

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

Please find attached the answers from the AFP to the questions on notice we received following our 10 November appearance before the Committee for this inquiry. I apologise for the delay in responding. In addition, the material below provided further background and context to the answers.

The Australian government is committed to ensuring high levels of compliance with social and welfare payments. As part of this commitment, the government has decided to have an increased focus on serious social security fraud, including through more vigorous investigation of possible frauds against the social security system.

Centrelink has a long standing arrangement with the Australian Federal Police (AFP), governed by a Service Agreement (2004). This agreement provides a statement of services to be provided to Centrelink by the AFP. These services include the outposting of AFP officers to Centrelink fraud investigation teams and assistance with the investigation of matters including, where necessary, seeking the execution of warrants to enter and search premises for evidence relating to suspected fraud.

The AFP has experienced a rapid increase in the level of demands placed upon it in the enhanced security environment over the last five years, which have been addressed by government through increased resources. As a result of these issues, a perception has grown amongst Centrelink staff that the AFP is less able to assist with serious fraud investigations. This perception of the AFP's reduced capacity to service Centrelink's requirements is not shared by the AFP, nor was it raised officially at senior levels with the AFP.

Despite the different perceptions, Centrelink and the AFP agree that there are resource implications in meeting the government's commitment to reduce the incidence of serious social security fraud. The Enhanced Focus on Serious Social Security Fraud 2006-07 Budget measure taken forward by the Minister of Human Services was designed to address this need. As part of this process, Centrelink sought access to search and seizure powers comparable to those exercised by some other Australian government agencies.

Centrelink acknowledges the AFP's pre-eminent expertise, capability and role under the Commonwealth Fraud Control Guidelines, particularly, in investigating matters of serious and complex fraud against the Commonwealth.

The AFP and Centrelink are in full consultation about maximising the AFP's involvement in the investigation of serious and complex social security fraud and the execution of search warrants relating to serious fraud investigations undertaken by Centrelink with a view to minimising the need for separate search and seizure powers.

Any agreement reached between Centrelink and AFP on the execution of search warrants and the referral of matters for investigations will be reflected in a new Service Level Agreement that will cover agreed service levels and corresponding resource implications for both agencies.

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SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE

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

AUSTRALIAN FEDERAL POLICE

Question No. 1

Senator Payne asked the following question at the hearing on 10 November 2006:

How often in the last year has the AFP searched premises without a warrant?

The answer to the honourable senator's question is as follows:

The AFP does not have readily accessible statistics available to answer this question.

Question No. 2

Senator Payne asked the following question at the hearing on 10 November 2006:

**What powers does the AFP have to search premises without a warrant, in what
sorts of matters you would exercise those powers?**

The answer to the honourable senator's question is as follows:

The AFP position in relation to accessing premises to obtain evidence is to in the first instance seek to use a search warrant.

An AFP member may search premises without a warrant at common law if the occupier of the relevant premises consents to the premises being searched. The consent of the occupier must be genuine and not given under duress. The occupier of the premises may also withdraw their consent at anytime during the search. If consent is withdrawn, the AFP member must cease their search. In the limited number of cases where the AFP member believes that consent is likely to be given by the occupier, or under particular circumstances existing at the time it would be deemed by the member as appropriate to seek that consent, the AFP member may choose to use that option.

The AFP is also given the legislative power to search premises without warrant under specific legislation including:

- in the ACT, where the AFP has the power to enter premises under section 190 of the *Crimes Act 1900* (ACT) in emergencies;
- under Section 183UA(1)(d) of the *Customs Act 1901* (Cth) which provides that a "police officer" is an authorised person for the purposes of sections 203B and 203C of that Act.

These sections permit an authorised person to search premises without a warrant for forfeited good and narcotic goods, respectively;

- per Section 32(1)(b) of the *Protection of Movable Cultural Heritage Act 1986* (Cth) which provides that an 'inspector', which includes a member or a special member of the AFP, may enter upon any land or premises and may seize any thing forfeited or connected with an offence under that Act;
- under Section 66AI of the *Quarantine Act 1908* (Cth) which provides that a quarantine officer, including a properly appointed AFP officer, may conduct a search without a warrant in an emergency situation; and
- under Section 3ZG of the *Crimes Act 1914* (Cth) and Section 225 of the *Crimes Act 1900* (ACT) which provide when a person is arrested a constable has the power to seize any items in plain view at a premises.

Question No. 3

Senator Ludwig asked the following question at the hearing on 10 November 2006:

What is the nature of the time between a request from Centrelink and the response by the Australian Federal Police?

The answer to the honourable senator's question is as follows:

The AFP can advise that for the 254 active Centrelink cases it currently has on hand, the average evaluation time for each referral was 12 days. These figures include matters referred for investigation.

The AFP can advise that for the 708 Centrelink cases the AFP has finalised since 2000, the average evaluation time for each referral was 16 days.

These evaluations occur within the 28 day agreed time frame stipulated in the AFP/Centrelink Service Agreement.

Question No. 4

Senator Ludwig asked the following question at the hearing on 10 November 2006:

Could you please provide the committee with a copy of the client satisfaction survey that you received from FaCSIA?

The answer to the honourable senator's question is as follows:

Each year since 1999 the AFP has commissioned a satisfaction survey of its external clients to ensure continuous improvements in service delivery to better meet the needs and expectations of those clients. Client satisfaction is one of the AFP's three key performance indicators.

In 2005 the University of Queensland Social Research Centre (UQSRC) was commissioned by the AFP to develop, undertake and report on the results of an ongoing Client Satisfaction

Survey for both domestic and international clients, and stakeholders of the AFP. The new client satisfaction survey is delivered as a web based interactive form in contrast to previous surveys which were all conducted via telephone interview.

The questionnaire is designed to cover functional business areas within the AFP and it assesses AFP performance when conducting investigations for nominated clients and general interagency relationships. Confidentiality of client information is strictly observed by UQSRC and only aggregate survey results are reported back to the AFP. As such it is not possible to identify satisfaction of a specific client such as FaCSIA.

Question No. 5

Senator Trood asked the following question at the hearing on 10 November 2006:

Does the existing memorandum of understanding between the AFP and Centrelink have a time or an expectation of time for response to requests that the AFP may receive for the execution of any of the activities you undertake?

The answer to the honourable senator's question is as follows:

The Service Agreement sets a 28 day period within which the AFP must complete the evaluation and inform Centrelink in writing whether the AFP either accepts or declines the Centrelink request. There is no specific guidance provided regarding the timeliness for execution of search warrants. However, in the spirit of the Service Agreement, the AFP seeks to undertake assistance with search warrant matters in a timely manner.

Question No. 6

Senator Payne asked the following question at the hearing on 10 November 2006:

FACSIA/Centrelink's response to questions on notice refers to 'a cash economy operation conducted in February 2005 which resulted in seven convictions, with sanctions ranging from good behaviour bonds to imprisonment'. In the paragraph after that, the response goes on to say, 'The search warrant was executed after a 12-month delay.'

Please provide to the committee as much information as you are able to about the reason for the delay in the execution of the search warrant.

The answer to the honourable senator's question is as follows:

On 21 July 2003, a Centrelink approached the AFP to discuss the possible referral of a Centrelink operation into a meat processing plant as well as other matters for search warrant assistance. During this meeting Centrelink tabled the evidence gathered to date and sought guidance from the AFP as to whether additional information would be required prior to drafting a Section 3E, *Crimes Act 1914* Search Warrant Affidavit. The AFP identified some minor additional information which was required, however, indicated that based on the information supplied by Centrelink the AFP would be able to execute a search warrant on

their behalf. Centrelink undertook to continue to work the matter up to refer it to the AFP at a later date.

During late 2003, the Centrelink once again approached the AFP as the additional enquiries had been completed and Centrelink wanted to request that the AFP execute the search warrants on their behalf. It was at this time the AFP advised the Centrelink that some of the entities involved in this operation were of interest to the AFP in relation to a more serious and significant criminal matter. On that basis, the AFP asked that Centrelink hold off from progressing the matter until the AFP had exhausted its investigation. At this time the Centrelink agreed to this and the AFP undertook to advise Centrelink when the AFP could execute the warrants of Centrelink's behalf.

During July 2004, the Centrelink was advised that the AFP no longer had an interest in the matter in relation to its investigation and that it was now possible for the AFP to execute the search warrants on Centrelink's behalf.

On 11 November 2004, the AFP received a fax referral from Centrelink for this operation for the execution of a search warrant. On 16 November 2004, the AFP wrote to the Centrelink to advise that the AFP had accepted the matter for search warrant assistance and asking them to contact the AFP to organise a date to execute the warrant.

On 17 December 2004, the AFP forwarded a copy of the warrant affidavit to the Brisbane Office of the Commonwealth Director of Public Prosecutions (CDPP), as the AFP had concerns that it was insufficient to have a warrant issued. On 20 December 2004, CDPP provided advice to the AFP concerning the affidavit as it then stood. The CDPP sought AFP agreement to directly deal with the relevant Centrelink officers, which occurred. Following this discussion the CDPP advised the AFP that Centrelink had advised that the urgency had gone out of this matter and that it might be able to be put off until after January 2005.

During late January 2005, the revised search warrant affidavit was completed and the then AFP outpost officer, liaised with Centrelink to determine a date of execution. Accordingly, planning documents were completed.

On 3 February 2005, the search warrant was executed on the meat processing plant on behalf of Centrelink.

Additional Question No. 1

Senator Trood asked the following question at the hearing on 10 November 2006:

Centrelink say that their fraud falls into the lowest category of investigation on the Case Categorisation and Prioritisation Model (CCPM), into which CCPM category does the AFP consider that fraud by Centrelink clients falls?

The answer to the honourable senator's question is as follows:

The AFP's experience is that not all Centrelink referrals fall into the lowest category. In fact as part of the last Service Agreement negotiations, the AFP chose to make Centrelink search

warrant referrals to rate higher than had previously been the case. The categorisation of each referral depends on its merits. By way of example:

- of the 167 referrals from Centrelink to the AFP during 2005-06, the AFP impact rating was:
 - 4 cases assessed as Very High impact;
 - 4 cases assessed as High impact;
 - 144 cases assessed as Medium impact;
 - 15 cases assessed as Low impact. Noting that only 3 of these "Low" impact cases were deemed to have a discretionary priority and were not accepted by the AFP, the other 12 low cases were deemed "Essential" and the AFP was obliged to accept the referral.
- Of the 56 cases referred by Centrelink to the AFP so far in 2006-07, the AFP Impact rating has been:
 - 3 cases assessed as Very High impact;
 - 1 case assessed as High impact;
 - 45 cases assessed as Medium impact; and
 - 7 cases assessed as Low impact. Noting that only 1 discretionary priority case of these 7 assessed as low impact was not accepted.

Additional Question No. 2

Senator Ludwig asked the following question at the hearing on 10 November 2006:

At p.38 of the Transcript, Dr Browne, General Manager of Centrelink, states that Centrelink refers to the AFP to investigate the more complex cases that Centrelink does not have the capability. Dr Browne then refers to an 'emerging gap', and that the numbers of cases that the AFP has been able to investigate has been declining.

What is the AFP's response to this statement?

The answer to the honourable senator's question is as follows:

The AFP believes that Dr Browne's statements in relation to the investigation responsibilities of Centrelink and the AFP at page 38 of the proof draft of the Transcript are consistent with the MOU between the AFP and Centrelink which provides that:

- Centrelink is responsible for the investigation of routine or minor instances of fraud against the programs it delivers. For the purposes of this agreement 'Routine or minor' means instances of fraud that on initial assessment by Centrelink, would be unlikely to be accepted by the AFP under the CCPM for investigation; and

- the AFP has primary law enforcement responsibility for investigating serious or complex fraud against the Commonwealth, politically sensitive matters and matters where there may be a real or perceived conflict of interest if the matter were to be investigated by Centrelink.

At the time of the hearing for this Bill Inquiry, the AFP was unaware of the types of cases that Dr Browne was referring to that would form the 'emerging gap'. Since the hearing the AFP and Centrelink have had preliminary discussions about this issue which are on going.

The AFP understands that Dr Browne's comments refer to the number of criminal investigations the AFP has been able to undertake for Centrelink. The AFP does not believe the total number of referrals it has accepted from Centrelink, including the cases it has been able to investigate and requests for assistance including search warrants, arrest warrants, and forensic analysis it has been able to action, has declined. In support of this the AFP submits the following referral figures for the period 1999/2000 to 2006/2007 which are based on our most current data:

FINANCIAL YEAR	REFERRALS RECEIVED	REFERRALS UNDER EVALUATION	REFERRALS ACCEPTED	REFERRALS REJECTED
1999/2000	224		213	11
2000/2001	207		178	29
2001/2002	143		104	39
2002/2003	149		133	16
2003/2004	130		106	24
2004/2005	117		109	8
2005/2006	167		164	3
2006/2007	58	4	53	1
Grand Total	1195	4	1060	131

Additional Question No. 3

Senator Ludwig asked the following question at the hearing on 10 November 2006:

In the course of the hearing, the Department tabled a letter from Commissioner Keely to Ms Sue Vardon (then CEO of Centrelink) dated 26 October 2001. The letter set out the operational impacts arising from the September 11 terrorist attacks in New York. At p. 30 of the Transcript, Mr Innes of FACSIA says, 'Clearly, from the perspective of the department, we would not necessarily want to distract AFP resources from the primary tasks outlined in that letter.'

Would the AFP like to provide the committee with any comments on that letter? More generally, what is the AFP's response to the Department's statement (p. 2 of its submission) that: '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.'

The Commissioner wrote that letter to the AFP major client agencies in the immediate aftermath of the September 2001 terrorist attacks on the USA. The purpose of the letter was to inform relevant CEOs on the short term demands on the AFP and to alert them to current restrictions on AFP services and the potential for more. The letter pre-dated any Government decision on the resourcing of the AFP to prevent terrorist activity as a new area of its operations as well as any other Government decision on additional AFP responsibilities since that time. The letter also predated the establishment of a functional structure within the AFP to better align the allocation its resources to its responsibilities and to provide greater flexibility to meet changing priorities.

The AFP notes that at the time of that letter the MOU between the AFP and Centrelink had only been signed in April 2001 and following the transmission of that letter the AFP and Centrelink negotiated a new MOU in June 2004 which both agencies currently operate under.

In terms of the statement on page 2 of the FACSIA submission to this inquiry, the AFP submits that it monitors its performance against all of its operational responsibilities through operational hours allocated to a matter and through the results achieved. Performance reports are provided to the National Managers Group each month and to the Executive Management Board every two months and these provide an opportunity for a number of interventions to occur where decisions concerning resource allocations are seen to impact work delivery.