

UPDATE on NSW Domestic Violence Law 2024 and beyond

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Hayley Dean, Solicitor Advocate
Accredited Specialist in Criminal Law



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Sensitivity Warning

- Themes of Domestic and Gendered Violence
- Mentions of Deceased persons
- Language choices will be neutral where suitable

What changes came in?

2 Changes	6 Changes	5 Changes
Crimes Legislation Amendment (Coercive Control) Act 2022	Bail and Other Legislation Amendment (Domestic Violence) Act 2024	Crimes (Domestic and Personal Violence) and Other Legislation Amendment Act 2024

DV Statistics

From July 2023 to June 2024, there were **36,509** defendants finalised in NSW Criminal Courts for a domestic-violence related charge

BOCSAR June 2024 Criminal Courts Statistics Report (Table 9)

What changes came in?

2 Changes

Crimes Legislation
Amendment
(Coercive Control)
Act 2022

“Domestic Abuse” definition

1 February 2024

Change to the definition of “domestic abuse” by the addition of s6A to the *Crimes (Domestic and Personal Violence Act) 2007*

s6A was inserted into the legislation because prior to it, there was no definition of “*domestic abuse*” in the statute.

Defining the term was important for two main reasons;

1. Expanded the scope of acts that can be defined as forms of domestic violence within statute
2. Provided cross over application of “domestic abuse” for ADVO applications through incorporation into the definition of ‘domestic violence offence’ and for bail considerations.

DEFINITION OF “DOMESTIC ABUSE”

Section 6A of the *Crimes (Domestic & Personal Violence) Act 2007 (NSW)* – not an exclusive list

Coercive or controlling behaviour	Causing a child to hear, or otherwise cause a child to be exposed to the behaviours	behaviour that causes a person to fear for the person's safety or wellbeing or the safety and wellbeing of others	physically abusive or violent to persons or pets or damages or destroys property
sexually abusive, sexually coercive or violent, interferences with reproductive health	Deprives or restricts a person's liberty or regulates a person's day-to-day activities	economically or financially abusive	verbal abuse
behaviour that shames, degrades or humiliates	Intimidation	Preventing a person from making or keeping connections with the person's family, friends or culture, spiritual or cultural practices	Stalking, harassment, monitoring or tracks a person's activities, communications or movements

Coercive Control - the Offence 54D *Crimes Act*

- 1 July 2024 Pt 3, Div 6A of the *Crimes Act* 1900 – a new offence of “Abusive Behaviour towards current or former intimate partners”. Section 54D is the operative section for the offence.
- New definitions added for “course of conduct”, “abusive behaviour”, “intimate partners”.
- Intention based offence
- 7 year maximum penalty
- Classified as a show cause bail offence by the addition of s16B(1)(c2) of the *Bail Act*
- Moved from incident offending to pattern of behaviour offending

What changes came in?

6 Changes

Bail and Other
Legislation
Amendment
(Domestic Violence)
Act 2024

Expanded Show Cause for certain Serious DV offences

– s16B Bail Act

- 1 July 2024 ss.16B(1)(c1) (c2) *Bail Act* were added to “show cause”
- **(c1)** “a serious domestic violence offence”
- “Serious domestic violence offence” is found within the definitions in the *Bail Act*:
 - (a) An offence under the *Crimes Act* 1900, Part 3 with a maximum penalty of 14 years imprisonment or more **if the offence is committed by a person against an intimate partner** or
 - (b) An offence under a law of the Commonwealth, another state or territory or another jurisdiction that is similar to an offence under that part”

“intimate partner” is defined also in the dictionary section of the *Bail Act* and mirrors the definition in s54C of *Crimes Act* – which is “married”, “de-facto” or “intimate personal relationship with” whether or not it is of a sexual nature.

Expanded Show Cause for certain Serious DV offences – s16B Bail Act

- **16B(c2)** an offence under the *Crimes Act*, contrary to section 54D = the coercive control offence.

Question: Have these amendments left some areas of DV that are still not covered by show cause?

Answer: Many, Part 3 “offences against the person with less than 14 year max pens = s37(1) and (1A) *Crimes Act* - Strangulation not covered unless the person falls unconscious. AOABH s59, Sexual touching s61KC&KD, and the “revenge porn” offences found at s91P,Q & R of the *Crimes Act* to name a few.

Bail Assessment Matters s18 Bail Act

- 1 July 2024 s18(1)(d1) was added to the *Bail Act* prescribing to the bail authority the factors to consider when **making an assessment of bail concerns**:

“(d1) behaviour engaged in by the accused that may, under the [Crimes \(Domestic and Personal Violence\) Act 2007](#), section 6A(2), constitute domestic abuse

Examples of behaviour—

behaviour that is physically abusive or violent, including strangulation and sexual assault, animal abuse and stalking”

Bail Assessment Matters s18 *Bail Act*

- 1 July 2024 s18(1)(o) *Bail Act* was varied so that the bail authority is to consider when **making an assessment of bail concerns**:

(o) "in the case of a serious offence **or a domestic violence offence against an intimate partner**, the views of any victim of the offence or any family member of a victim (if available to the bail authority), to the extent relevant to a concern that the accused person could, if released from custody, endanger the safety of victims, individuals or the community".

sTay!



Stays of Bail Expanded s40 *Bail Act*

- 1 July 2024 ss.40(5)(c) – (e) *Bail Act* added to the section
- Stays of bail can be applied to “a serious offence” which now includes;
 - (c) A serious domestic violence offence, (go back to the definitions section in the *Bail Act* = 14+ max pens) or
 - (d) An offence against s54D of the Crimes Act = “coercive control” or
 - (e) Offence against Part 3, Division 10, Subdivision 2 of the *Crimes Act* = 611 – 61KB = *sexual assault and assault with intent to have sexual intercourse* offences

Electronic Monitoring on bail for DV *s28B Bail Act*



Electronic Monitoring for DV s28B Bail Act

- 11 October 2024 s28B Bail Act added to the act
- Applies to show cause bails per s16B(c1) and (c2) where the accused has been granted bail.
- The accused “must” be subject to a bail condition that the accused person be subject to electronic monitoring, unless the bail authority is satisfied sufficient reasons exist, in the interests of justice, to justify not imposing the condition.
- The accused “must” remain in custody until arrangements are made for the electronic monitoring.
- Shifts the obligation for provision and supervision of the electronic monitoring to Corrective Services.

Bail by Magistrate/Judges Only s70A Bail Act

- 14 March 2025 s70A Bail Act added to the act
- The language of the section is very clear :
 “ Registrar must not make bail decision”
- Arose after public submissions due to the unlawful death of Molly Ticehurst in Forbes where the bail was granted to the alleged DV offender, who then went on to allegedly kill Miss Ticehurst.
- All first appearance weekend bail applications are now managed through a Centralised Bail Court at Parramatta Children’s Court, with the number of acting magistrates increased from three to six to assist in the determinations of bail.

Removal of AG approval

For prosecutions for offence of use tracking device without consent
s56(1A) Surveillance Devices Act 2007

- 1 July *s56(1A) Surveillance Devices Act 2007* added
- Previously, the AG's consent was required for prosecutions
- The subject offence is found in Part 2, subsection 9 of the Act which prohibits the use, installation and maintenance of tracking devices without consent and carries a max penalty of 5 years imprisonment.
- The addition of *s56(1A)* deletes the requirement of needing the AG's approval for prosecution of an offence against *s9* alleged to have occurred in circumstances where the offence is classified as a domestic violence offence, within the meaning of the [*Crimes \(Domestic and Personal Violence\) Act 2007*](#).

Removal of AG approval

For prosecutions for offence of use tracking device without consent
s56(1A) *Surveillance Devices Act 2007*

11 Meaning of “domestic violence offence”

(1) In this Act, **domestic violence offence** means an offence committed by a person against another person with whom the person who commits the offence has (or has had) a domestic relationship, being—

- (a) a personal violence offence, or
- (b) an offence (other than a personal violence offence) that arises from substantially the same circumstances as those from which a personal violence offence has arisen, or
- (b1) an offence under the [Crimes Act 1900](#), section 54D(1), or
- (c) an offence, other than a personal violence offence or an offence mentioned in paragraph (b1), in which the conduct that constitutes the offence is domestic abuse.

(2) In this section, **offence** includes an offence under the [Criminal Code Act 1995](#) of the Commonwealth.

Some comic relief before more legislation



What changes came in?

5 Changes

Crimes (Domestic and Personal Violence) and Other Legislation Amendment Act 2024

Definition of Stalking s8(1)(b1) Crimes (D&PV) Act

- 1 December 2024 s8(1)(b1) Crimes (D&PV) Act added
- Expanded the definition of stalking to cover emerging technology
- Now covers stalking *without* contact
- Stalking includes –
 - (b1) the monitoring or tracking of a person's activities, communications or movements—
 - (i) whether by using technology or in another way, and
 - (ii) whether or not the monitoring or tracking involves contacting or otherwise approaching the person

Stalking – new section 8(1)(b1) – the why

Aims in the Second Reading speech were to target;

- GPS trackers
- Monitoring a victim's online accounts
- Intention is that stalking would be covered in 3 different ways in the *Crimes (Domestic and Personal Violence) Act*
- Drew from findings of the 2024 NSW Crime Commission's report in Project Hakea, which found that there is frequent use of tracking devices by domestic and family violence perpetrators.

Stalking – 3 ways covered in the *Crimes (D&PV) Act*

1. Section 13 – this is the actual offence of stalking and/ or intimidation with a maximum penalty of 5 years.
2. ss16 and 19 – stalking and monitoring can form the basis for making an application for an ADVO under the act if the Court is satisfied on the balance of probabilities that a person has reasonable grounds to fear the defendant will engage in conduct that stalks the person, and in the opinion of the court, it is sufficient to warrant making the order.
3. Section 36(b) – expands the mandatory prohibitions within an ADVO – the defendant must not stalk the PINOP.

Electronic Service of Provisional AVO's s31 Crimes (D&PV) Act

- 3 February 2025 s31 Crimes (D&PV) Act amendment to the Act
- Significant bulk out of this section. Previously required personal service of provisional AVO's by police on parties "as soon as practicable". Left a notable gap in protection where an AVO was not in force until it was served.
- Section upgraded
 - "must" be served as soon as practicable was added
 - Allows for electronic service on the defendant if they consent to service
 - But only when the police have explained the effect of the order, the consequences for a breach of the order and the rights of both the defendant and the PINOP to the defendant

Aggravated Breach ADVO ss14(1A)-(1E) *Crimes (D&PV) Act*

- 31 March 2025 ss14(1A)-(1E) *Crimes (D&PV) Act* added
- A whole new offence upgrading to **3 years** max where the breach is with intent to cause harm or fear for safety – s14(1A)
- Intent is explained at s14(1B)(a) “if the person knows the conduct is likely to cause the harm or fear”
- The prosecution are not required to prove the harm or fear was actually caused – s14(1B)(a)
- Ss14(1D)&(1E) provide for “backsliding” to standard Breach AVO if trier of fact is not satisfied of the upgraded aggravated version.

Persistent Breach ADVO ss14(1A)-(1E) *Crimes (D&PV) Act*

- S14(1C) A whole new offence upgrading to **5 years** max penalty
- The breach is comprised by a person knowingly, on at least 2 occasions within a 28 day period breaches the order, and
- Can be made up against the same or different PINOPs and
- A reasonable person would consider the conduct likely to cause harm or fear, whether or not in fact it was caused.
- Same provisions regarding backsliding to standard Breach AVO
- Scheme covers standard, intentional, and reasonable person persistent breaches

Serious Domestic Abuse Prevention Orders Part 10A *Crimes (D&PV) Act*

- 29 September 2025 a new Part 10A *Crimes (D&PV) Act* will be added
- Introduction of a new term “*serious domestic abuse activity*”
- Creates a civil scheme where the Crown (police or DPP) can apply for an order against DFV offenders to comply with conditions, including positive obligations to protect family members or current or former intimate partners.
- The order can last up for 5 years.
- A breach of the order can attract a penalty of up to 5 years imprisonment
- Appeals against the making of the order are by right to the SC or the CA

Serious Domestic Abuse Prevention Orders Part 10A Crimes (D&PV) Act

- Meaning of “serious domestic abuse activity” means anything done by a person that is or was a serious domestic violence offence for which they have been charged – whether or not they have been tried, acquitted, convicted, quashed or set aside.
- Only applies to persons over 18 years of age
- Under the scheme, the Commissioner of Police or the DPP will be able to make an application for a **SDAPO** where, **within the last 10 years**, the adult has been
- Convicted of **2 or more** domestic violence offences with max pens of 7 yrs +. These matters will be dealt with in the Local Court or;
- Charged with a ‘**serious domestic violence offence**’ regardless of how the matter finalized. These matters will be dealt with the Supreme Court.
- And in determining the order, the court must consider a range of views as well as take into account hearsay evidence.

Changing child's name by sole parent s28(3)(a1)

Births Deaths and Marriages Registration Act

- 1 December 2024 s28(3)(a1) of the *BD&M Registration Act* amendment to the section
- Additional provision added to allow for a one parent to apply to change a child's name, when that one parent is a sole parent and that parent has
- (a1) the parent **has sole parental responsibility**, under a final parenting order made under the [Family Law Act 1975](#) of the Commonwealth, to make decisions about—
 - (i) major long-term issues for the child within the meaning of that Act, or
 - (ii) the child's name

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