



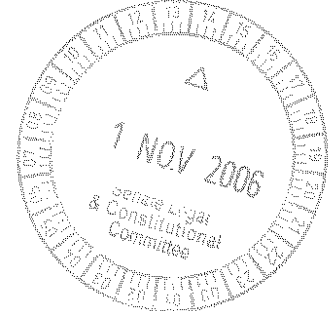
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Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House
CANBERRA ACT 2600



By Facsimile (02) 6277 5794

Dear Sir/Madam

Re: Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation (2006 Budget Measures) Bill 2006

I refer to the current inquiry by the Senate Legal and Constitutional Affairs Committee (the Committee) in respect of the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation (2006 Budget Measures) Bill 2006* (the Bill).

Schedule 2 of the Bill is, as stated in the Explanatory Memorandum, intended to provide "... search and seizure powers for authorised officers under family assistance law, social security law and the Student Assistance Act 1973." The Memorandum continues "...This [measure] will allow these officers to effectively investigate and prosecute offences in regard to programs administered under those provisions."

The Commission's legal practitioners and para-legal staff have involvement with family assistance and social security issues through a telephone and face to face general advice service, as well as a specialist advice service for Centrelink matters. In addition, the Commission provides legal assistance for representation by lawyers, in accordance with guidelines laid down by the Commonwealth, to eligible persons who have been charged with fraud and other offences under social security law.

Given the above, the Commission wishes to provide several comments to the Committee in relation to the proposed search and seizure provisions set out in Schedule 2 of the Bill. The comments are:

1. The Explanatory Memorandum refers to the fact that other Commonwealth agencies, such as the Health Insurance Commission, the Australian Taxation Office, the Child Support Agency and the Department of Immigration and Multicultural Affairs have search and seizure powers.

However, it is submitted that clients of the abovementioned agencies often seek to avoid contact with them and hence, it is considered, there is a more transparent need for search and seizure powers in those cases. On the other hand, clients of Centrelink need to remain in touch with that agency to maintain their eligibility for payment and, in those circumstances and having regard to the fact that the clients generally represent a section of the community at the lower end of the economic scale, it is arguable that the use by the agency of the existing information collection provisions of the *Social Security (Administration) Act 1999* ought to be sufficient.

2. A submission by the Federal Privacy Commissioner dated 3 August 2004, to an Inquiry into the Government's Response to the *Fourth Report: Entry and Search Provisions in Commonwealth Legislation* by the Senate Standing Committee for the Scrutiny of Bills (the OFPC Submission), endorsed the need for appropriate justification and proportionality in the grant of search and entry powers. Given that any debt to the Commonwealth, arising from Centrelink matters can be recovered via the normal debt recovery process, including deductions from future benefit entitlements, it is submitted that the provision of search and seizure powers, at the agency officer level, are not proportionate to the risks involved for the Commonwealth and are therefore not needed.
3. The OFPC Submission also noted that ensuring public trust in the grant and exercise of intrusive powers requires the highest practicable degree of transparency. These included the need for each agency to maintain a centralised record of its exercise of intrusive powers and agencies reporting to Parliament annually on the effectiveness of such powers. Such requirements do not appear to be referred in the Bill.
4. Under the proposed definition of an "authorised officer" (being an officer who may execute a search and seizure warrant) there appear to be no prerequisites in terms of the selection, qualifications and training of such persons. It is arguable, in the Commission's view, that consideration should be given to setting appropriate qualifications and training requirements for such staff if the changes are to be introduced.
5. It is noted that the proposed new section 103K(3) of the *Family Assistance Administration Act* allows the signature of the Magistrate who issues a warrant for search and seizure to be removed from the copy. This would appear to raise the need for measures to be in place to avoid the, albeit unlikely, unscrupulous use of warrant forms which have not been properly issued by a Magistrate.
6. The OFPC Submission also stated that "... legislation granting agencies power to seize materials should contain a requirement that incidentally collected third party personal information be destroyed by the agency as soon as practicable or when operational necessities permit." The Commission supports that approach and, if the search and seizure amendments are made, submits that adequate safeguards in respect of such third party personal information should be included.

In conclusion, Centrelink's Annual Report for 2003-04 states:

"Centrelink's mission, as the human face of the Australian Government, is to provide easy and convenient access to high quality government and community services that improve the lives of Australian families, communities and individuals".

The effect of the operation of the proposed search and seizure powers, as set out in Schedule 2 of the Bill, could be regarded as being inconsistent with the mission statement. Accordingly, and having regard to the comments above, the Commission queries the need for, and appropriateness of, the proposed new powers.

I trust the above comments will be of assistance and, should further information be required, please do not hesitate to contact me. The Commission would also welcome the opportunity to further participate in the consideration of these matters should there be the opportunity.

Yours sincerely



HAMISH GILMORE
Director