

**Submission
No 75**

COERCIVE CONTROL IN DOMESTIC RELATIONSHIPS

Organisation: Young Liberal Movement of Australia (NSW Division)

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NSW Young Liberal Movement Submission to the NSW Joint Select Committee on Coercive Control

January 2021

Prepared by members of the NSW Young Liberals
Including George Bishop, Deyi Wu, Katherine Robinson, Leané van Essen
and Josie Jakovac

29 January 2021

Re: Joint Select Committee on Coercive Control

Dear Committee Chair,

Please find attached a submission prepared by the NSW Young Liberals for the NSW Joint Select Committee on Coercive Control. As a Movement, we recognise that this is an issue which affects the lives of many young people in our community and we want to advocate and have our voices heard on this reform.

We believe that the policy debate surrounding coercive control reform must balance both the need to protect the dignity, safety and autonomy of those in our community with the need to preserve individual freedom and to avoid government overreach into private relationships. We do believe that there may be a legitimate space for the criminalisation of coercive control because of a gap in the existing criminal legal regime, so long as any proposed reform meets certain criteria.


These criteria, as set out in our introduction, are:

- First, that the behaviour an offence seeks to criminalise should not be covered by existing statutory offences;
- Second, that the coercive control which is criminalised is seen and understood by the public as a public wrong that inflicts harm (in a broad sense of the term) to a sufficient degree so as to warrant criminal regulation; and
- Third, the offence criminalises the targeted behaviour in a way which is specific, proportionate, and enforceable, does not overstep the role of government by over-regulating the private lives of individuals and does not criminalise conduct which is currently viewed as consistent with community expectations or within a margin of appreciation of it, having regard to cultural, age and demographic variation in the community.

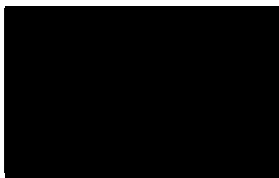
In our submission, we argue that the *Crimes (Domestic and Personal Violence) Amendment (Coercive Control – Preethi's Law) Bill 2020* (Preethi's Law) does not meet these criteria and is not an appropriate reform in the regulation of coercive control.

The Liberal Party has always been a party of evidence-based, sensible social reform balancing competing rights and interests. In our submission, we suggest further issues for the Committee to consider to assist in tailoring an appropriate response to its terms of reference; namely, digital coercive control (particularly in relation to social media), coercive control and young Australians, and the link between coercive control and intimate partner homicide.

We thank the Committee for considering our views.

We would be happy to respond to the Committee should you have any further questions. If we can be of further assistance, Director George Bishop can be contacted at 

Sincerely,



Hugo Robinson
President
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1 Introduction

In the context of close personal relationships, the New South Wales criminal law, in its present form, is concerned principally with prosecuting those who have committed discrete acts of physical violence, stalking or intimidation. Patterns of coercive and controlling behaviour that often precede these harmful acts, which in and of itself may not amount to stalking, intimidation or physical violence, may present a gap in the existing criminal legal regime. As the NSW Young Liberals, we recognise that this is an issue which affects the lives of many young people in our community and we want to advocate and have our voices heard on this reform.

The creation of a 'coercive control' offence could be an effective part of the solution to preserve the dignity, autonomy, and safety of those most at risk of intimate partner violence. We do believe that there may be a legitimate space for the criminalisation of coercive control, so long as any proposed reform meets certain criteria set out below. In our submission, we argue that there is a clear gap in the existing criminal legal regime which could be the subject of reform. We argue that such reforms could assist in the prevention of intimate partner homicide, address the challenge of coercive control which goes unnoticed by the criminal justice system and protect the safety of those in close relationships.

However, we argue that the Committee should only consider supporting such legislation if three criteria are satisfied.

- **(Existing offences)** the behaviour the offence seeks to criminalise is not covered by existing statutory offences.
- **(Public wrong)** the coercive control which is criminalised is seen and understood by the public as a public wrong that inflicts harm (in a broad sense of the term) to a sufficient degree so as to warrant criminal regulation.
- **(Proportionate, having regard to freedoms)** the offence criminalises the targeted behaviour in a way which is specific, proportionate, and enforceable and so as:
 - **(government overreach)** not to overstep the role of government by over-regulating the private lives of individuals; and
 - **(innocent conduct)** not to criminalise conduct which is currently viewed as consistent with community expectations or within a margin of appreciation of it, having regard to cultural, age and demographic variation in the community.

The *Crimes (Domestic and Personal Violence) Amendment (Coercive Control – Preethi's Law) Bill 2020* (**Preethi's Law**) unequivocally falls short of these criteria. The NSW Young Liberals strongly reject Preethi's Law as an appropriate reform or solution to the regulation of coercive control. Preethi's Law is grossly disproportionate in its scope and Orwellian in its overreach by government into private relationships. It de facto reverses the onus of proof with respect to the regulated conduct in section 14A(2) and the defence in section 14D and contains drafting ambiguity. By way of example of such drafting ambiguity, the word 'conduct', without qualification, can be interpreted in a singular or plural form. So, if a potential offender carries out an act on two or more discrete occasions over a number of months which have the effect, or likely to have the effect, of 'monitoring' their spouse from his or her support network just on these discrete occasions, it is unclear whether this would have to be charged as one or two counts of coercive control or how many instances would amount to 'conduct'. Preethi's Law does not even criminalise actual harm, only requiring conduct which is 'reasonably likely' to have one of the effects set out in section 14A(2). Preethi's Law also oversteps in regulating the manner in which parents raise and discipline their children.

In section 2 of our submission, we set out some of the motivations for coercive control reform, including the insufficiency of existing offences. In section 3, we outline some additional considerations for the Committee to assist in its deliberations and to ensure that any proposed reform is appropriate, specifically

with respect to coercive control on social media, coercive control of young Australians, and the link between coercive control and intimate partner homicide.

2 Motivation for Coercive Control Reform

Led by Leané van Essen – Epping-Eastwood YLs and Josie Jakovac – Hornsby-Berowra YLs

A core component of the offence of stalking or intimidation under section 13 of the *Crimes (Domestic and Personal Violence) Act 2007* (NSW) is that the Crown must prove beyond reasonable doubt that the accused intended to cause fear of physical or mental harm. This threshold, which although represents an important safeguard in the right of the accused, is a difficult threshold to prove and is not well tailored to the nature of coercive control.

Abuse is a pattern, a war of attrition that wears a person down and coercive control is the very heart of violent domestic violence acts according to Laura Richards who helped pass 2015 Coercive laws in England. A study by a U.K. police force revealed 95% of victims who experienced coercive control were women (BOCSAR, 2020). Young women accounted for higher risk of intimate partner violence than older women, and in NSW, 44% of victims of domestic violence-related assaults are under the age of 29 (Youth Action, 2019). Between 1 July 2000 and 30 June 2019, 80% of intimate partner homicide victims were women (HomelessnessNSW, 2021). Likewise, approximately one-third of adolescents experience some type of violence from an intimate partner, with an estimated 12% experiencing physical violence. Further, current laws fail to address issues and barriers faced by women and young people with a disability. For instance, some victims with a disability may not report abuse due to fear of being taken to an institution or care facility (HomelessnessNSW, 2021). In cases where the victim finds themselves in an already vulnerable position due to job, youth, socio-economic status or family circumstances, coercive control could cause perpetrators to exploit the victim's vulnerability (BOCSAR 2020).

Coercive control acts are the most common risk factor leading up to an intimate partner homicide. Unlike in cases of physical violence that can leave external bruising or broken bones, it's difficult to objectively assess whether coercive control has taken place. Within the context of this legislation, the question remains if it is possible for a law to appropriately distinguish between unhealthy and criminally abusive relationships. As with the stalking offences in NSW during the 1990s, the Scottish government required mandatory education and training prior to launching the offence that in turn resulted in 400 charges within three months of implementation. Conversely, Tasmania introduced two offences around coercive control in 2005, only to be met with rare implementation due to challenges around enforcement and conviction (DCJ, 2020).

Likewise, there is limited understanding of how these new laws could impact victims including First Nations women and culturally and linguistically diverse communities. It is crucial to consider whether broader community objections will lead to concerns of 'over-policing'. Justifiably there will be some concern around the issue of 'policing bad behaviour' where the state intervenes in areas that some may think ought to be left to private citizens self-regulation (Domestic Violence Death Review Team, 2019). It is important to balance such objections with the obligations of lawmakers to protect interest of public safety, to ensure offenders are not allowed to flourish unabated within the community (NSW Police, 2021). Further, appropriate steps should involve a broad set of community members to encourage community support for the new criminal reform.

3 Specific Issues for the Committee to Consider

In this section, we set out specific issues for the Committee to consider to assist in its deliberations and to ensure that any proposed reform is appropriate, specifically with respect to coercive control on social media, coercive control of young Australians, and the link between coercive control and intimate partner homicide.

3.1 Social Media and Coercive Control

Led by Katherine Robinson (@katherineraerobinson) – Ku-ring-gai YLs

- (a) Is the reform adequately tailored to address conduct on social media?

The Committee should consider how the reform could address the use of social media to coercively control victims. As an ever evolving landscape, and a landscape for which much criminal legislation is poorly adapted, we suggest that the Committee should give specific consideration to the issue of digital abuse in order to afford protection to those who are vulnerable and are coercively controlled through online platforms.

The literature indicates that technology (particularly social media) aids in the carrying out of stalking and harassment. This has led to the development of the term 'digital coercive control' which refers to the digitally based tactics used by perpetrators to intimidate and control previous and current partners (Woodlock et al., 2020). The prevalent use of technology and social media has made digitally facilitated harassment and abuse an increasing form of domestic violence. We suggest that the coercive control reform could attempt to fill the gap and address this form of abuse, which has not been given adequate protection in existing legislation. Survey's conducted on online harassment in the United States found that the most common perpetrators of digital abuse and stalking are current and former partners, which may warrant particular protection for this dynamic (Lenhart et al., 2016).

Although Division 15C of the *Crimes Act 1900* (NSW) addresses the growing issue of 'revenge porn' which is the unlawful taking, distribution or threat to distribute intimate images or videos, this would not address other digital acts which would fall within the concept of coercive control. There are a large spectrum of controlling behaviours which should be considered to ensure the proposed reform is appropriately tailored to address digital coercive control and protect victims of coercive control, harassment and abuse online. For example:

- **(Proxy stalking)** Proxy stalking refers to a perpetrator using other people to contact and stalk the victim with a view to controlling the victim, often in the context of failing romantic relationships (Melton, 2007). Proxy stalking may include when perpetrators view, watch and speak to the victim's wider circle on social media in order to gain further control in the victim's life. Participants in a recent study stated that it was common for the offender to use their social circle online to keep tabs on their whereabouts and would often receive messages from the perpetrators family and friends who would be involved in the same proxy behaviour (Woodlock, 2017). This further isolates the victim and can reduce the efficacy of privacy measures taken against the offender as multiple people are now involved in the harassment. It is argued in the literature that proxy stalking can be equally if not more alarming for the victim as it involves a larger group of people stalking and tracking them (Melton, 2007).
- **(Use of geo-data)** One of the most common forms of digital coercive control is the use of Facebook and Instagram to control victims using geo-data. This often includes using geo-data to locate a person's whereabouts, often paired with sending abusive messages, with a view to exercising a high degree of control over a person's very movements.
- **(Victim isolation)** This includes using the platform to send coercively controlling messages and reaching out to their friends and family through social media to create an unsafe space and with a view to isolating the victim (Woodlock et al., 2019). This form of coercive control makes it challenging for victims to feel as though they are safe and protected on social media platforms and in their life. Recent surveys indicate that victims suffering from this form of digital coercive control are also likely to be experiencing or will experience other forms of domestic violence. This indicates a strong correlation between stalking and harassment on social media and physical abuse, making this area of coercive control in need of greater attention.

There is also a question about how the proposed reform could define social media. We suggest that social media can be defined as an electronic medium or application where users may create and view content generated by users such as images, blogs, videos, messages and comments. Examples of such platforms include but are not limited to Facebook, Instagram, Twitter, LinkedIn, Pinterest and TikTok. All of these sites allow for the use and generation of unique content which can be tracked and viewed repeatedly, making it a vulnerable space for those in coercive relationships.

(b) A possible solution

It is obvious that acts of digital coercive control can be seen as coercive in isolation, but may also be coupled with other (non-digital) potentially violent or coercive behaviour on the part of the offender. Given this, we suggest that the Committee consider whether coercive control towards a former or current partner through the use of social media could be given weight during sentencing procedures, or as an aggravated or distinct offence. As with each of the other suggestions in this submission, a high bar should be set, so that proposed regulation will avoid overstepping into the private lives of citizens.

Given the increasing nature of digital coercive control through social media platforms, the acknowledgement of this behaviour as dangerous and destructive is a necessary and a valuable step towards better protecting victims both on and offline.

3.2 Youth and Coercive Control

Led by Deyi Wu – Ku-Ring-Gai YLs

We recognise that one of the most vulnerable segments in our society experiencing coercive control are young people.

The danger stems from the combination of teenagers and young adults encountering their first intimate or sexual relationship, the multitude of apps and devices which make it easier to track, locate, communicate with, follow and control the victim, and the mixed messaging within society of what constitutes 'abuse'.

One of the challenges that young people face is knowing how to identify abuse and patterns of coercive control. In the UK, Women's Aid and Cosmopolitan found that a third of teenage girls had experienced abuse in their past relationships, whilst 64% of the remaining two-thirds of participants had experienced behaviour which they did not realise was abuse.

When there are no prior relationships the victim can compare the behaviour to, the abuse or coercion can become normalised, leading them to falsely believe that abusive behaviour can be tolerated. This can then create a cycle of abusive relationships as it becomes their 'normal'.

As a society, we must continuously chip away at the imagery that 'domestic abuse' is limited to physical violence and external wounds. Sexual coercion, excessive jealousy, repeated criticism, surveillance, gaslighting, threats to expose nude photos, financial abuse, and cyber-stalking can, when repeated and of a sufficient degree, constitute 'abuse', despite the perpetrator leaving no physical mark on the victim.

There needs to be greater awareness-raising amongst young people to educate them on the broad definition of 'domestic abuse'. These campaigns need to target young people on existing, mainstream social media platforms, and ensure the information is as accessible and concise as possible.

Additionally, bolstering coercive control laws in Australia will cover the 'gaps' in the *Crimes (Domestic and Personal Violence) Act 2007* (NSW). Dating apps such as Tinder, Bumble, Hinge etc make it easier for perpetrators to engage in 'catfishing' and other behaviours which may, in a course of conduct with particular victims, be coercive. Currently, catfishing used to coercively control another is not illegal in NSW but as seen in the Renae Marsden suicide case in 2013, existing laws fail to adequately prosecute perpetrators.

We suggest that the Committee consider whether the current definition of a domestic relationship in s 5 is broad enough to cover the changing nature of online relationships and the use of aliases. We suggest

that the Committee consider whether the definition adequately covers scenarios whereby two or more people who have been involved in an intimate personal relationship, even if the perpetrator's identity is anonymous or fraudulent.

There are clearly gaps in our existing laws which must be adapted to better capture abusive behaviours, especially amongst young people who operate increasingly in the online space.

3.3 Coercive control – law enforcement and intimate partner homicide

We acknowledge that there are clear difficulties and issues when it comes to policing domestic violence. We also recognise the difficulties relating to community perceptions surrounding patterns of non-violent domestic abuse. As such, this section seeks to highlight the importance of the criminalisation of coercive control by recognising its links to violent domestic abuse and understanding that criminalisation can serve to help police prevent intimate partner homicide.

The Domestic Violence Death Review Team's research concluded that 99% of intimate partner homicide (IPH) is preceded by coercive control (Domestic Violence Death Review Team, 2019). This suggests that, despite it being one of the hardest forms of abuse to detect, coercive and controlling behaviour represents the clearest leading indicator to law-enforcement of IPH. Therefore, there is a strong argument that appropriately tailored criminalisation will empower frontline workers to stop the escalation of domestic abuse into IPH. We argue that it is important that the criminal justice system recognises this link and the risks related to it. Molly Dragiewicz, a domestic violence research professor from Griffith University, emphasises the importance of this recognition and notes that "[periods] of separation heightened the risk of violence. 'What happens is once a couple separates, the abuser loses a lot of routine ways of controlling the family they had before.... Somehow that system doesn't really recognise the intensity of the risk at separation. We know there is an escalation of risk at separation.'" (Ben Smee, 2020). The link between IPH and coercive control means that when victims do seek help or leave, they may in fact be more vulnerable and more likely to be murdered by their partner without the aid of the criminal justice system and the community. We suggest that the Committee is mindful of these risks in any reform proposal.

While ADVOs can assist police in deterring perpetrators and providing reprieve for victims, there is evidence to suggest that there may be limitations to this approach in the case of IPH. While ADVOs help to remove the control and power of the perpetrator over their victim, they may be less effective in hard protection of victims and also in the rehabilitation of perpetrators. By way of example, the latest national analysis of IPH shows almost a quarter of men who killed current or former female partners were named as respondents on protection orders at the time of the killing. By contrast, a quarter of women who killed male intimates were protected by domestic violence orders at the time of the homicide (Australian Domestic and Family Violence Death Network, 2018). In these situations, frontline workers have limited opportunity to prevent the murder.

While we make these observations, we acknowledge the importance of input from family experts, workers in domestic violence refuges, and survivors of domestic abuse in the NSW Government's response to addressing coercive control. However, we make these observations and stand behind the Attorney General's efforts in the spirit of the individual's freedom, both the freedom from government intervention in one's private life, but also the principle of non-aggression, and the Liberal tradition of evidence-based policy. We also wish to emphasise the importance of training provided to frontline workers, particularly police, to detect, understand, and appropriately respond to coercive control. This will be an important factor in addressing the challenges raised by coercive control.

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