

The Shopfront

YOUTH LEGAL CENTRE

Coercive Control

1 What is coercive control?

Coercive control is a pattern of abusive behaviours intended to coerce or control another person. This kind of behaviour can deny victims their independence or autonomy.

Coercive control can affect a person's mental and physical health, as well as their relationships and financial security. It can make a person feel like they are unsafe, don't have control over their life, or like they have lost their sense of independence. It can also isolate people or make them feel dependent on the controlling person.

Coercive control is complicated and can occur in a range of relationships.

2 Is coercive control a crime?

Coercive control is already a crime in places such as Ireland, Scotland, and England. Other states in Australia are also addressing coercive control. Tasmania already has laws in place. Queensland has passed laws that will come into effect soon, while Western Australia and South Australia have committed to developing laws in this area.

As of 1 July 2024, coercive control will be a crime in New South Wales under section 54D of the *Crimes Act 1900* (the Act).

The new law will make it a crime for an adult to engage in a course of conduct against a current or former intimate partner that consists of abusive behaviour, where they intend to coerce or control the other person.

The maximum penalty for coercive control is a prison sentence of seven years.

3 Who can be guilty of coercive control in NSW?

To commit the offence of coercive control in NSW, a person must be:

- aged 18 or over, and
- a current or former intimate partner of the victim. An intimate partner relationship can include marriage, de facto relationships and any other "intimate personal relationship", but it does not need to be sexual in nature.

To be clear, the victim may be aged under 18, but the offender must be 18 or over.

While coercive control can occur in different kinds of relationships, like friendships or family relationships, the new crime will only apply to former or current intimate partners. This is because coercive control is seen as a serious problem in intimate relationships and is closely related to intimate partner homicide.

The new crime of coercive control will be tested in the context of intimate relationships and may later be expanded to cover other types of relationships.

4 The offence of coercive control

4.1 Summary

A person will be guilty of the offence of coercive control if:

1. They are aged 18 or over, and
2. They engage in a course of conduct of abusive behaviour, and
3. This is towards someone who is or was an intimate partner, and
4. The person intends to coerce or control the other person, and
5. A reasonable person would think that the behaviour would be likely to:
 - a. Cause the victim to feel fear of violence or
 - b. Seriously negatively impact their capacity to engage in ordinary day-to-day activities, and
6. The conduct was not reasonable in the circumstances.

4.2 Abusive behaviour

The Act defines abusive behaviour to mean any behaviour that involves or consists of violence, threats against a person, intimidation or coercion or control. Specific behaviours listed in the Act include:

- Violence and threats of violence to people or animals
- Economic or financial abuse
- Intentionally harming someone's mental wellbeing by shaming, degrading, or humiliating a person
- Harassing, monitoring, tracking, or following a person
- Damaging property
- Isolating someone or preventing them from seeing other people
- Restricting someone from expressing their identity or engaging in cultural traditions
- Restricting or depriving a person of their freedom
- Unreasonably controlling or regulating a person's day-to-day activities

The meaning of abusive behaviour is very broad, and the above list is not exhaustive. This means other things might also be considered to be abusive behaviour even if they are not directly mentioned in the definition.

Other examples of what may amount to abusive behaviour include:

- Forcing someone to take drugs or other substances
- Forcing a person to take out loans or other forms of credit or controlling their basic needs such as the food they eat, the clothes they wear or when they can sleep
- Depriving a person of support services, including access to medical, financial or government services

4.3 Course of conduct

The Act defines a *course of conduct* as behaviour that is repeated and/or continuous. This means that a single instance of abusive behaviour would not constitute coercive control. However, there is no set minimum number of incidents needed for behaviour to be considered a course of conduct.

The conduct needs to be repeated or continuous, but it does not need to be an unbroken series of events. This means that a repeated series of behaviours could be coercive control even if there are long periods of time in between.

The Act also states that a course of conduct may include actions outside NSW, as long as some of the conduct has taken place in NSW.

To prove a course of conduct, each individual instance of abusive behaviour does not need to be proven beyond reasonable doubt. Instead, a course of conduct needs to be proved by considering the behaviours as a whole, or any combination of the behaviours.

4.4 Victim need not have been actually affected

Importantly, it is not necessary for the victim to have actually feared violence or be affected by the behaviour.

It just needs to be shown that a reasonable person, in the circumstances, would consider the course of conduct likely to cause fear of violence or have a serious adverse impact on the victim's capacity to engage in their daily activities.

4.5 Intention

To be guilty, the person must have actually *intended* to coerce or control the victim.

This means it is not enough that the person controls or coerces the other person accidentally, negligently (i.e. fails to take care that their behaviour does not control or coerce the person), or recklessly (i.e. knows there is a risk that their behaviour would control or coerce the person but disregards this risk).

However, as mentioned, it is *not* necessary to prove that the person *actually* coerced or controlled or caused harm to the other person.

4.6 Defence – reasonable in all the circumstances

If an accused person can raise some evidence to show that their actions were reasonable in the circumstances, they can use this as a defence.

Once this defence is raised, the prosecution then has to prove that the conduct was *not* reasonable in all of the circumstances. If the prosecution can't do this, the accused person will not be guilty of the offence.

Importantly, the court must consider not only whether the *accused* thought their conduct was reasonable. The test is whether a *reasonable person* would think the conduct is reasonable in the circumstances.

For example, if a person is accused of coercive control for financially controlling their intimate partner, they could raise some evidence to show that their conduct was reasonable. If they had screenshots where the other person said something like "I need you to help me be more responsible with my finances, please check how I spend my money each week", this might allow someone to show that their conduct was reasonable. Controlling a partner's finances might also be reasonable if it was in response to them siphoning off the family's finances to fund a gambling habit.

5 Coercive control and apprehended domestic violence orders (ADVOs)

Coercive control is now included in the definition of domestic violence under the *Crimes (Domestic and Personal Violence) Act*. This means that if a person is, or there are reasonably-grounded fears that a person is, engaging in coercive and controlling conduct, the victim can apply for an apprehended domestic violence order (ADVO).

An ADVO is an order that aims to protect a victim or potential victim by putting in place a range of conditions to stop another person from engaging in the harmful conduct. These conditions can include things like not contacting the victim or not visiting places the victim regularly attends (e.g. work, home, or school).

ADVO applications are usually made by police on behalf of the person looking to be protected under an ADVO, but an application can also be made by the person themselves if they are aged 16 or over.

See our separate fact sheet on *Apprehended Violence Orders*.

6 Further information, support and legal assistance

6.1 Where can I find more information?

NSW Government: Coercive Control
<https://www.nsw.gov.au/family-and-relationships/coercive-control>

NSW Government: Coercive Control and the Law
<https://www.nsw.gov.au/family-and-relationships/coercive-control/the-law>

Attorney General's Department: Understanding Coercive Control, Fact Sheet
<https://www.ag.gov.au/families-and-marriage/publications/understanding-coercive-control-fact-sheets>

Relationships Victoria: What Is Coercive Control – 12 Signs
<https://www.relationshipsvictoria.org.au/news/what-is-coercive-control/>

Legal Aid NSW: Coercive Control
<https://www.legalaid.nsw.gov.au/my-problem-is-about/a-criminal-charge/coercive-control>

Legal Aid NSW: Coercive Control: What do domestic and family violence specialist workers need to know? (recorded webinar)
<https://www.youtube.com/watch?v=llkOxtilfKI>

Women's Legal Service NSW: Coercive Control Reforms – An overview of the new offence (recorded webinar)
<https://vimeo.com/891672707>

6.2 Where can I find support services?

1800 Respect – Domestic and Family Counselling Services
<https://1800respect.org.au/> or 1800 737 732

NSW Domestic Violence Line
<https://dcj.nsw.gov.au/children-and-families/family-domestic-and-sexual-violence.html> or 1800 656 463

The Men's Referral Service – counselling and advice for men in relation to violent behaviour
<https://ntv.org.au/mrs/> or 1300 766 491

13 Yarn – counselling support services for people who identify as Aboriginal or Torres Strait Islander

<https://www.13yarn.org.au/> or 13 92 76

Headspace – counselling for young people aged 12–25

<https://headspace.org.au/> or 1800 650 890

6.3 Where can I get legal advice?

Legal Aid NSW – legal representation for people charged with criminal offences; also some legal advice and support for victims

<https://www.legalaid.nsw.gov.au/about-us> or 1300 888 529

Aboriginal Legal Service – legal representation for people charged with criminal offences who identify as Aboriginal or Torres Strait Islander

<https://www.alsnswact.org.au/> or 1800 765 767

The Shopfront Youth Legal Centre – legal advice and representation for homeless and disadvantaged young people aged 25 and under

<https://www.theshopfront.org/> or (02) 9322 4808

Women’s Legal Service NSW – legal services for women across NSW, especially for women experiencing domestic violence

<https://www.wlsnsw.org.au/> or (02) 8745 9600

Wirringa Baiya Aboriginal Women’s Legal Centre – legal services for Aboriginal and Torres Strait Islander women and children in NSW

<https://www.wirringabaiya.org.au/> or (02) 9569 3847

Inner City Legal Centre – legal advice for people in the inner city area, and a statewide service for the LGBTQI+ community

<https://www.iclc.org.au/our-services/> or (02) 9332 1966

Redfern Legal Centre – free legal advice in a wide range of areas including domestic and financial abuse

<https://rlc.org.au/accessing-our-services> or (02) 9698 7277

The Shopfront Youth Legal Centre Updated June 2024

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The Shopfront Youth Legal Centre is a service provided by Herbert Smith Freehills in association with Mission Australia and The Salvation Army.

This document was last updated in June 2024 and to the best of our knowledge is an accurate summary of the law in New South Wales at that time.

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