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7 February 2018

Mr Tim Watling
Secretary, Legal and Constitutional Affairs Legislation Committee
Parliament House, Canberra
Email: legcon.sen@aph.gov.au

Dear Mr Watling,

Family Law Amendment (Family Violence and Other Measures) Bill 2017

Thank you for your invitation to comment on both the *Family Law Amendment (Family Violence and Other Measures) Bill 2017* and *Family Law Amendment (Parenting Management Hearings) Bill 2017*.

At the outset I need to make you aware that the Government of Tasmania has assumed a caretaker role due to the dissolution of the House of Assembly. Consequently, the comments contained in this correspondence provide agency officer perspectives but should not be seen to reflect Tasmanian government policy or positions.

The Bills have been reviewed within my agency, and there is only one matter on which we have any comment – that being the proposal within the *Family Law Amendment (Family Violence and Other Measures) Bill 2017* to make breaches of an injunction made for personal protection a criminal offence.

Although there may be merit in the principle of this proposal, the difficulties in the practical implementation make the proposed amendment less desirable. Our understanding of the proposal is that the proposed offence would be enforced primarily by State and Territory police, and if this were the case, primarily by general duties members. However, the Commonwealth criminal law is not something routinely used by these police members, and Commonwealth criminal procedure is substantially different from State criminal procedure in Tasmania.

These differences in procedure are not trivial. They relate to powers to identify persons (e.g. demand name and address), to search (including an entirely different search warrants regime), to arrest, investigative detention, interview procedures, and the taking of forensic samples. Consequently, enforcement of the proposed offence by State and Territory police would require general duties members to be trained in an entirely separate, but parallel, criminal procedure, the use of which may be extremely rare.

Further, the differences in Commonwealth and State/Territory criminal procedure are significant enough that they also affect other investigative procedures. For example, if forensic evidence, such as DNA, were required to link an offender to an offence, crime scene samples for this offence could not be placed on, or compared to, our Tasmanian DNA database.

As a consequence of these practical difficulties, it is difficult to support a proposal that would see a requirement for State and Territory police to routinely enforce the Commonwealth criminal law. This is especially the case when the requirement to utilise the offence would not be common, and the enforcement would be by general, rather than specialist, police members.

To overcome these difficulties, a potential alternative approach could be for the States and Territories to legislate to recognise personal protection orders as being equivalent to a local family violence order (or their equivalent in the particular jurisdiction). This would make any breach of the order a State/Territory offence and would eliminate the pressure of training every general duties police member on a parallel criminal procedure they would rarely use. However, this proposal is not something we have had the opportunity to consult on, and it may be that there are other approaches that could similarly simplify the identified issues.

Should you have any queries in regard to this submission, the appropriate contact officer within Tasmania Police is Senior Sergeant Luke Manhood. Senior Sergeant Manhood can be reached on _____ or by email at _____

Yours sincerely

D L Hine
COMMISSIONER OF POLICE