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Jackie Morris
Secretary
Senate Legal and Constitutional Committee
Parliament House
CANBERRA ACT 2600

Inquiry into the Telecommunications (Interception and Access) Amendment Bill 2007

The Police Federation of Australia (PFA) as the national body representing Australia's 50,000 serving police officers wishes to draw the Committee's attention to aspects of this Bill that we believe are an infringement on the rights of police officers as citizens. We are concerned that it will seriously erode police officers privacy and argue that it has the effect of providing Australia's police officers with a lower level of privacy protection than other citizens enjoy.

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 the use of telecommunications data against police officers in non-criminal actions such as disciplinary proceedings.

The amendments would achieve this extension by exempting disclosure to a third party the 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 police jurisdictions are

found within State and Territory legislation, and carry pecuniary penalties, even for very minor matters. This is not the case, as we understand it, for the Commonwealth Public Sector Act generally, therefore a small portion of the workforce, which includes police, will have fewer rights simply due to their employment.

I have attached to our submission a copy of correspondence received from the Attorney General dated 28 May 2007 after we had raised these issues with him. I specifically draw your attention to the third last paragraph on page two of that correspondence where he states –

> *"This is by reason of the meaning of 'pecuniary penalty', which is limited to specific monetary penalties set out in relevant legislation and imposed by a court".*

In the case of police disciplinary proceedings penalties are generally imposed by tribunals, appeals boards, hearing officers or the like which we understand would normally come under the definition of a court.

The PFA therefore respectfully suggests that the committee, if it is not of a mind to delete the amendment relating to the enforcement of a law imposing a pecuniary penalty from the Bill, to recommend the inclusion of a definition of pecuniary penalty, as outlined in the Attorney General's letter which stipulates that it is a monetary penalty imposed by a court, and for the purposes of the definition, we believe 'court' should be defined as a legally constituted criminal or civil court over which a Judge or Magistrate presides and excludes those internal (employment related) discipline matters heard and determined by a tribunal, appeals board, hearing officer or the like.

Such an amendment we believe may alleviate the secondary disclosure provisions from being used in police disciplinary matters. It is our interpretation of the Attorney's correspondence that any impact of this Bill on police disciplinary matters is an unintended consequence of the proposed legislation. This view is further supported by the fact we understand that the Attorney General has suggested that we lobby state governments to remove pecuniary penalties from the various state Acts that underpin police disciplinary matters. We argue that such action, even though desirable on our part, is not feasible, particularly in the short term.

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. However, 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. We argue that 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. The committee may be aware that an outstanding disciplinary inquiry may prevent an officers' promotion from being processed until that inquiry is finalized. It could be that an officers' promotion is put on hold pending such an inquiry for months if not years thus depriving them of significant financial gain. That financial penalty could be compounded when the issue of superannuation is taken into account over an extended period of time, when the matter might be only very minor in nature or the officer is not a direct target of the investigation, but merely implicated by virtue of the secondary disclosure provisions.

We accept that along with extensive powers conferred on police officers comes greater accountability. Each jurisdiction has a variety of mechanisms in place to ensure such 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. We argue that whilst this also represents a significant invasion of privacy, this current Bill will further extend the invasion of privacy to which police officers are currently exposed.

The PFA urges the committee 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 by clear definition as earlier outlined.

We look forward to an opportunity to present our concerns to the Committee.

Yours sincerely

M A Burgess

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