QUEENSLAND COUNCIL FOR CIVIL LIBERTIES
G.P.O. Box 2281 Brisbane 4001

1 November, 2006

Committee Secretary
Senate Legal & Constitutional Affairs
Committee
Department of the Senate
PO Box 60100
CANBERRA ACT 2600

By Email:legcon.sen@aph.gov.au

Dear Madam/Sir

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

Thank you for the opportunity to make a submission to this Inquiry.

This submission relates to the search powers provided for in the legislation.

This submission will be short for 2 reasons. Firstly, we accept that to a significant degree the legislation complies with the relevant principles. Secondly, ours is a voluntary organisation and the time period provided for us to respond, less than a month, to the request for a submission was far too short.

We make our comments under 3 headings:

1. General Principles Concerning Powers of Inspectors and Like Officials

In the Council's view[1] legislation giving powers to inspectors and the like needs to reflect the fact that that powers serve different ends and those different ends need to be reflected in different types of powers and safeguards.

[1] In arriving at these principles the Council has had regard to the fourth report of the Senate Standing Committee for the Scrutiny of Bills – *Entry and Search Provisions in Commonwealth Legislation* 6 April 2000 and the Report of the Victorian Parliament Law Reform Committee – *The Powers of Entry, Search, Seizure and Questioning of Authorised Persons – May 2002*.

The legislation should recognise the distinction between the powers that an officer should have to:-

1. Investigate where a person is possibly exposed to some sanction be it criminal or otherwise;

2. Monitor compliance with a regulatory scheme or funding program;

3. Deal with emergency situations.

The Council says that:-

1. In first category of case a search warrant issued by judicial officer should be a prerequisite of an entry and search.

2. In the second category where the Department wants to audit the books of an organisation which has received funds from it we would accept that there is a proper basis for authorising entry under the legislation without consent and without a warrant so long as there is reasonable notice and it is to be carried during business hours. The officers need to be required to identify themselves properly and to identify the purposes for which they are conducting the search. Refusal to consent or allow entry would form the basis of an application for a warrant. In these sort of situations the Department would only be allowed to go in and audit and inspect and check. It wouldn't be authorised to seize things or arrest people.

3. We accept that circumstances may arise which make it impractical to obtain a warrant before an effective entry and search can be made. Impracticality should be assessed in the context of current technology. If an official exercises a power to enter and search in circumstances of impracticality, that official must then, as soon as reasonably possible, justify that action to a judicial officer.

In addition, individuals executing search warrants should be required to report to the Court. The legislation should contain provisions similar to that in Section 21 of the *Search Warrants Act 1985 (NSW)* requiring the person to whom the warrant is issued to furnish a report in writing to the court which issued it stating whether or not the warrant was executed and setting out the results of the execution or setting out the reasons for why the warrant was not executed.

It would appear that the draft bill conforms with these principles apart from the latter, for which the government is to be congratulated.

2. Circumstances in which a Warrant is to be issued

The traditional formula [2] requires that a judicial authority issuing a warrant must be satisfied of 2 things:

1. That there are reasonable grounds for suspecting there is evidence to be found on the premises; and
2. There are reasonable grounds for believing that it will afford evidence as to the commission of an offence.

The effect of these requirements is that the officer seeking the warrant must lay before the Court information setting out his or reasonable grounds for suspecting that a person has committed an offence and his grounds for suspecting that evidence of the commission of that offence will be found on the premises.

It seems to us that the of the Bill, particularly in comparison with the language of Section 3E of the *Crimes Act* waters down these requirements by obviating the need for the applicant for warrant put before court the basis for their belief that a person has committed an offence.

This may be seen as overly cautious but it would be preferable in our view if the Bill were amended to reflect the traditional formula.

3. Training of Centrelink Officers

Our fundamental problem with this legislation is the belief stated in the explanatory memorandum and in the second reading speed that Centrelink now has the capacity to investigate these offences itself. The Council does not share that view.

From the writer's experience a comparison for example of the interview techniques employed by Centrelink Officers with those employed by police officers shows quite clearly that the Centrelink Officers have no appreciation of the basic principles of natural justice and fairness. From the records of interview that the writer has seen Centrelink Officers regularly engage in leading questions, putting half-truths and misleading slants on the evidence put to witnesses.

It is our view that until the Centrelink Officers adopt a standard of practice consistent with that of police officers they should in fact not have the power to investigate criminal offences.

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[2] *Reflected in provisions such as the former Section 679 of the Criminal Code (Qld);Former Section 10 of the Crimes Act and the current Section 3E of the Crimes Act*

We trust this is of assistance to you in your deliberations.

Yours faithfully
McKAYS

Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
1 November 2006