

Criminalising Coercive Control Public Consultation

Submission from the Don Dunstan
Foundation
October 2023

About us

The Don Dunstan Foundation is a thought leadership organisation and our activities build on the legacy of former South Australian Premier, Don Dunstan. We work on projects and activities to inspire action for a fairer world. We are a registered charity and focus on raising awareness of social justice issues through public engagement activities, collaborative projects, and research.

From his time as Premier and Attorney General, Don Dunstan left a strong progressive policy legacy across many varied areas. This includes the groundbreaking legislation in 1976 which criminalised marital rape, strengthening the rights of victims of sexual assault and abuse in their homes.

This submission focuses on the draft legislation to criminalise coercive control currently available for public consultation and will do so in two sections:

- The intent of the changes, and
- Further considerations and questions.

The intent of the proposed changes

The work the Malinauskas Government has been doing to further strength protection for victims of domestic violence is to be commended. As part of a suite of legislative and policy measures to empower and improve outcomes for women, and to target gender inequality, the proposed legislation seeks to criminalise coercive control as a standalone offence, in recognition of the particularly insidious and often unrecognised form of domestic abuse that it is.

In particular, the public awareness campaign on coercive control warning signs has been a positive move to educate the community on this issue. The Don Dunstan Foundation was proud to partner with the Office for Women and the City of Adelaide on a public forum in February this year to further amplify the conversations and raise the awareness of warning signs to look for in relationships. We received overwhelmingly positive feedback from our community about the event and our engagement with this issue, with many people saying this was reminiscent of the social reforms of the Dunstan era and an issue of great importance to our society. Feedback was also supportive of the Government's action in this area, recognising that it has a severe and damaging impact on victims and is often a precursor to physical violence.

The Foundation supports the intent behind the legislation and the need for strengthening of our current system to support law enforcement to act on this behaviour. The impact on the community is clear and the criminal justice system must be given the tools it needs to protect victims. Successful prosecution is known to be challenging and the Foundation supports the need to better define coercive control as a pattern of behaviour with a serious and damaging impact.

Further considerations

The intent of the changes is clear, and it is our hope that the Bill in practice will deliver greater protections to victims as intended.

Our own consultation with some of our key stakeholders has raised some questions we would ask to be considered in any further drafting of the Bill, with the view to strengthening the impact of the legislation and its protection of victims.

An important element of compliance with the law, particularly a criminal law, is that it is accessible and comprehensible and not confusing for the ordinary person to understand. It is also crucial that law enforcement authorities, courts and support services have a shared understanding of the offence and the legal recourses for victims. From this perspective having multiple sources of criminal law governing essentially the same or similar behaviour is potentially problematic. For this reason, consideration should be given to ensuring the multiple legislations don't conflict, and consideration given to what extent legislative change is necessary to improve the existing legal framework to avoid any potential conflicting or confusing components. This could include consideration about how the current intervention order processes could be strengthened.

In relation to the implementation of the legislation, we would also ask for consideration to be given to power structures within relationships particularly where cultural practices and other social or interpersonal customs are present. This would be particularly necessary to ensure a contextual understanding by law enforcement officers in their response to an allegation of coercive control. The ability of a victim to prove a pattern of behaviour or to work with authorities to establish this pattern, can be significantly impaired when the perpetrating partner holds more power in the relationship. A potential serious and unintended consequence to be avoided is where a perpetrator is actually able to use this new provision for their own gain, because they have greater ability to establish a pattern by manipulating their victim and misrepresenting their behaviour.

Conclusion

The law needs to be as accessible and easily comprehensible as possible. A strong public awareness campaign, especially one that accounts for different cultural understandings, will be the key to the success of the proposed changes. The work which has already been done by the Government and the domestic violence sector in raising awareness of what coercive control is, and the impact it has in relationships is significant and to be commended. The Foundation is strongly supportive of this work continuing and is committed to supporting the Government in this important policy implementation.

