



1 November 2006

Ms Jackie Morris
A/g Committee Secretary
Standing Committee on Legal and Constitutional Affairs
Parliament House
Canberra ACT 2600

C/- 5B, 414 Elizabeth Street,
Surry Hills, 2010
Phone: (02) 9211 5300
Toll Free: 1800 226 028
Fax: (02) 9211 5268
TTY: (02) 9211 0238
ABN: 76 002 708 714
www.welfarerights.org.au

Via email: LegCon.Sen@aph.gov.au

Dear Ms Morris

Re: Inquiry into the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget and Other Measures) Bill 2006.

The National Welfare Rights Network (NWRN) takes this opportunity to comment briefly on the above bill, however, based on our recent experience before Senate Committees, where even Government member recommendations have been ignored, we do so with reservations.

Nevertheless, given the experience of our clients in relation to matters raised in the legislation, and the significant dangers that the proposed changes present, we feel compelled to at least place on the public record our concerns and to put forward recommendations that could easily remedy the problems that we anticipate arising out of this legislation.

We urge the Committee to give serious consideration to our submission.

If we can be of further assistance to the Committee in its deliberations please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to read "M Raper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael Raper
President
National Welfare Rights Network

The NWRN is a network of services throughout Australia that provide free and independent information, advice and representation to individuals about Social Security law and its administration through Centrelink. For member details, services and information visit: www.welfarerights.org.au

Submission
from
the National Welfare Rights Network (NWRN)
to
Standing Committee on Legal and Constitutional Affairs
on
**Families, Community Services and Indigenous Affairs and Veteran's
Affairs Legislation Amendment (2006 Budget Measures) Bill 2006**

1 November 2006

1. The Government's proposal

In Schedule 2, the Government proposes to give Centrelink officers the power to obtain a warrant from a magistrate and, having done so, to be able to enter a premises, to search the premises for evidential material, and to seize things the officer believes are relevant to the alleged offence.

2. Problems with and objections to the proposal

2.1 National Welfare Rights Network opposes fraud

From the outset, the National Welfare Rights Network (NWRN) wishes to make it perfectly clear that we do not in any way condone illegal activity in the Social Security system or Social Security fraud in any shape or form. Our members are community legal centres committed to upholding the law and to ensuring that Centrelink upholds the law in its dealings with its clients.

2.2 Centrelink issues distinguishable

In this context, the NWRN believes that it would be a grave mistake to give Centrelink officers (as opposed to the police) the power to enter, search and seize, the private premises of a Social Security recipient.

Although bureaucrats from other Commonwealth Government agencies have similar powers to those being proposed for Centrelink, our assumption is that in the majority of cases such warrants are not used to search private premises, but rather workplaces, offices or places of business in search of relevant written material or documents (such as evidence that shows a person is working or is an unlawful in Australia). Where warrants are used to enter a private premises, the bureaucrat is also searching for paper evidence, written documents that are clear and definable.

The major distinguishing factor in this proposal is that, based on our experience and analysis, a likely and common use of the proposed search and seize powers would be in relation to Marriage-like Relationship investigations. These are highly sensitive, personal, intrusive and largely subjective matters that require a holistic decision to be made based on a number of criteria (eg social, financial, sexual and other relationships between the alleged partners where even proof that they live in the same premises is not proof of a Marriage-like Relationship).

Given the nature of these issues (see 3 below), and the track record of Centrelink (see 4 below), we believe that it is most inappropriate and dangerous to extend these powers to Centrelink officers. The powers should remain in the hands of the police and only the police who are highly trained and experienced in such matters (see 5 below).

2.3 A further distinguishing factor

A further distinguishing factor stems from the nature of Centrelink inquiries and the powers Centrelink already has to obtain information. The Explanatory Memorandum notes that the other Commonwealth agencies that use search and seize powers do so to assist administering their programs. ATO, DIMIA and the Child Support Agency all deal with avoidance issues, ie the citizen generally has something to gain by staying out of contact with the relevant agency.

Centrelink clients on the other hand need to remain in touch in order to continue to receive their benefit. Centrelink makes mainly administrative decisions based on evidence from banking institutions, Lands & Titles Offices, employers, universities and other such institutions. Information from these organisations is readily available under the provisions of s192 of the *Social Security (Administration) Act*, 1999 and the general power to obtain information. Because of the need to be in contact in order to receive a payment there is no decision which is so urgent that it can not be satisfied under this section.

3. The nature of Marriage-like Relationship issues

We have particular concerns regarding the prospect of Centrelink officers being able to obtain warrants to search a person's home for evidentiary material pertaining to an investigation of whether they are living in a "marriage-like" relationship (generally relating to whether a woman on Parenting Payment is "falsely" claiming to be single).

An investigation of whether a person is living as a single person or as a member of a couple is qualitatively different to an investigation concerning possible identity fraud involving multiple Social Security claims, or concealing employment by working under a false name. Unlike a multiple identity investigation, for which the probability of establishing fraud upon obtaining the evidence sought is quite high, whether or not a person is living in a Marriage-like Relationship, whatever the evidence, is in itself a subjective matter and establishing evidence of co-habitation is only part of the consideration. While the type of evidential material relevant to identity fraud involves documentary material of a specific nature (eg, multiple identity pension cards, or employment records under an assumed name), to which a warrant application can make specific reference, "evidence" that a person has a partner is by its very nature non-specific, complex and all-encompassing.

Most importantly, children can be affected by such investigations. In our experience, Australian Federal Police (AFP) searches regarding whether a person is living with a partner may involve the seizure of a broad range of a family's personal items which may include children's belongings. Evidence seized can include diaries, personal correspondence (letters, greeting cards, party invitations), with attempts to identify clothing potentially belonging to the alleged partner. This is highly intrusive and distressing for the families involved.

4. Centrelink's track record

The NWRN, its members, and we would suggest, the wider community, does not have the confidence in Centrelink to fairly, impartially and sensitively exercise the powers proposed by the Government in this Bill. A look at Centrelink's track record substantiates this. A few examples are set out below to indicate the problems and our concerns.

Centrelink's records are full of errors; and this is according to their own internal review mechanisms. According to Australian National Audit Office Audit Report No. 43, 2005-06, into the *Random Sample Survey (RSS)* results for 2004-05, the 10,048 records randomly selected for review revealed that 45 per cent of records contained at least one error and 30 per cent of records contained an error that had a dollar impact.

Further, according to the Australian National Audit Office Audit Report no. 29, 2005-06, *Integrity of Electronic Customer Records, Centrelink* one in two Centrelink records contained an error. The ANAO report found a disturbingly high level of inaccuracy in Centrelink's record keeping systems, which revealed a range of systemic and operational shortcomings. Up to 20 per cent of proof of identity information was insufficient or unreliable, up to 500,000 (3 per cent) clients had multiple Customer Reference Numbers, up to 7,000 people shared a tax file number, and in 42 cases, a person's date of birth and date of death were the same.

Centrelink itself reported recently that 585 Centrelink staff had been sanctioned for privacy violations, 19 had been dismissed and a further 92 had resigned.

On the specific issues surrounding Centrelink and Marriage-like Relationships (MLR), the NWRN is on record with our serious concerns about the behaviour of Centrelink staff who undertake investigations into alleged MLR's. We have lodged a number of specific complaints with both Centrelink and the Commonwealth Ombudsman where highly inappropriate behaviour has occurred, many of which individual cases have highlighted systemic problems with current MLR investigation practices.

NWRN meets with Centrelink to discuss problems and progress in this area on a regular basis. Recently, Centrelink has put in place mechanisms to address the problems which they agree are unacceptable, but there is still a long way to go in ensuring that Centrelink processes and procedures around investigations into MLR's are conducted in a fair, impartial and non-threatening manner. It is also worth noting that complaints to the Commonwealth Ombudsman's office led it to undertake an Own Motion investigation into policy around MLR's, the report from which is expected to be released shortly.

Until Centrelink has shown that it can properly exercise its current powers in administering Social Security payments, particularly in relation to MLR's, it should not be granted such a significant increase in its powers as envisaged in the Bill.

5. Powers should remain with the police

We propose that given these issues, it is crucial that any such searches of people's homes should continue to be conducted with the utmost professionalism and care. The AFP has the required training to fulfil this function properly. In addition to the police training and experience in such matters, there is also a widespread

understanding in the Australian community that police have the power to enter, search and seize on the production of a warrant. It is not known by many, if any, that some bureaucrats also have this power, (but not yet in Social Security matters). We would anticipate enormous conflict and misunderstanding, and perhaps even violence, if Centrelink officers were to turn up at a private residence brandishing a search warrant and demanding to enter the premises to investigate a Marriage-like Relationship matter.

In addition, under the proposed arrangements, there is no mechanism for overseeing the activities of Centrelink in relation to the use of the search and seize powers. Given the significance of allowing Centrelink to enter into a person's private premises without their permission, it is imperative that measures be put in place to monitor the use of these powers.

6. Recommendations

- 6.1 That Schedule 2 be removed from the Bill.
- 6.2 That, if Schedule 2 is to remain in the Bill, it be amended so that any search and seize power that is extended to Centrelink officers is limited to non-residential premises.
- 6.3 That any search and seizure powers granted to Centrelink not exceed the powers available to the Australian Federal Police.
- 6.4 That Centrelink be required under the legislation to maintain a record of its exercise of these intrusive powers and to report to Parliament annually on the full use and effectiveness of the powers.
- 6.5 That an independent system of oversight be established to monitor the use by Centrelink of search and seizure powers.