



Australian Government

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

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

Dear Ms Morris

I refer to the Committee's hearing on Friday 10 November 2006 in relation to the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006*, and particularly the Questions On Notice that you sent to my Department in this regard.

I attach the answers to these questions, which I am transmitting on behalf of Centrelink.

Please do not hesitate to contact Mr Glyn Fiveash (02 62446132) from my Department if you have any queries.

Yours sincerely

Dr Jeff Harmer

9 November 2006

CENTRELINK RESPONSE TO QUESTIONS ON NOTICE
Senate Committee on Legal and Constitutional Affairs Inquiry into the
Families, Community Services and Indigenous Affairs and Veterans' Affairs
Legislation Amendment (2006 Budget Measures) Bill 2006 (the Bill).

1. *On page 2 of its submission, the Department refers to an investigation in October 2004 which, because Centrelink did not have the power to pursue the matter, had to wait 13 months to piggy back onto a State operation in order for the investigation to progress. Please provide the committee with further information in relation to this investigation, specifically:*

a) *Which State agency was involved?*

Answer: Victoria Police, in 2005.

b) *Was the decision to wait 13 months to piggy back onto the State operation a decision by the State agency or by Centrelink?*

Answer:

The operation in October 2004 targeted a large property involved in the harvesting industry. Previous operations in the region and other intelligence indicated a high proportion of Centrelink customers in the workforce that were suspected of not declaring their earnings. Centrelink sought permission to enter from the legal owner of the property and was refused.

By the time access to the property was denied the harvesting season was coming to a close, and in these circumstances, Centrelink did not pursue a warrant because it would not have been able to be executed in time. The investigation was then progressed in November 2005 when harvesting began again in that region.

In any investigation timeliness is critical. A delay of even a few days can impact success, for example where the delay results in the evidence no longer being available. Time delays in execution also risk compromise of the secrecy required for fraud investigations.

Many of these investigations require action at short notice and it would be unreasonable for Centrelink to expect the AFP to be able to immediately execute a search warrant, particular in light of its present priorities and coverage across rural and regional Australia. This is consistent with the priorities set by the Australian Federal Police Commissioner.

Given emerging trends in fraud activity, such as the cash economy and unexplained wealth, the Government has resourced Centrelink to enhance its fraud investigation capability. It now needs the capacity to consider execution of warrants as an option in investigating suspected serious fraud.

In order to collect information that would substantiate undeclared employment Centrelink most often elects to employ less intrusive investigation methods. However, these powers need to be available where it is the only effective option. If the powers sought had been available to Centrelink at the time of the above operation they would have been considered as an option early in the planning process.

2. Could you provide the committee with details of all instances in the last 3 years where warrants have not been able to be obtained in sufficient time for Centrelink to investigate potential breaches of social security law. In particular, for each occasion, could you provide the committee with the information on the nature of the warrant sought, and whether the search was for a private dwelling, an office, a workplace, or other premises?

Centrelink does not have a central database collating the number of cases where warrants have not been able to be obtained. This would require manual collection, which has not been possible in the time frame.

Over recent years the resources of the Australian Federal Police (AFP) have been increasingly focused on matters that are rated high under their Case Categorisation and Prioritisation Model (CCPM) eg international terrorism, national security, real threat to life, and economic crime. The types of offences committed against Centrelink are mostly rated 'low' against the CCPM.

Against this environment the Government has resourced Centrelink to train its fraud investigators to handle cases that may have been referred to the AFP in past years. There is an increasing number of more serious cases involving cash economy operations and identity fraud that require the execution of a search warrant.

The majority of warrants executed by the AFP have been obtained for identity fraud or cash economy investigations. For example, since 1997 a Fraud Investigation Team in a Centrelink Area has drafted 69 search warrant affidavits, of which 75 per cent related to identity fraud (eg. searches in private residences or offices) and the remaining 25 per cent to cash economy investigations (eg focussed on self-employed business operators).

Under existing arrangements Centrelink prepares the affidavits setting out the allegations and the evidence sought for presentation to a magistrate when applying for a search warrant. This information needs to be sufficiently strong in order to obtain approval from the magistrate.

At the moment the warrant can only be executed by the AFP. The powers being sought would enable Centrelink to respond promptly and efficiently to situations which require execution of a search warrant and would enhance overall fraud investigation capability.

To provide an example, a cash economy operation, conducted in February 2005, resulted in 7 convictions with sanctions ranging from good behaviour bonds to imprisonment. Critical to the success of this operation was the use and execution of a search warrant. A complicit employer provided inaccurate and misleading information to Centrelink's standard requests for information.

The search warrant was executed after a twelve month delay and the place of employment searched. As a result two contradictory sets of wage records were seized. This evidence was crucial to the prosecution's case as it clearly demonstrated a collaborative and systematic falsification of wage records.

Given delays and the substantial evidentiary base, Centrelink conducted surveillance on the property. As the warrant could not be executed at the time the Commonwealth

had to conduct surveillance again. The total amount of overpayments raised as a result of this operation is \$232,842. It is estimated that overpayments for customers could have been reduced by up to 30-50 per cent.

3. *What type of evidence would be jeopardised if Centrelink (sic) were not granted the search and seizure powers in the bill?*

Answer: Under the proposed powers Centrelink would seek documentary and electronic evidence to confirm whether fraudulent activity exists. This could include pay records, identity documents, computer records, banking records, drivers licenses, social security documents, employment records, utility and telephone accounts, rental agreements and loan agreements. These types of evidence may be concealed, lost or destroyed if the person or business becomes aware of the investigation. This loss can jeopardize the ability to finalise an investigation. Further detail about the specific types of evidence is at Attachment A.

4. *Has consideration been given to less intrusive means of obtaining this evidence?*

Answer: Yes. There is a range of avenues which Centrelink explores at the point of identifying potential fraudulent activity. This includes initial suspicions and/or allegations that may arise through data-matching, intelligence gathering including collaboration with other government agencies, staff observation and information from the public.

In cases where Centrelink suspects there is fraud, the evidence may be gathered through:

- Computer based investigations eg Centrelink's own records; Commercial databases such as Baycorp, Births, Deaths & Marriages, Property records, etc; Australian Transaction Reports and Analysis Centre (AUSTRAC).
- Written and/or verbal requests for information from third parties eg Past and present employers; Government agencies; Real Estate agencies; Financial Institutions; Suppliers.
- Covert Optical Surveillance where appropriate.

In the absence of voluntarily provided information, evidence compulsorily seized is the only mechanism for Centrelink to fully investigate suspected fraud and secure a conviction.

5. *What areas of investigation do the Department/ Centrelink envisage that warrants under the bill will be required to investigate?*

Answer: Warrant powers would only be used in circumstances where there is a criminal investigation underway in respect to a suspected fraud against the Commonwealth. Centrelink would be able to use warrants to gather evidence in respect to a fraud against any benefit that Centrelink administers.

Warrants would not be used in any other circumstances, for example warrants would not be used for the purpose of gathering information simply to raise a debt or to conduct a compliance review.

Warrants could only be issued by a Magistrate where they are satisfied that there are reasonable grounds for suspecting that there is evidentiary material on the premises that will afford evidence as to the commission of specific criminal offences.

The requirement for a Magistrate's authorisation represents a significant protection to ensure that warrants are not granted inappropriately.

The circumstances where a warrant is preferred as opposed to other information gathering powers or consent, are circumstances where the person is suspected of fraud, has already demonstrated a level of dishonesty and there is an associated high risk of the loss or destruction of evidence should the person become aware of Centrelink's investigation.

Centrelink has extensive experience working in the investigative environment and its investigators undertake criminal investigations in respect to frauds against all of the programs that Centrelink administers including assisting the AFP in the execution of search warrants.

6. *What areas of investigation does the Centrelink currently use the AFP and State agencies to obtain warrants for? Specifically, for the last 3 years could you tell the committee:*

- a) The number of warrants sought.*
- b) The type of warrants sought, including the type of building or dwelling or other premises that was to be searched.*
- c) Whether it was the AFP or a State agency that assisted in obtaining the warrant.*
- d) Whether the Centrelink investigation piggybacked on an AFP or State agency operation.*

Answer:

(a) As indicated earlier, Centrelink does not have statistical information about numbers of warrants sought; the primary investigation areas relate to identity fraud and the cash economy for small self-employed operators.

(b) The type of warrants sought relate to residential premises, commercial premises, conveyances and/or persons. Recent years have seen a trend in the increased use of labour hire companies and subcontractors. These employers tend to operate as low overhead operations that tend to change ownership or management structures regularly which presents a risk of lack of continuity of business records over time. Access to the "bookwork" of such organisations is thus a time critical matter.

(c) Assistance in executing a warrant is only provided by the AFP.

(d) As an alternative to seeking warrants, Centrelink has over the last few years participated in joint operations with other agencies that have the necessary powers to search and seize or enter to examine and copy. Centrelink has participated in these operations as an invitee and questions have arisen over the admissibility of evidence obtained when the operation has been conducted under another agency's powers. In these cases there is extra work involved caused by having the information stored at another agency's office. There may be issues relating to the possibility of breaks in the continuity of evidence because of multiple handling through different agencies.

7. *How is material that is seized to be reported? How is material that is seized to be kept and secured? Is material that is seized to be destroyed? Is material that is seized to be returned to the owner?*

Answer: Procedures in relation to the handling of evidence would be developed in accordance with the standards set down by the Australian Government Investigations Standards (AGIS) package. The AFP website states that AGIS has been developed for all Australian Government agencies to further enhance their investigative practices, and are the standards used by the AFP when undertaking quality assurance reviews as required by the Commonwealth Fraud Control Guidelines. AGIS includes the requirement that the security and continuity of exhibits must be maintained at all time. It is envisaged the AFP and / or Attorney-General's Department would be consulted during the development of these procedures.

8. *Could you provide the committee with the number and type of referrals Centrelink have made to the DPP for fraud-like matters in the last 2 years? In particular, for how many of these referrals were warrants either required, sought or used to obtain material? Could you give the committee a breakdown of those statistics (ie the number of matters where a warrant was required; the number of matters where a warrant was sought; and the number of matters where the warrant was used?)*

Answer: (a) In 2004-05 Centrelink referred 4702 matters to the Commonwealth DPP for consideration of prosecution action. The figure for 2005-06 was 3961. Centrelink does not keep statistical information about whether warrants were sought or used. Any further information would need to be collated from a manual case-by-case examination of the files.

9. *In the last 2 years, for investigations where no warrant was used to obtain material, how many referrals from Centrelink have the DPP not pursued because it was the DPP's opinion there was a lack of evidence?*

Answer: The DPP does prosecute the majority of cases referred by Centrelink. In 2004-05 the DPP prosecuted 3511 cases and in 2005-06, 2885 cases. Over these two financial years the DPP have not pursued approximately 700 cases because in the DPP's opinion there was a lack of evidence.

The Commonwealth Director of Public Prosecution's (CDPP) opinion is that a Centrelink investigation should be conducted like any other criminal investigation. If a search warrant is appropriate when endeavouring to gather evidence (eg identify fraud cases) this avenue should be used. The timely use of search warrants would result in fewer cases rejected by the CDPP, due to a lack of evidence.

10. *Could you provide the committee with the following information in relation to outcome of matters that Centrelink has referred to the DPP in the last 2 years:*

- a) What breaches of social security law have been found to have occurred?*
- b) In how many matters has a criminal sanction been imposed?*
- c) How many of these matters have been settled by Centrelink prior to, or in the course of, a hearing?*

Answer:

(a) In the previous two financial years there have been 6,268 convictions for breaches of Social Security Law, Crimes Act 1914/Criminal Code Act 1995 or the Student Assistance Act. There are a number of possible offences under each of these laws and without examining each individual case it is not possible to indicate to which law the breaches relate.

(b) In the previous two financial years approximately 7,820 criminal sanctions have been imposed. Convicted cases can be issued with more than one penalty.

(c) Once a case has been referred to the DPP they have responsibility for prosecuting the case that is then settled ultimately by the court. Centrelink is not a party to the case once it has been handed over to the DPP for prosecution.

11. *In the last two years what fraud-like matters have Centrelink investigated, but not referred to the DPP? Why were matters not referred to the DPP?*

Answer: Centrelink refers to the DPP all cases where it believes there is sufficient evidence to obtain a conviction and which meet the national Case Selection Guidelines agreed with the DPP. On average there are around 4,000 cases investigated and referred to the DPP by Centrelink each year. There are also around a further 15,000 cases that are investigated and not referred to the DPP due to lack of sufficient evidence.

12. *If this bill is to proceed, how does Centrelink propose to centrally record and track warrants?*

Answer: Centrelink's current fraud management and access control software provides centralised data accessible by officers with the appropriate fraud investigation security access. Centrelink proposes to enhance existing fraud management and access control elements within its integrated systems to record and track warrants.

Enhancements to the existing systems will enable tracking of the progress of warrants by capturing a record of the actions and decisions performed in accordance with legislative and policy requirements.

13. *Under the Commonwealth Fraud Control Guidelines agencies are required to put in place a comprehensive fraud control program to prevent, detect, investigate and report fraud. What programs does Centrelink have in place to minimise fraud, as per the Commonwealth Fraud Control Guidelines?*

Answer: Centrelink has recently published its Fraud Control Plan 2006 – 2008. This document sets out our commitment to fraud control and business integrity for the next two financial years, with the plan being directly linked to Centrelink's Strategic Directions.

It has been compiled to address the specific requirements of the Commonwealth Fraud Control Guidelines 2002.

Fraud control in Centrelink is based on the following principles:

- o Prevention, detection and investigation of fraud;

- o prosecution of offenders;
- o application of appropriate civil, administrative or disciplinary penalties;
- o recovery of proceeds of fraudulent activity;
- o training of all employees to provide them with an awareness of ethics, privacy and fraud;
- o specialised training of employees involved in fraud control activities; and
- o reporting to Government and accountability to Parliament.

Under the Business Partnership Arrangements with the Departments of Families, Community Services and Indigenous Affairs, Employment and Workplace Relations, and Education, Science and Training, Centrelink conducts compliance activities to ensure customers are receiving their correct entitlement. These compliance activities are specifically directed at prevention, detection and deterrence of incorrect payments and fraud.

Centrelink uses a number of mechanisms to detect incorrect payments and fraud, including:

- o data-matching of information held by Centrelink or obtained from other agencies (such as the Australian Taxation Office);
- o information provided by members of the public about suspicious conduct;
- o identity fraud work;
- o inter-agency compliance activities; and
- o selecting customers for review of their entitlements on the basis of risk.

Key risks contributing to payment fraud have been identified through a formal risk assessment process. A number of overarching preventative strategies and activities to address these risks have been developed. These include:

- o Voluntary Compliance Media Campaign - "Keeping the System Fair (KSF) 2004-05 Budget Initiative;
- o Business Integrity Strategy - "Business Integrity Strategic Plan 2006 - 2009";
- o Getting It Right; and
- o Tiered Proof of Identity Model.

14. *Why does the bill not make any provision for magistrates to put conditions on the exercise of warrants?*

Answer: The legislative scheme sets out requirements for warrants to operate effectively. Centrelink will comply with all such conditions on a warrant.

15. *Why does the bill make provision for compensation for damage to electronic equipment, but does not make provision for the return of seized material?*

Answer: In accordance with the Australian Government Investigation Standards package, Centrelink procedures relating to the handing of seized evidence would include provision for the return of evidence to the lawful owner if the reason for its seizure no longer existed or the evidence was not going to be used. In all other cases,

seized material would be returned to the owner at the conclusion of the court proceedings and appeal period.

16. *If the bill proceeds, what procedures does Centrelink intend to put in place to deal with the exercise of warrants on premises where there are no English speakers?*

Answer: Centrelink would develop procedures to ensure accredited interpreters were present where there were no English speakers on the premises. These procedures would be developed in accordance with the Australian Government Investigation Standards package.

The Centrelink customer record identifies which customers require an interpreter. Centrelink investigators would review relevant customer records prior to execution of the warrant to identify any interpreter requirements.

17. *In what circumstances is it envisaged that reasonable force will be necessary in the execution of warrants by Centrelink officers?*

Answer: Centrelink will not use physical force against people in order to execute a warrant. Centrelink understands that any use of force against a person is a serious matter that can affect the safety of all persons associated with a search warrant. Centrelink investigators would open closed doors or gates and would remove obstacles preventing entry, including obtaining assistance from locksmiths to open locked doors and the like. Centrelink would not attempt to physically remove or move people who are obstructing or threatening them and preventing them from executing the warrant. In such circumstances, Centrelink may seek the assistance of police. The objective of the search warrant is to secure its legal right to enter the nominated premises.

18. *What consideration has been given to putting in place procedures for the protection of Centrelink officers in the course of executing warrants?*

Answer: Centrelink will develop procedures and provide an ongoing training programme to safeguard the safety of officers executing search warrants.

19. *In relation to subsection 221A(2), do you agree that provision allows for contractors to be made authorised officers for the purposes of Part 4A? Is it envisaged that contractors will be made authorised officers for the purposes of Part 4A?*

Answer: It is possible that a contractor could be appointed as an authorised officer, so long as the Secretary was satisfied that the contractor had appropriate qualifications or experience. While it is not planned to use contractors, there may be some circumstances where specialist services are required, such as Computer Forensics. 20.

In relation to paragraph 103D(1)(d), how broadly does the cascading delegation operate? Is it envisaged that an authorising officer may be assisted in the search by officers who are not authorised officers? When a delegation is made under 103D(1)(d), will the delegation include officers assisting in the search who are not authorised officers?

Answer: Section 103D (of the *A New Tax System (Family Assistance) (Administration) Act 1999*) refers to material that is to be included in a warrant. Paragraph 103D(1)(d) provides that either the authorised officer named in the warrant,

or another authorised officer who is subsequently substituted into the warrant by the first authorised officer, may exercise the warrant. This is not a delegation but a substitution of names between authorised officers. An authorised officer named in a warrant cannot substitute their name with the name of a person who is not an authorised officer.

There are provisions within the bill that allow for authorised officers to be assisted by officers who are not authorised officers. Centrelink envisages that there will be assisting officers who are not authorised officers. This is not a delegation of the authorised officer's powers and responsibilities under the warrant.

The use of officers assisting authorised officers reflects the current practice of warrants executed by the AFP. Centrelink officers already often assist AFP officers in the execution of Centrelink related warrants.

21. *How many officers from Centrelink have been sanctioned for breaches of confidentiality in the last 2 years? What action has been taken against those officers?*

Answer: Code of conduct action within Centrelink deals with issues related to breaches of confidentiality. The detailed information is not readily available.

22. *Section 23YF of the Crimes Act provides that where a video or audio recording is made of a child who is a suspect, offender or volunteer, then a copy of the recording must be made available to the interview friend of the child. Does the Department/Centrelink have any procedures in place, such as in section 23YF of the Crimes Act, for instances where children may be recorded in the course of Centrelink officers searching a premises?*

Answer: The Bill does not address what procedures should be followed for this situation.

Centrelink would develop procedures in relation to recordings made in the execution of a warrant. Where any recordings are made, whether visual or audio, a copy must be provided to a concerned party, where they request it. Centrelink's procedures will reflect this requirement.