

Legal definition of ‘domestic abuse’

Factsheet for the justice sector

What changes are being made to the law?

NSW is introducing a legal definition of ‘domestic abuse’ from 1 February 2024.

This legal definition will be inserted into the *Crimes (Domestic and Personal Violence) Act 2007* as section 6A.

The law will state ‘domestic abuse’ is any behaviour in a domestic relationship that:

- is violent
- is threatening
- is coercive or controlling
- makes a person fear for their own safety or the safety of others.

Why is this definition being introduced?

This definition will help people understand what behaviour is domestic abuse and support people to identify domestic abuse.

The definition recognises that:

- abuse is more than physical abuse and could include verbal, sexual, emotional, psychological or financial abuse, or behaviour that controls a person or limits their freedom
- domestic abuse can be one or many acts over time
- children experience domestic abuse when they hear, see or are exposed to the effects of domestic abuse.

For an Apprehended Domestic Violence Order to be made, it must be shown that there is fear of a domestic violence offence on reasonable grounds.

The definition of domestic abuse does not change this requirement.

What behaviours are covered under the definition?

The legal definition of domestic abuse will cover many different types of behaviour. It can involve a single act, or repeated behaviours.

Some examples include engaging in, or threatening to engage in, behaviour that:

- is physically abusive or violent
 - is sexually abusive or violent
 - is economically or financially abusive
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- is verbally abusive
- humiliates, shames or degrades the victim
- intimidates
- is stalking, harassment or involves monitoring or tracking a person's activities or communications, whether physically, using technology or in another way
- involves damaging or destroying property
- causes death or injury to an animal or uses an animal to threaten a person
- isolates a person or prevents a person from connecting with their family, friends or culture, participating in cultural or spiritual ceremonies or practice or expressing their cultural identity
- deprives or restricts a person's liberty or unreasonably controls or regulates their day-to-day activities
- makes threats, for example threatening to withdraw visa sponsorship, threatening to have a child removed from the country.

Behaviour that causes a child to hear, see or be exposed to the effects of domestic abuse is also domestic abuse.

What types of relationships are covered by the definition?

For conduct to be domestic abuse, it needs to occur between people in a current or former domestic relationship. This is already defined in section 5 of the *Crimes (Domestic and Personal Violence) Act 2007* and covers where people are or have been:

- in an intimate relationship, marriage or de facto relationship with the same person (for example, a person's ex-partner and current partner would have a domestic relationship with each other at law, even if they had never met)
- in an intimate personal relationship (including being married or in a de facto relationship), whether or not the relationship was of a sexual nature
- living in the same household
- living in long-term residential facilities such as aged care homes
- dependent in paid or unpaid caring relationships
- relatives (i.e. are family)
- for Aboriginal or Torres Strait Islander people, extended family or kin according to the Indigenous kinship system of the person's culture.

How does the definition interact with existing laws?

The definition will work together with existing laws that respond to domestic and family violence.

It will clarify that when the behaviour involved in a criminal offence is domestic abuse, the offence is a 'domestic violence offence.' This means that powers and laws can apply, including those set out below.

- Apprehended Domestic Violence Orders (**ADVOs**) - which are court or police orders that protect a person from someone they are or were in a domestic relationship with. An ADVO can be made where a

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person fears on reasonable grounds the other person will commit a ‘domestic violence offence’ against them.

- Special police powers to investigate domestic violence offences set out in Part 6 of the *Law Enforcement (Powers and Responsibilities) Act 2002* such as powers to seize and detain firearms.
- Protections for complainants in court such as the right to have a support person present when giving evidence, set out in Chapter 6, Part 4B and section 306ZQ of the *Criminal Procedure Act 1986*. Mandatory warnings by the Judge to the jury about considering absence of or delays in complaining about a domestic violence offence may also apply under section 306ZR of the *Criminal Procedure Act 1986*.
- Sentencing presumptions that a person convicted of a domestic violence offence will be sentenced to full time detention or a supervised order unless the court considers another sentence is more appropriate and gives reasons for this under section 4A of the *Crimes (Sentencing Procedure) Act 1999*.
- The requirement to suspend a firearms licence or prohibited weapons permit when a person is charged with a domestic violence offence under section 22 of the *Firearms Act 1996* and section 16 of the *Weapons Prohibition Act 1998* respectively.

The definition of domestic abuse operates separately from the coercive control offence, which will come into effect in July 2024. The definition of domestic abuse aims to assist the community or a police officer to identify conduct that may be a domestic violence offence for the purposes of seeking a domestic violence order against someone.

How will the changes be implemented?

The NSW Government has allocated more than 12 months before the definition commences to allow for training, education and other work needed to ensure the reforms work as intended.

An Implementation and Evaluation Taskforce formed in December 2022 under section 54I of the *Crimes Act 1900*. The Taskforce provides advice to the Minister on training and education, precise commencement dates, and consultation with stakeholders, particularly with sector-specific Reference Groups.

Get help

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

If you're experiencing domestic abuse, contact 1800RESPECT on 1800 737 732 or visit 1800respect.org.au for support.

If you're worried about your behaviour, contact Men's Referral Service on 1300 766 491 or visit www.ntv.org.au/mrs for support.

Learn more about how to get help at nsw.gov.au/coercive-control-get-help