



1st November 2006

Ms Jackie Morris
Committee Secretary
Senate Legal and Constitutional Affairs Committee
Department of the Senate
PO Box 6100
Parliament House, Canberra ACT 2600

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Dear Ms Morris

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

Please find attached a submission by the Community and Public Sector Union (PSU Group) to the Senate Legal and Constitutional Affairs Committee regarding the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006 - Schedule 2 which proposes the introduction of significant new search and seizure powers for Centrelink officers.

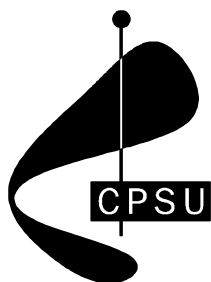
CPSU would also appreciate the opportunity to participate in the public hearing on Friday 10th November. Please contact Ms Alison Rahill on 02 8204 6906 with regards to this matter.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'per Stephen Jones', is written over the signature line.

Stephen Jones
National Secretary
Community & Public Sector Union
Best Regards

Contact person:
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Submission

Senate Legal and Constitutional Affairs Committee

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

Submission by the Community and Public Sector Union (PSU Group)

November 2006

Key Recommendations

CPSU is not confident that the level of detail contained within the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006 Schedule 2* is sufficient to ensure the Commonwealth's objectives are reflected and achieved.

CPSU believes the ambiguity of the *use of force* provisions will expose Authorised Officers to a range of allegations, civil & criminal prosecution and serious threats to their personal safety. The current employment framework does not accommodate this level of risk. We recommend the removal of Section 103J (1) and (2) *Availability of assistance and use of force in executing a warrant*

CPSU recommends the removal of Schedule 2 part 4A Division 1 – *Searches without a warrant* and 130K (3) *the copy of the search warrant need not include the signature of the magistrate who issued it*. These provisions are inconsistent with law enforcement best practice, accountability and transparency as well as removing important checks and balances.

If the Bill is to proceed, CPSU strongly recommends amendments to ensure suitable credentials, training, support, qualifications and remuneration accompany the increase in powers contained within the Bill. We are also seeking amendments to the Offences section; enhanced employee protections; and establishment of oversight and complaints mechanisms.

Introduction

CPSU is the registered union for Centrelink and FACSIA employees. This submission details the CPSU concerns regarding the *Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006* (the Bill). CPSU comments are restricted to the Schedule 2 new search and seizure powers for Authorised Officers of Centrelink and FACSIA.

CPSU comments will refer to amendments made to the *New Tax System (Family Assistance) (Administration) Act 1999*. However these comments equally apply to amendments to the *Social Security (Administration) Act* and the *Student Assistance Act 1973* as amendments are mirrored.

CPSU does not condone illegal activity or fraud in regard to the above Acts or any Australian law. We support Authorised Officers engaged under the Public Service Act 1999 to be appropriately supported, credentialed, trained, skilled and remunerated to undertake their duties.

Authorised Officers - Centrelink and FACSIA

CPSU is concerned at the absence of Agency-wide consultation with staff at Centrelink and FACSIA about the proposal to introduce new search, entry and seizure powers for Authorised Officers.

Although we understand only a small number of Officers will be trained, there needs to be full consideration and better understanding of the Commonwealth's objectives with this section of the Bill.

There needs to be investigation and thorough consideration of the level of credentialing, training, support, qualification and remuneration that would need to accompany the increase in powers contained within the Bill.

Searching and seizure

There is concern over the legal implications of an Authorised Officer conducting a 'search with warrant' under this Bill. In particular, the scenario of a thing not associated with Commonwealth benefits such as a weapon or other dangerous article being found during the search, e.g. illicit substances, drugs or stolen items. The question arises as to what actions (if any) an Authorised Officer must follow in this situation. Would a search that uncovered drugs/stolen items then become an unlawful search? Would an Authorised Officer be obliged to make a citizens arrest under State/Territory law?

Furthermore it is unclear what happens during the course of a 'search without warrant' if an Authorised Officer uncovers another dangerous article, e.g. illicit substances, drugs or stolen items. Will this compromise evidence in other prosecutions?

There are also no provisions that deal with objects or documents seized that belong to third parties.

An explanatory note or enabling provision would be needed in the Bill to cover searches and the matters referred to above to ensure clear legal understanding and action.

Use of Force

This section of the Bill lacks sufficient detail and is unclear whether or not the intention is for Authorised Officers to exercise quasi-police powers. The first question that needs to be addressed is - why do law enforcement officers have use of force powers? A few possible scenarios might be: to stop persons destroying evidence; to restrain persons from harming someone or themselves; or to detain persons if they are removing evidence.

There is no explanation in the Bill of the degree of use of force allowable (lethal / non-lethal) and to what end. Does the Commonwealth intend to arm Authorised Officers?

The Bill is unclear about what would happen in a situation in which an Authorised Officer was assaulted or witnessed an assault on another person. It would appear they would have to return with a summons because they do not have powers to detain or arrest. Any attempt to intervene at the time could see Authorised Officers face assault charges.

We believe the ambiguity associated with the use of force provisions will leave Authorised Officers exposed to a range of allegations, civil & criminal prosecutions and serious threats to their personal safety. The current employment framework does not accommodate this level of risk.

1. Recommendation - Remove Section 103J (1) and (2) *Availability of assistance and use of force in executing a warrant*

Credentials, Training and Remuneration (new clause required)

The new powers of Authorised Officer contained in the Bill represent a major enhancement of existing powers by the introduction of responsibilities similar to policing powers. The level of training to become qualified in use of force, security of evidence, and search and seizure would currently require six months training in a police academy, followed by 3 years of buddying-up, before being able to fully exercise this range of powers.

Effective application of the new powers would require a training regime and full credentialing, preferably overseen by a policing body in order to develop the necessary skills to exercise these powers.

The CPSU believes the Bill does not provide sufficient detail or onus on the Department to ensure that the delegation of these new powers is accompanied by the provision of appropriate credentialing, training, qualifications and remuneration.

Although accountability under the *Public Service Act* applies, there is a large degree of subjectivity in decision-making required in the application of these enhanced powers. Navigating this subjectivity will also require a thorough training regime.

Current remuneration of officers was determined prior to this Bill so does not reflect current responsibilities or the enhanced responsibilities that would be created by the Bill.

The CPSU believes the Department Secretary should not delegate the enhanced powers within this Bill to an Authorised Officer without an appropriate selection process. That process must certify that an officer has met pre-requisite standards and received suitable training and qualifications to use those powers.

The Department Secretary should be empowered to provide additional remuneration to any Authorised Officer who has been certified as suitable to exercise the enhanced powers contained within the Bill.

2. Recommendation: *Insert into Clause 222A (2) as a pre-requisite, powers may only be delegated to an Authorised Officer, who is certified by the Secretary as having received suitable training, support and qualifications for the exercise of these powers. The Department Secretary may provide additional remuneration to those officers so certified*

Education of the broader community

The power and authority of Police to issue search warrants and enter premises without the permission of occupiers is widely known. It is not well known that Commonwealth Authorised Officers also hold such powers. It is highly unlikely that the broader community is aware of Authorised Officers' power to seize things and if necessary use force against things or individuals.

We have concerns about the personal safety of Authorised Officers who may enter a hostile environment where occupiers are unaware of their obligations towards those officers. In countries such as the United Kingdom public servants have legal protections against abuse and threatening behaviour by members of the public.

3. Recommendation: The Senate Committee requires the Department to undertake a comprehensive education campaign about any enhanced powers of Authorised Officers and related offences.

Oversight mechanism

CPSU is concerned that the Bill does not include any monitoring or centralised collection of data relating to the issue of warrants, the outcomes of warrants, or any reporting of the new powers.

4. Recommendation: That the Senate Committee require the Department to maintain comprehensive records of the exercise of these powers and report back to the Committee within the first twelve months of the operation of these powers. This report should also be made available to the Ombudsman with a view to having oversight powers and in regard to monitoring the effectiveness of these powers.

Powers and penalties should not exceed AFP

CPSU understands that 'search without warrant' is rarely used by the Australian Federal Police because it raises a range of compliance and integrity issues. Currently AFP would only exercise 'search without a warrant' powers in counter-terrorist situations. CPSU believes the Commonwealth has not made a clear case for the 'search without warrant' powers.

CPSU is unsure why an Authorised Officer would need the power to remove the signature of Magistrate from a copy of the warrant form to provide to the occupier of the premises, and what purpose this serves. This erosion of transparency or accountability is of concern.

We believe the search powers currently available to the AFP should be sufficient for the purposes of the Bill.

Authorised Officers face serious penalties if they are found to have misused a warrant and the onus of proof lies with the officer involved. We believe the burden of proof should rest with the prosecution.

The Bill proposes penalties against Authorised Officers of up to two years imprisonment. This is double the penalty for an AFP officer charged with use of a fraudulent warrant. It would be more appropriate for the powers of Authorised Officers to be commensurate with the threat posed to the Commonwealth by taking into account existing sanctions currently available on matters of fraud.

5. Recommendation: Removal of part 4A Division 1 Searches without a search warrant; Amendments to Subdivision D – Offences 130W – 103ZA to reflect penalties consistent with law enforcement agencies. Removal 130K (3) *the copy of the search warrant need not include the signature of the magistrate who issued it.*

Public Service Act integrity regime

The accountability and integrity regimes of Public Service Act establish conduct suitable for employees, and detail sanctions for when the standards aren't met. The Australian Public Service Act contains a detailed set of Values and Conduct supported by departmental guidelines. Authorised Officers will have high standards of individual protection and external accountability in their employment:

- Protection for Whistleblowers
- Protection from unfair, unjust or unreasonable termination
- External review of promotion to uphold merit selection
- External review of disciplinary actions by the Public Service Commissioner

However, what is unclear in the Bill is how the APS environment interacts with the Offences section and secondly how civil or criminal allegations made against Officers will be dealt with. Officers will need additional protections such as a separate complaints mechanism to be established.

6. Recommendation: amend subsection 221A(2) to ensure these powers are not delegated to 'independent contractors' by requiring that *the person must be an officer who the Secretary considers has suitable qualifications or experience and is engaged under the APS Act 1999.*

Assisting Officer

CPSU is concerned that the Authorised Officer is able to delegate responsibility to an Assisting Officer who may not have appropriate credentials, training, qualifications or skills. The Department Secretary should retain the powers of delegation under section 221A Appointment of authorised officers and issue of identity cards.

7. Recommendation: Remove 1 subsection 3(1) assisting officer be removed as it undermines the delegating authority of the Secretary

Recommendations

1. CPSU believes the ambiguity of the *use of force* provisions leave Authorised Officers exposed to allegations, civil & criminal prosecutions and facing serious threat to their personal safety. The current employment framework does not accommodate this level of risk. We recommend the removal of Section 103J (1) and (2) *Availability of assistance and use of force in executing a warrant*
2. Insert into Clause 222A (2) as a *pre-requisite, powers may only be delegated to an Authorised Officer, who is certified by the Secretary as having received suitable training, support and qualifications for the exercise of these powers. The Department Secretary may provide additional remuneration to those officers so certified*
3. The Senate Committee require the Department to undertake a comprehensive education campaign about any enhanced powers of Authorised Officers and related offences.
4. That the Senate Committee require the Department to maintain comprehensive records of the exercise of these powers and report back to the Committee within the first twelve months of the operation of these powers. This report should also be made available to the Ombudsman with a view to having oversight powers and in regard to monitoring the effectiveness of these powers.
5. CPSU recommends the removal of Schedule 2 part 4A Division 1 – *searches without a warrant* and 130K (3) *the copy of the search warrant need not include the signature of the magistrate who issued it*. These provisions are inconsistent with law enforcement best practice, accountability, transparency as well as removing important checks and balances.
6. Amend subsection 221A(2) to ensure these powers are not delegated to ‘independent contractors’ by requiring that the *person must be an officer who the Secretary considers has suitable qualifications or experience (insert) ‘and is engaged under the APS Act 1999’*.
7. Remove 1 subsection 3(1) *assisting officer* as it undermines the delegating authority of the Secretary.
8. If the Bill is to proceed, CPSU strongly recommends amendments to ensure suitable credentials, training, support, qualifications and remuneration accompany the increase in powers contained within the Bill.
9. Amendments to the Offences section; additional employee protections such as a separate complaints mechanism need to be established.