

LEGISLATION COMPARISON

DIFFERENCE BETWEEN FORMER GOVERNMENT AND CURRENT GOVERNMENT BILLS



Government of
South Australia

The former Government consulted on a Bill to criminalise coercive control in 2021, the **Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021 ('2021 Bill')**. Stakeholders who were involved in that consultation may wish to know how the **Criminal Law Consolidation (Coercive Control) Amendment Bill 2023 ('2023 Bill')** differs from the 2021 Bill.

The following table provides a comparison of the two Bills, and outlines the policy reasons for the current Government's new approach. The 2023 Bill has been shaped by valuable feedback provided by community stakeholders at roundtables on coercive control held by the Office for Women in late 2022 and early 2023.

This table should be considered together with the Stakeholder fact sheet provided on the 2023 Bill.

	2021 Bill	2023 Bill	Policy reasons for any differences
Relationships covered	Covers current or former spouses, domestic partners or intimate partners	Covers current or former spouses, domestic partners or intimate partners	No changes
Definition of the prohibited behaviour	Committing 'acts of abuse' against a current or former spouse or partner. 'Acts of abuse' was defined as one of an extensive list of behaviour types such as: • behaviour that is violent, threatening, intimidating, frightening, harassing, humiliating, degrading or punishing; • damaging property; • withholding financial support necessary for meeting the reasonable living expenses of the person	Engaging in behaviour that has a serious controlling impact on a current or former spouse or partner. A controlling impact occurs when the conduct either directly or indirectly restricts the partner's: • freedom of movement; • freedom of action; • freedom to engage in social, political, religious, cultural or economic activities; • bodily autonomy; • access to necessities, support services or property.	Many of the behaviours covered as 'acts of abuse' under the 2021 Bill are very likely to have a controlling impact, and therefore there is substantial overlap between the types of behaviours covered by the two Bills. However, the 2023 Bill has developed these concepts further. By defining the offence by whether the behaviour restricts a partner's fundamental freedoms, the 2023 Bill more clearly shows the effect that coercive control has on victims and why it is considered to be such a serious offence. 'Controlling impact' was designed to bring a more objective standard to investigation and enforcement of the offence than some of the phrases used in the 2021 Bill. For example, what is considered intimidating, harassing, humiliating or degrading can sometimes be subjective and culturally dependent, and there is a risk that authorities may bring their own biases to these concepts when administering the legislation. By contrast, controlling impact is linked to measurable factors like access to food or support services. This more clearly delineates when unhealthy relationship behaviours become criminal – namely, when they impair someone's ability to exercise their own free will and autonomy. This is intended to aid uniform application of the offence throughout the State and avoid perpetrator misidentification or overcriminalisation.

	2021 Bill	2023 Bill	Policy reasons for any differences
Required number of acts	The offence required three or more 'acts of abuse' to have occurred	The offence does not have a minimum number of required incidents and instead criminalises a 'course of conduct' that has a serious controlling impact	Stakeholder feedback has noted that in the past approaching domestic abuse as a series of discrete incidents of violence concealed the effects of ongoing, subtle patterns of behaviour over time. The 2023 Bill does not focus on a particular number of incidents in order to move towards a more holistic understanding of domestic abuse.
Examples	Did not contain examples	Contains a schedule of examples illustrating how a person's behaviour may have a controlling impact on their spouse or partner	The structure of the offence has been designed taking into account ease of application by frontline police officers. For this reason it has a short central definition of controlling impact, rather than a longer, multi-pronged definition of abuse. Because the main definition in the 2023 Bill is shorter, it was considered useful to have illustrative examples of how behaviour might have a controlling impact.
Intention element	Must be proved that the defendant either: - intended to cause the victim physical or mental harm (including distress, anxiety or fear); or - was aware of the risk that the behaviour could result in physical or mental harm (including distress, anxiety or fear) and engaged in the conduct despite the risk and without adequate justification	Must be proved that by the course of conduct the defendant intended to either: - have a controlling impact on the victim; or - cause the victim serious apprehension or fear.	Based on roundtable feedback and lived experience of victims, an intention to control the victim is considered to more accurately reflect real life situations of coercive control. A perpetrator's primary motivation is typically to force the victim to behave in a certain way. They see themselves as entitled to control the victim, and they are prepared to take whatever measures are necessary to achieve that goal. Whilst the victim is invariably frightened or harmed in the process, this is not necessarily at the forefront of the perpetrator's mind. Indeed, some perpetrators genuinely (although mistakenly) believe they are being 'protective'. Therefore, the main intention element is simply to control the victim. This is considered a criminal intent as it is an intentional interference with someone's fundamental freedoms (see below defences in relation to justifiable interference). The offence can also be proved by showing that the defendant intended to cause the victim serious apprehension or fear, to cover cases in which this can be shown to have been the principal motivation. An intention to cause physical or mental harm has not been included, as there are existing offences that already criminalise intentionally causing physical or mental harm (ss 23 and 24 of the <i>Criminal Law Consolidation Act 1935</i>).
Exclude behaviours by regulation	Yes	Yes	Both Bills allow the regulations to prescribe certain behaviours that will be deemed not to constitute an offence. This allows for future fine-tuning if the legislation operates in an unintended way in relation to particular behaviours. Any regulations made pursuant to this power are subject to Parliamentary oversight.

	2021 Bill	2023 Bill	Policy reasons for any differences
Maximum penalties	5 years imprisonment for basic offence 7 years imprisonment for offence where the abusive behaviour is either: • directed at a child; or • makes use of a child; or • is witnessed by a child.	7 years imprisonment for any offence	Coercive controlling behaviours can have a devastating effect on children who witness or are made to be involved in the behaviours. However, after considering roundtable feedback, it is the Government's position that coercive control involving a child should not automatically be considered <i>inherently</i> more serious than coercive control that does not involve a child. Because coercive control is such a complex dynamic, the seriousness of each case should be considered on its own merits. The 2023 Bill imposes a maximum penalty of 7 years for any coercive control, and individual cases will be sentenced according to their unique circumstances, including any impact on children.
Defences	No defences	Defence for behaviour that is reasonable in the circumstances	The defence in the 2023 Bill has been included due to the new intention element of seeking to control a spouse or partner. In some exceptional circumstances, deliberately restricting a spouse or partner may be justifiable. For example: • if a partner had a serious gambling addiction, it may be reasonable to restrict their access to joint funds; • if a partner is violent, it may be reasonable to temporarily restrict their access to jointly owned premises by changing locks until an intervention order can be put in place.