

Submission to the Inquiry by the Senate Legal and Constitutional Affairs
Committee into the *Families, Community Services and Indigenous Affairs
and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill*
2006



Presented by

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Introduction

The Students' Representative Council (SRC) of the University of Sydney welcomes the opportunity to present a submission to the Inquiry by the Senate Legal and Constitutional Affairs Committee into the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006*.

The SRC is the representative body for all undergraduate students at the University of Sydney. The SRC provides students with welfare and advocacy services, including information and advice on Centrelink payments, benefits and concession cards.

Whilst the SRC welcomes certain provisions in the Bill, notably the expanding of the eligibility criteria for the crisis payment to those people experiencing domestic violence, the SRC is deeply concerned over Schedule 2 of the Bill, which will grant search and seizure powers to authorised Centrelink officers.

The SRC does not support this provision. The powers of search and seizure should never be granted without demonstrating a clear and overriding public interest, and the SRC is not satisfied that the Government has made such a case. Furthermore, notwithstanding the lack of a reasonable basis for the Government to confer search and seizure to Centrelink officers, the SRC is concerned over the potential abuse of these powers.

The SRC argues that the Government's present emphasis on detection, investigation, and prosecution of fraud is preventing the development of strategies to minimise the unlawful payment of benefits. It is the experience of the SRC that Centrelink overpayments commonly result from recipients failing to disclose changes to personal circumstances governing eligibility and payability. An understanding of this failure is needed.

Rationale for the Granting of Powers of Search and Seizure.

All people have a fundamental right to the security of their residence. No government should intrude on this right without demonstrating a clear public interest - that is, a public interest which is greater than the public interest in the individual's security of their residence. As the Senate itself has noted:

It is often said that empowering such authorities to enter and search private premises involves striking a balance between two competing public interests. There is a public interest in the effective administration of justice and government. However, there is also a public interest in preserving people's dignity and protecting them from arbitrary invasions of their property and privacy, and disruption to the proper functioning of their businesses and work.

Neither of these interests can be insisted on to the exclusion of the other¹
In granting powers of search and seizure to Centrelink, the Government is therefore required to demonstrate that the degree of intrusion will be outweighed by outcome of this intrusion. The SRC argues that the Government has not met this requirement.

The Second Reading speeches by Government members in respect of the Bill are here telling. The Minister for Families, Community Services and Indigenous Affairs argued that the powers provided at Schedule 2 of the Bill 'will enhance Centrelink's capacity to detect and investigate serious and complex cases of fraud'². Yet the granting of powers of intrusion cannot be justified by mere efficacy. Elsewhere, Government members have argued that the provision for search and seizure powers 'sounds pretty horrendous... but is really a protection measure'³, for use in 'protecting the integrity of the payment system'⁴, that has 'come about to further prevent defrauding of social security'⁵.

Such comments would suggest that social security fraud is epidemic in Australia. However the Government's own data reveals that social security fraud in Australia is minor. In 2004-05, Centrelink reported around 3400 fraud convictions, representing a debt amount of around \$41 million. With 6.5 million people receiving a total of \$63 billion in program payments, the incidence of fraud is thus around half of one percent, and the accompanying debt less than three-quarters of one percent of total program payments.

This very low incidence of Centrelink fraud - among the lowest in the world - has escaped acknowledgment by the Government in its arguments for conferring search and seizure powers to Centrelink.

Moreover, Centrelink already has effective resources for the detection and investigation of social security fraud, and it would appear that the Government is increasing such resources, having announced earlier this year the plan to recruit 380 staff across Australia to work in the roles of 'Fraud Investigators, Review Officers, Analysts and Intelligence Specialists'⁶.

The Explanatory Memoranda to the Bill also notes Centrelink's investigative capability now includes a 'significant increase in focus on addressing the cash economy and identity fraud'. Identity fraud is of course a serious matter, but the Government has not provided any data in respect of the incidence of identity fraud in securing Centrelink payments.

¹ Entry And Search Provisions In Commonwealth Legislation, The Fourth Report of 2000, Senate Standing Committee For The Scrutiny Of Bills

² Second Reading Speech by the Minister for Families, Community Services and Indigenous Affairs, 14 September 2006.

³ Second Reading Speech, Member for Herbert, 11 October 2006.

⁴ Second Reading Speech, Member for Parkes, 11 October 2006.

⁵ Second Reading Speech, Member for Greenway, 11 October 2006.

⁶ 'Can You Catch Welfare Cheats?', Media Release by Minister for Human Services, 28 July 2006.

The Government has simply failed to make a case for granting search and seizure powers to Centrelink.

The Exercise of the Powers of Search and Seizure

Notwithstanding the lack of a reasonable basis for the Government to confer search and seizure powers to Centrelink officers, the SRC is concerned over the potential abuse of these powers.

Ensuring public trust in the exercise of powers of search and seizure requires the highest degree of transparency. Given that the proposed powers will potentially apply to the 2.2 million households on family tax benefits, and those on unemployment benefits, student payments, disability benefits and the age pension, the requirement for transparency is paramount.

Schedule 2 of the Bill does not provide for any oversight of the use of these powers. The SRC argues that at a minimum Centrelink should maintain a centralised record of its use of the powers of search and seizure, and report annually to Parliament on the effectiveness of these powers. The SRC notes that the Health Insurance Commission is directly accountable to the Parliament through a mandatory annual report on its use of its investigatory and entry powers.

The SRC is also not satisfied that the powers of search and seizure will be exercised by appropriately trained people. The SRC may not share the blunt assessment that the Bill will ‘allow the powers to go to little pettifogging officials’⁷, but nonetheless argues that these extensive powers should only be exercised by people with training comparable to that of the officers of the Australian Federal Police.

Conclusions

The SRC is concerned that the Government’s emphasis on detection, investigation, and prosecution of fraud is preventing the development of strategies to minimise the unlawful payment of benefits. The SRC argues for the use of proactive strategies to prevent fraud rather than relying on the essentially reactive emphasis.

It is the SRC’s experience that Centrelink overpayments commonly result from recipients failing to disclose changes to personal circumstances governing eligibility and payability. The SRC argues that the unacceptable levels of financial hardship among Centrelink

⁷ Second Reading speech, Member for Kennedy, 11 October 2006.

recipients⁸, together with a dissociation engendered by an increasingly ‘compliance’ oriented Centrelink, may account for this failure. Social security policy should of course be economically sound, but it should also be attuned to social and psychological contexts.

In an era of ‘mutual obligation’, the Government’s demonstration of its own trustworthiness is a necessary condition for its expectations of compliance from social security recipients.

⁸ A Senate Inquiry in 2004 found that 21% of Australians were surviving on less than \$400 per week