



**Australian Government**

**Department of Families, Community Services  
and Indigenous Affairs**

**THE SECRETARY**

Box 7788 Canberra Mail Centre  
ACT 2610

Telephone 1300 653 227

TTY 1800 260 402

Facsimile (02) 6244 7983

E-mail [jeff.harmer@facs.gov.au](mailto:jeff.harmer@facs.gov.au)

[www.facs.gov.au](http://www.facs.gov.au)

Ms Jackie Morris  
Secretary  
Senate Standing Committee on Legal and Constitutional Affairs  
Department of the Senate  
Parliament House  
CANBERRA ACT 2600

Dear Ms Morris

Thank you for the opportunity to provide the Committee with a submission in regard to Schedule 2 of the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006*. Schedule 2 of this Bill relates to search and entry of premises by Centrelink and departmental staff investigating possible breaches of the social security and family assistance laws.

I enclose a copy of the submission in relation to this matter. Please contact Mr Glyn Fiveash (02 62446132) from my Department if you have any queries.

Yours sincerely

Dr Jeff Harmer

November 2006

*Department of Families, Community Services and Indigenous Affairs Submission to the Inquiry into the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006*

We note the referral of the above Bill (the Bill) to the Senate Legal and Constitutional Affairs Committee and welcome the opportunity to provide further explanation of the importance of the proposed powers in Schedule 2 of the Bill and the corresponding measures to safeguard the civil liberties of Australian citizens.

The Bill contains four schedules. While this submission only addresses Schedule 2 of the Bill, the other Schedules provide for the following amendments:

- Schedule 1 amends the social security means testing rules in regard to the amount of asset-test exempt curtilage around a person's principal residence;
- Schedule 3 provides new qualification rules for crisis payment; and
- Schedule 4 introduces a number of minor information gathering measures, designed to assist with social security and family assistance compliance issues.

The Australian Government's Human Services agencies (including Centrelink) between them deliver over \$90 billion of payments and services to Australians each year, across a broad range of programmes and on behalf of a number of policy departments.

In order to protect the integrity of those payments and services, fraud and compliance activities have been targeted to protect the very substantial outlays of taxpayers' funds associated with those services. The importance of fraud and compliance activities in relation to social, health and welfare related services is illustrated by over \$1 billion in savings annually.

In implementing the Australian Government's fraud and compliance activities, agencies have regard to the *Commonwealth Fraud Control Guidelines* (the Guidelines) which make clear that agencies are responsible for preventing and detecting fraud. The Guidelines state that fraud is of major concern to the Australian Government and that prosecution of fraud offences is vital to fraud deterrence. It is clear that the community also expects a strong and effective fraud and compliance regime.

The fraud and compliance strategies have been built upon the following four key inter-related principles of:

- **Prevention** – to have systems and procedures in place that minimise the risk of fraud and incorrectness, for example, stringent proof of identity requirements;
- **Detection** – to detect fraud and incorrectness at the earliest possible stage using a range of techniques including data matching, tip-offs from independent sources, and cross-agency collaboration directed towards identifying inconsistent and incorrect information;
- **Deterrence** – to deal publicly and decisively with the cases which are detected, thus creating recognition of the risks and penalties involved in attempting to defraud the Commonwealth, and in order to promote voluntary compliance; and
- **Recovery** – to ensure all reasonable steps are taken to recover payments made where the entitlement to them did not exist.

The powers in Schedule 2 of the Bill are necessary to implement part of the Australian Government's Enhanced Focus on Serious Social Security Fraud measure which is directed to addressing more serious fraudulent activity. Total savings from the measure are estimated at approximately \$150 million over the next four years.

### **Current Centrelink fraud investigation**

In the absence of voluntarily provided information, evidence seized under search warrant is often the only mechanism for Centrelink to fully investigate suspected fraud and secure a conviction in more elaborate and complex cases of fraud, particularly more serious fraud cases involving the cash economy, employer collusion and identity fraud. Centrelink's experience indicates that evidence of these types of fraud may be compromised if the acquisition of evidence is delayed because of actions by the accused. Accordingly, timely access to evidence is imperative to the successful investigation and ultimate prosecution of the most serious suspected fraud.

Under current arrangements, Centrelink is dependent upon the Australian Federal Police (AFP) or other State or Territory agencies to obtain search warrants. Historically, many search warrants have been executed by AFP officers, often with the assistance of Centrelink officers. While we receive cooperation from the AFP, it is now clear that it has an enlarged agenda to work on as a result of terrorism. In order to maintain integrity and public confidence in the welfare system we consider it prudent for departments and Centrelink to undertake investigations in their own right.

For example, Centrelink identified suspicious activity operating within a particular industry in October 2004. However, without the necessary powers to pursue the matter, the investigation waited for 13 months to piggy back onto a State operation before it was able to proceed. This State-based exercise involved around 100 customers who had under-declared their income. The exercise ultimately resulted in savings of around \$1 million.

### **Proposed powers**

The Bill will enable authorised officers to investigate more serious and complex frauds and reduce reliance on other Australian Government and State/Territory agencies for the timely investigation of suspected fraud.

The proposed powers will permit officers of either Centrelink or a department to apply to a Magistrate for a search warrant when they have reasonable grounds for suspecting that there is, or there will be in the following 72 hours, evidence of a breach of fraud provisions in the *Criminal Code Act 1995* or of the social security laws.

Additional powers also allow officers to enter premises where they have suspicion that evidential material may be on or in the premises and the occupier consents to the entry. Permission to enter on these grounds can be revoked at any time.

## Comparable legislation

These powers, if granted, would comply with established Commonwealth criminal law policy. Accordingly, the powers are similar to powers granted to more than a dozen other Australian Government agencies and departments, including the Department of Environment and Heritage, Department of Communications, Information Technology and the Arts, Medicare Australia, Integrity Commissioner, Department of Agriculture, Fisheries and Forestry, Department of Transport and Regional Services, Australian Securities and Investment Commission, Australian Transport Safety Bureau, Australian Prudential Regulation Authority, Department of Health and Ageing, Australian Customs Service, and the Department of Education, Science and Training.<sup>1</sup>

We note that the Bill proposes greater safeguards than a range of similar powers currently in legislation which are exercisable without judicial warrant, for example in relation to tax, corporate regulation and insurance regulation, consumer protection, transport safety and child support matters.<sup>2</sup>

## Safeguards

As a matter of law all search warrants, before they can be executed, will require the approval of a Magistrate on information provided by an authorised officer on oath or affirmation.

Only a limited range of officers will be able to use these new enforcement powers, being those who have been expressly authorised by the Secretary for this purpose, and where the Secretary considers that such officers possess suitable qualifications or experience. It is proposed that an ongoing training programme will be developed for these officers, and that a pre- and post-warrant reporting and quality assurance assessment programme will be established.

Additionally, search warrants must state an expiry time and may limit the hours during which the warrant must be executed – eg between 0900 and 1700 hours. The Bill also requires officers applying for a warrant to disclose details of any other warrant in respect of the same premises that the officer has applied for in the preceding five years, ensuring there is a check on repeated searches of particular premises.

---

<sup>1</sup> Department of Environment and Heritage (*Fuel Quality Standards Act 2000*, s43), Department of Communications, Information Technology and the Arts (*Telecommunications Act 1997*, s547A), Medicare Australia (*Medicare Australia Act 1973*, s8X), Integrity Commissioner (*Law Enforcement Integrity Commissioner Act 2006*, s108), Department of Agriculture, Fisheries and Forestry (*Quarantine Act 1908*, s66AF), Department of Transport and Regional Services (*Motor Vehicle Standards Act 1989*, s30), Australian Securities and Investment Commission (*Australian Securities and Investment Commission Act 2001*, s35), Australian Competition and Consumer Commission (*Trade Practices Act 1975*, s65Q), Australian Transport Safety Bureau (*Transport Safety Investigation Act 2003*, s.35), Australian Prudential Regulation Authority (*Insurance Act 1973*, s115A), Department of Health and Ageing (*Aged Care Act 1997*, s92-2), Australian Customs Service (*Customs Act 1901*, s198), Department of Education, Science and Training (*Education Services for Overseas Services Act 2000*, s137).

<sup>2</sup> *Aged Care Act 1997*, *Child Support (Registration and Collection) Act 1988*, *Income Tax Assessment Act 1936*, *Taxation Administration Act 1953*, *Australian Securities and Investments Commission Act 2001*, *Trade Practices Act 1975*, *Transport Safety Investigation Act 2003* and the *Insurance Act 1973*.

The Bill establishes the right of occupiers of warrant premises to observe searches and imposes clear obligations on officers executing warrants to announce execution of the warrant, to identify themselves to occupiers of warrant premises and to show the warrant to occupiers of such premises.

Should there be any misconduct by authorised officers, there are offences in relation to the entry and search of premises. Each of the offences carries a penalty of two years imprisonment.

In addition to the safeguards imposed by the legislation, policy guidelines will be developed to ensure the necessary balance between the integrity of outlays and citizens' rights to privacy.

Commonwealth legislation permitting Australian Government officers to conduct searches at premises have numerous safeguards. The safeguards in the Bill are at least as rigorous as the safeguards in place for similar powers in other legislation exercisable under warrant, and in a number of cases better protect the rights of individuals in respect of the exercise of those powers in other legislation.<sup>3</sup>

---

<sup>3</sup> Eg, the power to issue warrants to APRA under the *Insurance Act 1973* is conferred on Justices of the Peace.