

Crimes Legislation Amendment (Coercive Control) Bill 2022

NSW Government Factsheet

The NSW Government has introduced a new Bill to Parliament to make coercive control in intimate relationships an offence.

The *Crimes Legislation Amendment (Coercive Control) Bill 2022 (the Bill)* will strengthen justice system responses to domestic abuse and increase protections for those living through domestic and family violence.

This Bill delivers on the NSW Government's commitment to develop, publicly consult on and introduce a standalone offence of coercive control in the 2022 spring session of Parliament. This was a key part of the NSW Government's response to the unanimous recommendations by the Joint Select Committee on Coercive Control.

What is coercive control?

Coercive control involves patterns of behaviour that have the cumulative effect of denying victim-survivors their autonomy and independence. The behaviour can include physical, sexual, psychological, emotional or financial abuse.

The proposed law means it would be an offence to carry out these repeated abusive behaviours against a current or former intimate partner (including against a person's partner, boyfriend/girlfriend or spouse).

How will the new offence work?

The Bill will create a bespoke standalone criminal offence of coercive control with key safeguards. The offence consists of five elements to be proved beyond reasonable doubt:

1. An adult engages in a course of conduct. This means engaging in behaviour repeatedly or continuously.
2. The course of conduct is 'abusive behaviour' that involves violence, threats or intimidation; and/or coercion or control of the person against whom the behaviour is directed.
3. The accused intends the course of conduct to coerce or control the other person.
4. A reasonable person would consider the course of conduct would, in all the circumstances, be likely to cause: the other person to fear that violence will be used against them or another person; or a serious adverse impact on their capacity to engage in some or all of their ordinary day-to-day activities.
5. The course of conduct is directed at a current or former intimate partner.

The Bill provides for a statutory review of the offence after three years of operation. The review will include consideration of whether the mental element should be extended to recklessness, the scope of relationships captured should be expanded, impacts on Aboriginal people, misidentification of victim-survivors, and whether the penalty should be increased.

Is there a defence?

A defence will be available where the course of conduct was reasonable in all the circumstances. This may apply, for example, where a person was protecting themselves or another person. Including this defence is a critical safeguard against criminalisation of legitimate conduct or misidentifying the victim as the perpetrator.

What is the maximum penalty?

The offence will carry a maximum penalty of seven years' imprisonment. It will be a Table 1 offence under the *Criminal Procedure Act 1986*, which means it will be dealt with in the Local Court unless the prosecutor or the accused elects otherwise.

How has the Government decided what form the Bill should take?

The Bill is the product of careful consideration and unprecedented consultation.

The NSW Government has conducted at least 7 stages of consultation over the last 2.5 years alone.

The Bill that the NSW Government has developed is the culmination of listening carefully to the lived-experience of victim-survivors, stakeholders on the frontline of our domestic violence support services and legal system, Aboriginal-led organisations and community members, and individual members of the public.

Timeline for development of and consultation on the Coercive Control Bill

2016 – The NSW Government introduces the words “coerce or control” into the *Crimes (Domestic and Personal Violence) Act 2007* after extensive consultation, enabling Apprehended Domestic Violence Orders (ADVOs) to be granted in relation to offences intended to coerce or control the person.

Mar 2020 – Consultation round 1: The NSW Government commences informal consultation on laws to address coercive and controlling behaviour.

Sep 2020 – The NSW Government supports, in full or in principle, all recommendations by the Domestic Violence Death Review Team *2017-2019 Report*, including to monitor coercive control laws in other jurisdictions.

Oct 2020 – Attorney General Mark Speakman releases a [Discussion paper on Coercive Control](#), with detailed questions about the scope of a new offence and how it should be defined.

Oct 2020 to May 2021 – Consultation round 2: The Parliamentary [Joint Select Committee on Coercive Control](#) (established on the motion of the Attorney General) receives more than 150 written submissions (double those received by Scotland in its initial consultation).

Oct 2020 to Jul 2021 – Consultation round 3: The Joint Select Committee hears from 70 witnesses over six days of hearings and a regional visit.

Jul 2021 – The [Joint Select Committee hands down its Final Report](#), with 23 unanimous recommendations, including criminalising coercive control.

Dec 2021 – [NSW Government commits to criminalise coercive control](#) in intimate partner relationships as a stand-alone offence and release a public exposure draft bill for consultation.

May 2022 – Consultation round 4: The Attorney General releases a cabinet in confidence exposure draft bill to around 20 restricted legal and government stakeholders, including the Aboriginal Legal Service NSW/ACT, to identify any technical legal matters prior to public release.

Jul-Aug 2022 – Consultation round 5: The [NSW Government releases an Exposure Draft Bill](#) on the ‘Have Your Say’ website for public consultation and receives 196 submissions (three times more than Scotland).

Aug 2022 – Consultation round 6: 27 roundtables and targeted consultations are held in August and September 2022 with stakeholders representing the legal sector, the domestic and family violence sector, Aboriginal people and Aboriginal-led organisations, people with disability, the LGBTQIA+ sector, the older persons’ advocacy sector, the culturally and linguistically diverse community, the health sector, regional community members and people with lived experience of domestic abuse.

Sep 2022 – Consultation round 7: The Attorney General and the Minister for Women’s Safety and the Prevention of Domestic and Sexual Violence meet with key stakeholders in the domestic violence and legal sectors, including Aboriginal-led organisations. A further revised cabinet in confidence draft bill is circulated.

Will ordinary relationships be prosecuted?

No. The offence of coercive control is not designed to intrude on ordinary relationships.

Can the new offence be used to prosecute past behaviour?

No. The proposed laws will only apply to behaviour that happens once the laws are passed by Parliament and then commence. Violent or threatening behaviour that occurred before the new laws pass may nonetheless be criminal under other, existing offences.

Will the new offence apply to any family member or friend who is abusive?

The new offence of coercive control will only apply to an adult who uses abusive behaviour repeatedly or continuously against a current or former intimate partner. The offence will not apply to abusive behaviour against siblings, parents or elders, other relatives or friends. Existing criminal offences will continue to apply to that conduct.

How will this offence affect Apprehended Domestic Violence Orders?

The new offence will be deemed a 'domestic violence offence'. This is important because in NSW a range of targeted provisions, including protections for victims, apply only to offences deemed to be a 'domestic violence offence'. For example, this means that:

- ADVOs can be sought in relation to fear of the conduct associated with the new offence. An ADVO may impose prohibitions and restrictions on the perpetrator.
- Police can use special search, entry and seizure powers when a police officer believes on reasonable grounds that a domestic violence offence is being or may have been recently committed, or is imminent or likely to be committed.
- The Commissioner of Police must suspend a firearms license or a prohibited weapons permit when a person is charged with a domestic violence offence.
- In Court, there are procedural protections in place for domestic violence complainants and they will have the right to a support person.

What else does the Bill do?

The Joint Select Committee on Coercive Control also recommended that a definition of 'domestic abuse' should be legislated as a priority, as NSW currently does not have a statutory definition.

The Bill introduces a definition of 'domestic abuse' in the *Crimes (Domestic and Personal Violence) Act 2007*.

Under the Bill, a court will be able to grant an ADVO if satisfied on the balance of probabilities that the victim has reasonable grounds to fear the commission of an offence "in which the conduct that constitutes the offence is domestic abuse".

The definition of 'domestic abuse' will also serve a key function in enhancing community understanding of what domestic abuse is, and the different physical and non-physical ways it can manifest.

How does the Bill compare with other jurisdictions?

This offence is unlike any other coercive control offence in the world. It is unique because the NSW community is unique.

We now have the benefit of years of case law, literature and subsequent reviews on different models of legislation, including in England and Wales, Northern Ireland, Scotland, Ireland and Tasmania.

The NSW Government has learnt from overseas jurisdictions' experiences and built a bespoke offence that best reflects the diverse nature of our society in NSW, in terms of Aboriginal communities and CALD communities.

If passed, what is the timeframe for implementation?

There will be at least a further 14.5 months, and up to a further 19.5 months, before the laws actually commence, to ensure the community is aware of coercive control, to ensure careful consideration is given to implementation and that appropriate training, education and resourcing is in place.

How will the Bill be implemented?

The NSW Government has committed to ensure careful consideration is given to implementation, including under the stewardship of a multi-disciplinary implementation taskforce, consistent with recommendations by the Joint Select Committee on Coercive Control.

The Secretary of the Department of Communities and Justice will lead an implementation taskforce.

In line with the recommendations from the Joint Select Committee Report, the taskforce will “consult with stakeholders including NSW Police, victim survivors, the domestic abuse sector, disability advocacy organisations, and representatives of culturally and linguistically diverse, Aboriginal and Torres Strait Islander and LGBTQ communities”.

The taskforce will oversee, in close collaboration with stakeholders, implementation activities, including:

- Implementation of the legislation in the criminal justice system, including training and education of judicial officers and lawyers.
- Training of NSW Police Force and the wider service sector on identifying, recording and responding to coercive control.
- Oversight of the broad community awareness campaign on what coercive control is, with targeted campaigns for priority populations (including Aboriginal and Torres Strait Islander and CALD communities).

Support services

If you or someone you know are in immediate danger, call the Police on [Triple Zero \(000\)](tel:000).

You can call [1800 RESPECT](tel:1800737732) on [1800 737 732](tel:1800737732) or visit www.1800respect.org.au for confidential advice, counselling support and referrals.