



Police Federation
of Australia

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14 May 2007

Australian Law Reform Commission
Level 25
135 King Street
SYDNEY NSW 2000
AUSTRALIA

Dear Sir/Madam

SUBMISSION TO REVIEW OF PRIVACY

The Police Federation of Australia (PFA) wishes to put to the ALRC review our concern about the serious erosion of privacy experienced by Australian police officers due to existing and proposed exemptions in Commonwealth telecommunications legislation.

The PFA is the national body representing around 50,000 serving police officers across Australia. As such, we are duty bound to draw to the attention of inquiries such as the ALRC review, infringements on the rights of police officers as citizens.

We note from ALRC Issues Paper 31 your 'view that the circumstances in which communications can be intercepted is an issue that is outside the scope of this Inquiry. However, federal legislation governing the interception of telecommunications contains provisions about the use, disclosure and storage of information which may also be 'personal information'. These provisions, and their interaction with the *Privacy Act*, are within the scope of the Inquiry.....'.

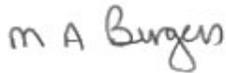
The *Telecommunications (Interception) Act 1979* and the *Telecommunications (Interception and Access) Act 1979*, together with recently drafted amendments

to the latter Act, have the effect of providing police officers with a lower level of privacy protection than other citizens enjoy. In our letter of 22 March 2007, we wrote to the Attorney General the Hon. Phillip Ruddock MP expressing our concern at an exposure draft of the Amendment Bill which will further erode the rights of police officers to the same privacy protection as other citizens. A copy of our letter, which is self-explanatory, is attached.

The PFA would be pleased if the ALRC review would examine and report on means to ensure that the telecommunications laws do not infringe unreasonably on the personal privacy of police officers afforded by the privacy laws of the Commonwealth.

I would be pleased to be involved in your future consultations planned for later in 2007 and to give evidence at the ALRC hearings as part of the Privacy Inquiry.

Yours sincerely

A handwritten signature in black ink that reads "m A Burgess". The signature is written in a cursive, lowercase style.

Mark Burgess
Chief Executive Officer

Attachment



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ATTACHMENT

22 March 2007

The Hon. Phillip Ruddock MP
Attorney General
Parliament House
CANBERRA ACT 2600

Dear Minister

RE: PROPOSED TELECOMMUNICATIONS (INTERCEPTION AND ACCESS) AMENDMENT BILL 2007

Officers from your Department recently briefed the Police Federation of Australia (PFA) on an exposure draft of the proposed *Telecommunications (Interception and Access) Bill 2007*. We appreciated the opportunity to examine the proposed amendments.

As you know, the PFA represents Australia's 50,000 police through the state, territory and federal police associations and unions. On their behalf, the PFA wishes to express serious concern about one element of the proposed Bill.

As we understand it, the amendments dealing with secondary disclosure and use of telecommunications data (new section @182 of the Bill, particularly Subsection 182(2)) would have the effect of legalizing, contrary to the prohibition and privacy laws which apply to the community generally, the disclosure to a third party and use of telecommunications data against police officers (and officers of

like organizations such as ASIO) in non-criminal actions against them such as disciplinary proceedings.

The amendments would achieve this extension by exempting disclosure to a third party and use of information or a document if the disclosure or use is reasonably necessary 'for the enforcement of a law imposing a pecuniary penalty'. It is these provisions which are likely to impinge on the area of police disciplinary proceedings as the disciplinary offences applicable to most jurisdictions are found within State and Territory legislation, and carry pecuniary penalties.

The PFA strongly supports the current and proposed provisions which enable the use of telecommunications intercepts, stored communications and telecommunications data for enforcement of the criminal law, including against corruption.

Beyond the criminal law, it is vital that the community's rights to privacy which are an essential element of our human rights are upheld. There is no justification for legislating on the basis that the rights to privacy of persons who happen to be police officers should be of a lesser standard than those of other citizens.

To go further than the current law and enable the secondary disclosure and use of telecommunications data in disciplinary proceedings which may be for quite minor matters, in breach of current standards of individual privacy is to strike a poor balance in the law.

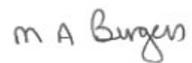
We accept that along with extensive powers in relation to the general community conferred on police officers comes greater accountability. Each jurisdiction has a variety of mechanisms in place to ensure that accountability. As it is, police officers perform difficult and stressful roles and are subject to significant internal disciplinary proceedings in the event that an individual error of judgment or misdemeanor occurs, or workplace behavioral issues need to be dealt with. Furthermore, the entire area of "misconduct" is still being heavily debated within our courts, crime commissions and the judiciary generally and certainly lacks any clear definition.

The Full Court of the Supreme Court of Western Australia, *in Re Matthews; Ex Parte MacKenzie* [2001] WASCA 358, established that the law currently allows the secondary disclosure and use of information obtained under a telecommunications interception warrant in police dismissal proceedings. This represents a significant invasion of privacy. We are of the view that there is no need for the proposed amendment in relation to telecommunications data which will further extend the invasion of privacy to which police officers are currently exposed.

The PFA would urge you to delete the amendment relating to the enforcement of a law imposing a pecuniary penalty from the Bill. Alternatively, or in addition, we would ask that you consider specifically ruling out the secondary disclosure and use of telecommunications data provisions being used in any police disciplinary proceedings.

We would be pleased to discuss the matter with you.

Yours sincerely

A handwritten signature in cursive script that reads "m A Burgess".

Mark Burgess
Chief Executive Officer