

19 March 2008

Mr Jonathan Clark
Secretary
Standing Committee on Law and Justice

Inquiry into the Prohibition on the Publication of Names of Children
Involved in Criminal Proceedings

Dear Mr Clark,

Thank you for your assistance with respect to my appearance, with my colleague Gary Charlesworth, before the Inquiry.

The Committee had asked that I respond further in relation to their concern as to the effect that any extension of the prohibition into the period prior to charge (hereafter “extension”) may have on police. This enquiry was made following the concerns I expressed that any extension would pose a legislative drafting challenge.

I reiterate that it is not the position of the NSWPF that an extension is opposed. It is the case however that the NSWPF would be concerned that any extension should not operate so as to hinder or restrict police in their legitimate investigation of possible offences.

Any extension would need to be carefully expressed in the legislation so as to exclude any police officer from its ambit when they are performing any law enforcement or investigative function that may relate to the subject child.

There has been some discussion as to the proper meaning of the terms “publication”, “published” and “broadcast” as they currently appear in s11 of the *Children (Criminal Proceedings) Act 1987*. The NSWPF respectfully submits that operational imperatives require, for example, that a child’s name may be broadcast over the police VKG network, or distributed by other electronic means that may then be transferred into hard copy form by police officers in the ordinary course of their duties. Such actions should not be considered to be a “publication” or a “broadcast”.

The NSWPF submits that the Act should make it clear, whether or not an extension is applied, that the following actions do not constitute a breach of s11 however it may be framed:

- Enquiring of a person as to the whereabouts of a child;
- Enquiring of a person as to their knowledge of any aspect relating to the child’s movements, history or features;
- Broadcasting the name and/or details of a child over any police network, electronic or otherwise, for legitimate law enforcement and investigation purposes;
- Publishing the name and/or details of a child to other police officers and NSWPF employees for investigation and/or law enforcement purposes;
- Undertaking any task in the course of a police investigation which might otherwise be a breach of s11; and

- Undertaking any task ordinarily associated with the Police Prosecutorial function in relation to court proceedings to which the child is a party and which might otherwise be a breach of s11.

These safeguards, if drafted into any amendment of s11, should alleviate the concerns of the NSWPF that their investigative and law enforcement tasks might unwittingly place individual officers in breach of the Act.

There remains a concern that there will need to be “certainty” attaching to the point at which a breach may occur. For example, if the NSWPF is conducting a covert investigation of a child, however a tip-off results in publication by a media agency, does this amount to a breach? When exactly does an investigation period start? Is it when the officer crystallises an intention to make an enquiry, or is when the first question is asked? The very nature of investigations is that identifying a commencement point in time can be very difficult. A further example may be that a constable makes a note in her notebook, however a formal investigation does not commence until some time later when another piece of evidence suggests the first notebook entry may have some relevance. These are issues that will require very careful consideration in any amendments to the Act.

The NSWPF would welcome the opportunity to assist this Inquiry again should there be any further points for clarification, and of course, we would wish to participate in any further review of this section resulting from the Inquiry’s findings.

Thank you again for facilitating the involvement of the NSWPF in this important Inquiry.

Yours faithfully,

Michael Antrum
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