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2023

## NSW Coercive Control Reforms - An overview of the new offence

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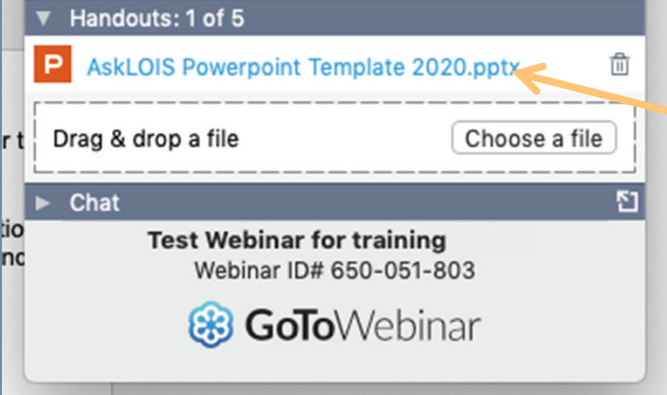
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### Acknowledgment of Country



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Welcome



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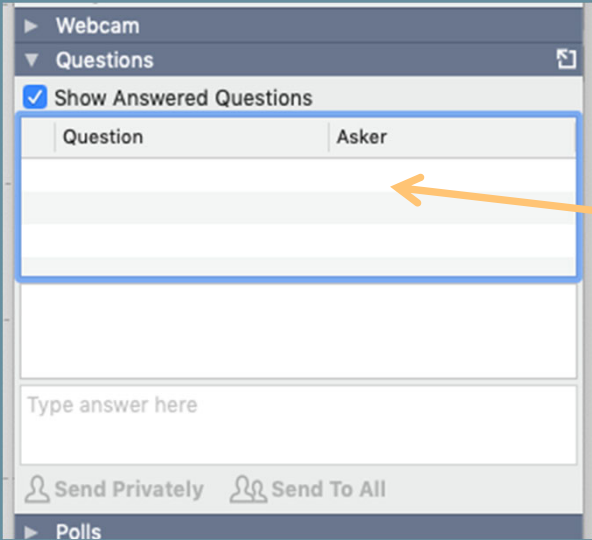
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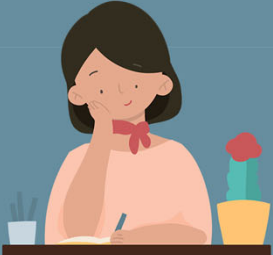
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## Topics covered

1. The new offence
2. Protections arising from the new offence being a domestic violence offence
3. Cultural and systems reform required to accompany the new law
4. Coercive Control Implementation and Evaluation Taskforce & Review provisions

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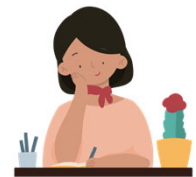
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## Overview of reforms

A new stand alone offence of course of conduct of abusive behaviour.

Expected to commence sometime between 1 February 2024 and 1 July 2024.

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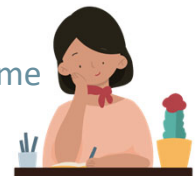


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## 1. What is the new offence? Section 54D Crimes Act

1. The alleged offender is an **adult**, and
2. The alleged offender and complainant are/were **intimate partners**, and
3. The alleged offender engaged in a **course of conduct** against the complainant (repeatedly and/or continuously)
4. The course of conduct consisted of **abusive behaviour**
5. The alleged offender **intends** the course of conduct to **coerce or control** the complainant, and
6. A **reasonable person** would consider the course of conduct would be likely, in **all the circumstances**, to cause:
  - a. The complainant to fear that violence will be used against them or another person, or
  - b. A serious adverse impact on their capacity to engage in some or all of their ordinary day-to-day activities.

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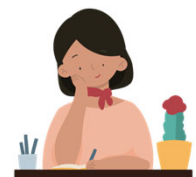


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## New offence – first element

Alleged offender is an **adult**.

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## New offence – second element

The alleged offender and complainant are/were **intimate partners**.

### Meaning of intimate partner

- is or has been married to the first person, or
- is or has been a de facto partner of the first person, “De facto partner” is defined in the *Interpretation Act 1987*, s 21C, or
- 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

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## New offence - third element

The alleged offender engaged in a **course of conduct** against the complainant.

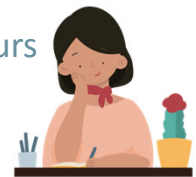
A “**course of conduct**” means engaging in the behaviour repeatedly or continuously or both. (s54G (1))

It does not have to be engaged in as an unbroken series of incidents or in immediate succession. (s54G(2))

Includes behaviour in NSW or in NSW and another jurisdiction. (s54G(3))

The course of conduct may be any combination of abusive behaviours & is assessed by considering the totality of behaviours.

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## New offence - fourth element

The course of conduct consisted of **abusive behaviour**.

“**Abusive behaviour**” includes violence, threats or intimidation of a person, or coercion or control of the person – a non-exhaustive list of examples is provided in the legislation.

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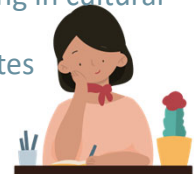
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## Non-exhaustive list of abusive behaviour – s54F(2)

Examples include behaviour that:

- causes harm to a child, the person or another adult if the person fails to comply with the demands made of them
- causes injury or death to an animal or otherwise uses an animal to threaten a person
- is economically or financially abusive eg. withholding financial support to meet reasonable living expenses or preventing or unreasonably restricting employment
- shames, degrades or humiliates
- directly or indirectly harasses, or monitors or tracks a person's activities, communications or movements either physically or by using technology or in another way
- causes damage to or destruction of property
- prevents a person from making or keeping social connections, participating in cultural or spiritual ceremonies or practice, or expressing their cultural identities
- deprives or restricts a person's liberty or unreasonably controls or regulates a person's day-to-day activities

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## New offence – fifth element: the mental element

The alleged offender **intends** the course of conduct to **coerce** or **control** the complainant.

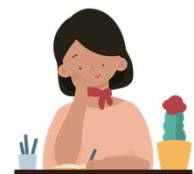
The Macquarie Dictionary defines "**coerce**" as:

- to restrain or constrain by force, law, or authority; force or compel, as to do something.
- to compel by forcible action ...

It defines **control** as:

- to exercise restraint or direction over; dominate; command.
- to hold in check; curb.

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## New offence – sixth element

A **reasonable person** would consider the course of conduct would be likely, in **all the circumstances**, to cause:

- a. The complainant to fear that violence will be used against them or another person, or
- b. A serious adverse impact on their capacity to engage in some or all of their ordinary day-to-day activities.

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## The new offence

- The new offence will only apply to behaviour that happens once the new law commences.
- The victim-survivor need not have actually suffered the fear or serious impact for the new offence to apply.
- Maximum penalty of 7 years imprisonment.

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## Prosecution of new offence – procedural requirements

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.

They are required to allege:

- the nature and description of the behaviours that amount to the course of conduct; and
- the particulars of the period of time over which the course of conduct took place.

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## Statutory defence

In proceedings for the new offence, it is a defence if the course of conduct was reasonable in all the circumstances.

The course of conduct was reasonable in all the circumstances is taken to be proven if—

- evidence adduced is capable of raising an issue as to whether the course of conduct is reasonable in all the circumstances, and
- the prosecution does not prove beyond reasonable doubt that the course of conduct is not reasonable in all the circumstances.

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## 2. New offence will be a domestic violence offence

1. ADVO can be obtained in relation to a domestic violence offence.
2. Police special search, entry and seizure powers where believe on reasonable grounds domestic violence offence is being or may have been recently committed or is imminent or likely to be committed.
3. Commissioner of Police must suspend a firearms licence or a prohibited weapons permit, respectively, when a person is charged with a domestic violence offence.
4. Protections for DV complainant in giving evidence.
5. Presumption person convicted of DV offence is sentenced to full-time detention or a supervised order.
6. Victim impact statement will be allowed to be made.

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## 3. Poll question

### What work needs to accompany the new reforms?

- a) Training for police, legal sector, judicial officers, sexual, domestic and family violence sector and others
- b) Common language and shared understanding of coercive control & tools to help identify coercive control
- c) Accountability frameworks to address systemic discrimination and systemic misidentification of the person most in need of protection
- d) All of the above

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## 4. Implementation and Evaluation Taskforce and reviews

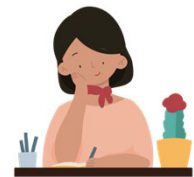
The Coercive Control Implementation and Evaluation Taskforce was established in December 2022.

Reference Groups provide advice and recommendations to the Taskforce.

The Taskforce provides a report on its main purposes to the Attorney every 6 months prior to commencement of the new offence and thereafter must report at least yearly for the duration of the Taskforce. This report is tabled in Parliament and published. The first report is available [here](#). The second report is expected to be published in December 2023.

There will be 3 reviews of the legislation once it commences at 2 yearly intervals from the previous review to ensure continuous improvement.

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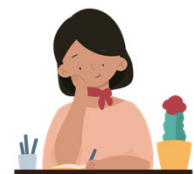


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## Review provisions - s54J Crimes Act

- Whether to extend beyond current and former intimate partner relationships
- Whether to include recklessness
- Impact on Aboriginal people, culturally and linguistically diverse people and LGBTIQ+ people
- Whether victim-survivors are misidentified as perpetrators
- The penalty
- Types of behaviour included in prosecuting the offence and whether non-physical forms of abusive behaviour are included
- Extent to which the new offence is charged on its own or in combination with other charges
- Use of defence

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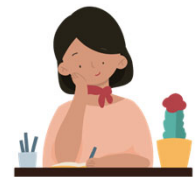


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## Review provisions - s54J Crimes Act (con't)

- Variations in use of offence in different police regions, commands and districts
- The effectiveness of the definition of “domestic abuse” in the *Crimes (Domestic and Personal Violence) Act* on education of the community and improvements to police response to domestic and family abuse
- Number of cases commenced, number of convictions, average length of time from complaint to verdict
- Review of transcripts of criminal trials that relate to the offence
- Type of training and effectiveness of training (including police officers, judicial officers and legal practitioners)

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## Documenting evidence of coercive control

See the previous Ask LOIS:

[A conversation about coercive control](#) presented by Rosetta Lee in September 2022

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## Any Questions?



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Practical steps to respond to  
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