

CRIMINALISING COERCIVE CONTROL

Community guide



**Government of
South Australia**

ACKNOWLEDGEMENT OF COUNTRY

The South Australian Government acknowledges and respects Aboriginal people as the state's first people and nations and recognises Aboriginal people as traditional owners and occupants of South Australian land and waters.

INTRODUCTION

This document includes examples of coercive control and abusive behaviour. If you or someone you know is experiencing coercive control or domestic violence there are support services that can help. See the back of this book for more.

The Government of South Australia is committed to criminalising coercive control, an insidious and often unrecognised form of domestic abuse.

Coercive control is often difficult to fit within existing criminal offences. It is an ongoing pattern of controlling and abusive behaviours that may include physical, sexual, psychological, financial and emotional abuse and intimidation.

Importantly, it is not a single act of violence, but a pattern of abusive behaviours where someone intentionally tries to control another person by making them feel afraid, ashamed, anxious, unsure or upset.

As a result of this fear and subordination, victim-survivors can become dependent on the perpetrator – they gradually lose friendships, family support, access to support networks and employment. Coercive control in a relationship is also a risk factor for intimate partner homicide.

Our community needs to learn more and better understand this type of abuse. The Government has already begun an awareness campaign, encouraging younger South Australians to ‘See the Signs’ of coercive control, and better recognise when a relationship might be turning abusive.

The Legal Services Commission has also joined the campaign, providing more information about where to seek help – including crisis support services, social support services and legal services.

After a period of in-depth engagement with a range of stakeholders, the Government of South Australia has drafted the Criminal Law Consolidation (Coercive Control) Amendment Bill 2023 to criminalise coercive control. We now want to hear from the South Australian community about the Bill.

Criminalising coercive control is an important step in recognising the seriousness and profound harm it can cause in our community.



WHAT IS COERCIVE CONTROL?

Coercive control is when someone intentionally tries to control you or make you behave in a certain way by doing or saying things that make you feel afraid, ashamed, anxious, unsure or upset.

Coercive control seriously impairs a person's freedom to make their own choices and to act according to their own preferences and best interests.

It is a pattern of behaviour that can involve many different forms of abuse. It isn't necessarily violent.

It can include but is not limited to:

- making it hard for you to see your friends and family
- always needing to know where you are and what you are doing
- telling you what you can and can't wear, or where you can and can't go
- not letting you have control over your own money, or where you work
- checking your phone, your computer and your social media
- not letting you practice your faith or spirituality in ways that you want to
- any actions or behaviours that make you feel like you're being watched, or like you can't act like yourself because you'll be punished
- any actions or behaviours that make you feel forced into doing something you don't want to do, including sexual acts.

Although it can occur in different contexts, coercive control is often present in abusive intimate partner relationships. This could be between people who are married, in committed partnerships, or people who are dating.

While coercive control is often perpetrated by men against women in romantic relationships, coercive control can happen to **anyone** — no matter your gender, how you define your sexuality, your background, or who you are as a person.

Coercive control can also start happening or keep happening after a separation or a breakup of a relationship.

Why do we need to criminalise it?

Coercive control may be subtle or hard to detect, but it is still a form of abuse. This abuse can cause significant negative consequences for victims, including poor mental and physical health, lowered financial stability, decreased self-confidence, and reduced ability to seek assistance and support.

Coercive controlling behaviours can also have a devastating effect on children who are exposed to this type of behaviour.

In South Australia, the law currently does not recognise many coercive behaviours as criminal – especially their repeated use within an intimate relationship. This is particularly the case for non-physical types of violence or abuse.

It has also been shown that coercive control in a relationship is a risk factor for intimate partner homicide.

Does the Bill cover other kinds of relationships?

While coercive control can happen in many different kinds of relationships, the Bill focuses only on coercive control against spouses, domestic partners or intimate partners ('intimate partner relationships').

We are taking this approach to focus on the area of highest risk.

ABOUT THE BILL

The Criminal Law Consolidation (Coercive Control) Amendment Bill 2023 creates a new criminal offence of coercive control against current or former intimate partners. It defines when controlling behaviours against intimate partners will be punishable by the criminal justice system.

The Bill defines 'intimate partners' as people who are married, in committed partnerships or people who are dating.

Elements of an offence

Generally, two key elements must be proved before someone can be found guilty of a crime:

- that the person did the physical acts of the crime
- that they had a particular intent when they did those physical acts.

In this Bill, prosecutors must prove the defendant intended to have a **controlling impact** on the other person, or cause them serious apprehension or fear, rather than directly harming them.

This is similar to other offences, like blackmail (where the intent is to get the victim to submit to a demand) or stalking (where the intent could be to cause the victim fear).

What does the Bill criminalise?

The Bill criminalises a pattern of behaviour that a reasonable person would see as having a serious controlling impact on a partner, if the behaviour was intended to control that person or cause them apprehension or fear.

In the Bill, this pattern of behaviour is called a 'course of conduct'.

When does a course of conduct have a controlling impact?

A course of conduct has a controlling impact when the partner is restricted in one or more of the following ways:

- Freedom of movement (eg your partner locks you in the house or threatens to hurt you or your children if you leave.)
- Freedom of action (eg you don't have control over how you spend your time or the way you perform household tasks)
- Freedom to engage in social, political, religious, cultural or economic activities (eg your partner's behaviour makes it very hard for you to see your friends or family, or to work in a job of your choosing)
- Bodily autonomy (eg you don't get to choose whether or not you use birth control)
- Access to necessities, support services or property (eg your partner decides when you can and can't go to the doctor)

A controlling impact can also be direct or indirect.

- **Direct restriction of food:** the perpetrator places a lock on the fridge to stop the victim accessing food.
- **Indirect restriction of food:** there is no physical barrier to the person accessing food, but if they eat foods the perpetrator deems unacceptable, they will be subject to verbal abuse and intimidation. The other person is coerced to restrict their food intake to avoid the abuse and intimidation.

The Bill has been drafted to be flexible to different cultures and situations, focusing on universal freedoms rather than on particular behaviour types. This means the Bill could be applied in different contexts:

- LGBTIQ+ person: removing a transgender partner's access to gender affirming hormones is a restriction on their ability to make choices with respect to their body.
- Person with disability: taking away a partner's mobility device, such as a wheelchair, restricts their freedom of movement.
- Aboriginal person: actions that prevent an Aboriginal partner from engaging in and practicing culture, such as visiting Country, sacred sites and attending ceremonies are a restriction on freedom of movement.

Penalties and defences

The coercive control offence is punishable by up to 7 years imprisonment. The appropriate penalty in each particular case will be determined by a judge who will take into account all the circumstances.

For someone charged with coercive control, it will be a defence to prove that the course of conduct was reasonable in all of the circumstances. The onus of proving this is on the person charged with the offence - they must convince the judge or jury that their behaviour was reasonable.

In some exceptional circumstances, deliberately restricting a spouse or partner may be considered reasonable. 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.

What the Bill does not criminalise

The Bill does not criminalise relationships where both people freely adopt traditional gender roles. This includes for cultural or religious reasons. For example, one partner taking primary responsibility for the family finances with the genuine free consent of the other partner is not an offence.

It is normal and healthy to negotiate difficult issues in a marriage or intimate partnership (such as where to live, how to raise children, family finances). The Bill does not criminalise attempts to influence a partner's choices through persuasion in ways that a reasonable person would not consider to be a restriction on their free will.

HOW HAVE WE GOT HERE?

A lot of work has taken place to get the Bill to its current form, including stakeholder engagement and consultation with a range of community groups.

The former Government consulted on a Bill to criminalise coercive control in 2021, the Criminal Law Consolidation (Abusive Behaviour) Amendment Bill 2021.

When the current Government was elected, they committed to criminalising coercive control, and have pursued legislation that focuses more on the intent to control the other person rather than specific acts of abuse.

In developing the current Bill, the Government has built on important discussions that had already started with the sector and the broader community.

In late 2022 and early 2023 stakeholder roundtables were held to seek community input with the following groups:

- Aboriginal and Torres Strait Islander women and communities
- Culturally and Linguistically Diverse community leaders
- Embolden Voices for Change Lived Experience Group
- Young people and organisations that work with young people
- LGBTIQ+ community members and organisations
- Disability sector community members and organisations

How feedback has influenced the Bill

Roundtable participants provided comments on what the offence should look like once drafted, as well as initiatives to implement the legislation, such as community education and training for justice system authorities.

Some of the key feedback that has been incorporated into the draft Bill includes:

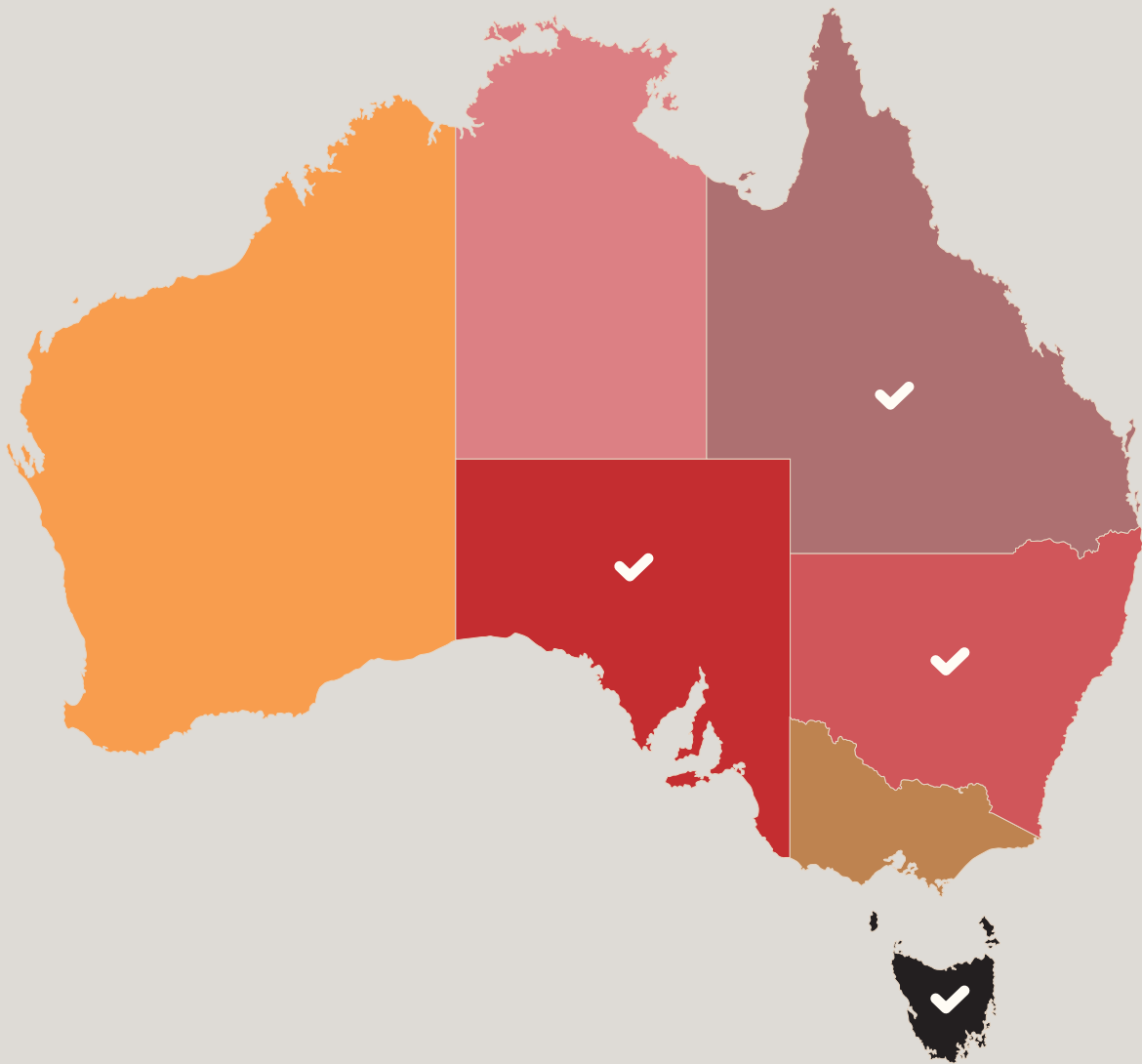
- a focus on victim-survivors
- emphasising the fundamental right to freedom for everyone
- being applicable in different contexts
- using accessible and simple language
- de-emphasising physical violence
- being informed by lived experience.



How does South Australia compare with the rest of the country?

Coercive control is criminalised in a small number of Australian jurisdictions.

- The New South Wales government passed the *Crimes Legislation Amendment (Coercive Control) Act 2022* in late 2022. It will come into effect in 2024.
- Queensland recently passed the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022, which contains various measures to combating coercive control in the lead-up to criminalisation. The Queensland Government has committed to introducing a standalone offence of coercive control.
- The Tasmanian *Family Violence Act 2004* also criminalises some of the common types of behaviours constituting coercive control through their offences of economic or emotional abuse.



WHAT HAPPENS NEXT?

Once consultation closes, we will collate the feedback and see whether any further changes are required to the Bill.

If the Bill then passes Parliament, there would be a lot of work undertaken before the legislation commences.

Issues that would be considered during this phase of the reform include:

- what training might be required for police and other front-line workers to assist them to understand and enforce the offence
- whether any further community education on coercive control is required
- what support services are available to assist victims of coercive control.

HOW DO I HAVE A SAY?

The Government is currently seeking feedback on the current version of the draft Criminal Law Consolidation (Coercive Control) Amendment Bill 2023. We want to know:

- if the Bill is clear and easy to understand
- the safeguards to prevent the Bill accidentally criminalising reasonable behaviour are effective
- whether any additional examples of coercive controlling behaviour should be added.

Visit YourSAy to complete our survey.

You can also provide a written submission to: LLPSubmissions@sa.gov.au

Consultation closes **Tuesday 10 October 2023.**



www.yoursay.sa.gov.au/coercive-control

SUPPORT SERVICES

If you or someone you know is experiencing coercive control or domestic violence, there is confidential support available.

South Australian Domestic Violence Crisis Line

1800 800 098 (24 hours) | [Women Safety Services website](#)

The Domestic Violence Crisis Line is a statewide service offering assistance to women experiencing domestic violence in South Australia by providing information, counselling and safe accommodation options.

Men's referral service (No To Violence)

1300 766 491 | [No To Violence website](#)

The Men's Referral Service is a men's family violence telephone counselling, information and referral service. It also provides support and referrals for women and men seeking information on behalf of their male partners, friends or family members, and workers in a range of agencies seeking assistance for their clients who are men.

Yarrow Place Rape and Sexual Assault Service

8226 8777 or 1800 817 421 | [Yarrow Place website](#)

Yarrow Place Rape and Sexual Assault Service is an inclusive service, including medical and counselling services, for anyone in South Australia who has been sexually assaulted.

1800RESPECT

1800 737 732 (24 hours) | [1800respect website](#)

1800RESPECT is a national 24-hour online and telephone service offering counselling and support to anyone experiencing domestic and family violence and/or sexual assault and their family and friends.

KWY Aboriginal and Torres Strait Islander Family Services

08 8377 7822 | [KWY Aboriginal and Torres Strait Islander Family Services website](#)

KWY provide services and support in domestic and family violence, child protection, youth work, kinship care, disability, mentoring, Aboriginal education outcomes and perpetrator intervention.

Nunga Mi:Minar – Northern Regional Domestic Violence and Aboriginal Family Violence Service

1800 003 038

Nunga Mi:Minar provides support for Aboriginal and Torres Strait Islander women and their children escaping family violence by providing an immediate safety response, accommodation and material assistance, advice, information and advocacy.

Legal Services Commission

1300 366 424 | [Legal Services Commission website](#)

The Legal Services Commission provides free legal advice and support to all South Australians. They also operate the Women's Domestic Violence Court Assistance Service (WDVCAS), which supports women to apply for, vary, or revoke an intervention order.