years after the report about the second review was required to be tabled under paragraph (b).

[2] Schedule 11 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Crimes Legislation Amendment (Coercive Control) Act 2022

Application of amendments

Part 3, Division 6A, as inserted by the *Crimes Legislation Amendment (Coercive Control) Act 2022*, applies only in relation to behaviour that occurred, or is alleged to have occurred, on or after the commencement of the Division.

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 any of the following behaviours directed by one person (the *first person*) against another person (the *second person*) with whom the first person has a domestic relationship—
 - (a) violent or threatening behaviour,
 - (b) behaviour that coerces or controls the second person,
 - (c) behaviour that causes the second person to fear for the person’s safety or wellbeing or the safety and wellbeing of others.
- (2) Without limiting subsection (1), engaging in, or threatening to engage in, the following behaviour may constitute domestic abuse—
 - (a) behaviour that is physically abusive or violent,
 - (b) behaviour that is sexually abusive, coercive or violent,
 - (c) behaviour that is economically or financially abusive,

Examples—

- 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
 - 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
- (d) behaviour that is verbally abusive,
 - (e) behaviour that shames, degrades or humiliates,
 - (f) behaviour that is intimidation,
 - (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,
 - (h) behaviour that damages or destroys property,
 - (i) behaviour that causes death or injury to an animal, or otherwise makes use of an animal to threaten a person,
 - (j) behaviour that prevents the second person from doing any of the following or otherwise isolates the person—
 - (i) making or keeping connections with the person’s family, friends or culture,
 - (ii) participating in cultural or spiritual ceremonies or practice,
 - (iii) expressing the person’s cultural identity,

- (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,

Examples—

- 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
 - denying a person access to basic necessities including food, clothing or sleep
 - 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
- (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).
- (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) or (2) may constitute domestic abuse even if the behaviour does not constitute a criminal offence.

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

Insert after section 11(1)(b)—

- (b1) an offence under the *Crimes Act 1900*, section 54D(1), or

[4] Section 11

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

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

[5] Section 11(1)(c)

Insert “or an offence mentioned in paragraph (b1)” after “personal violence offence”.

[6] Schedule 1 Savings, transitional and other provisions

Insert at the end of the Schedule, with appropriate Part and clause numbering—

Part Provisions consequent on enactment of Crimes Legislation Amendment (Coercive Control) Act 2022

Application of amendments

An amendment made by the *Crimes Legislation Amendment (Coercive Control) Act 2022* applies only in relation to—

- (a) behaviour that occurred, or is alleged to have occurred, on or after the commencement of the amendment, or
- (b) an offence committed, or alleged to have been committed, on or after the commencement of the amendment.

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 “54,” in Table 1, item 2.