

CHAPTER 1

INTRODUCTION

Background

1.1 On 11 October 2006, the Senate referred the provisions of the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006 (the Bill) to the Standing Committee on Legal and Constitutional Affairs, for inquiry and report by 22 November 2006.

Purpose of the Bill

1.2 The purpose of the Bill is to give effect to a number of measures announced as part of the 2006-07 Budget, including changes to the social security means test; amendments to crisis payment; and to provide new entry, search and seizure powers for Commonwealth officials for 'serious and complex'¹ fraud investigations under family assistance, social security and student assistance legislation.

1.3 Schedule 2 of the Bill contains the proposed entry, search and seizure powers. Schedule 2 amends the *A New Tax System (Family Assistance)(Administration) Act 1999*, the *Social Security (Administration) Act 1999*, and the *Student Assistance Act 1973*, to provide for the new powers. Essentially the Bill establishes the same regime for each of those pieces of legislation. The Explanatory Memorandum (EM) to the Bill states that the intention of the provisions in Schedule 2 is to allow authorised officers to 'effectively investigate and prosecute offences in regard to programs administered under those [laws]'.²

1.4 In his Second Reading Speech, the Minister for Families, Community Services and Indigenous Affairs explained the rationale for the Bill:

... the bill will introduce several provisions to enhance Centrelink's capacity to detect and investigate serious and complex cases of fraud. Centrelink's current powers to pursue investigations into suspected fraud are limited to provisions that may be used to require the provision of relevant information and, if appropriate, search warrants executed by the Australian Federal Police under the Crimes Act. Over recent years, Centrelink's investigative capacity has been developing to allow the detection, investigation and prosecution of more serious fraud of welfare payments, including a significantly increased focus on the cash economy and identity fraud. To put this capacity to its best use in protecting the integrity of the payments system, this bill introduces, for social security, family assistance and related student assistance payments, provisions for

1 The Hon. Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, Second Reading Speech, *House of Representatives Hansard*, p. 8.

2 p. 11.

entry and search of premises, and copying and seizing material relevant to pursuing these investigations. These new provisions will mirror provisions already available to other Commonwealth agencies, such as the Health Insurance Commission, the Australian Taxation Office, the Child Support Agency and the Department of Immigration and Multicultural Affairs, in their similar activities.³

1.5 Under Schedule 2, an officer authorised by the Secretary of the Department of Families, Community Services and Indigenous Affairs (FaCSIA) may:

- enter premises with the consent of the occupier;
- apply to a magistrate personally or by telephone or electronic means for a warrant on the basis that the officer considers there are reasonable grounds to suspect there is evidential material on the premises;
- execute the warrant to enter premises, with assistance and using reasonable force as needed;
- search the premises for evidential material;
- take photographs or video recordings;
- use equipment to process items found in the search and take items away to determine if they can be seized;
- operate electronic equipment at the premises to obtain and copy data that might be evidential material; and
- obtain an order requiring a person to assist in accessing a computer and copying its data.⁴

Conduct of the inquiry

1.6 The committee has confined its inquiry to consideration of Schedule 2 only.

1.7 The committee advertised the inquiry in *The Australian* newspaper on 17 October 2006, and invited submissions by 1 November 2006. Details of the inquiry, the Bill, and associated documents were placed on the committee's website. The committee also wrote to 43 organisations and individuals.

1.8 The committee received 16 submissions. A list of submissions is at Appendix 1. Submissions were placed on the committee's website for ease of access by the public.

3 The Hon. Mal Brough MP, Minister for Families, Community Services and Indigenous Affairs, Second Reading Speech, *House of Representatives Hansard*, p. 8.

4 For a detailed explanation of Schedule 2 of the Bill, see EM, pp 11-33.

1.9 The committee held a public hearing in Canberra on 10 November 2006. A list of witnesses who appeared at the hearing is at Appendix 2 and copies of the Hansard transcript are available through the Internet at <http://aph.gov.au/hansard>.

1.10 On 20 November 2006, the Minister for Human Services advised the Chair of the committee that the Federal Government will be withdrawing Schedule 2 from the Bill in its entirety.⁵

Acknowledgement

1.11 The committee thanks those organisations and individuals who made submissions and gave evidence at the public hearing.

Privilege issue

1.12 During the course of the inquiry, the committee considered a matter where it appeared that a submitter may have been threatened with a possible penalty in relation to the evidence that person gave to the committee. On further investigation of the matter, the committee did not consider that the facts disclosed that the person who made the alleged threats had intended to threaten the submitter, or that the submitter had felt threatened. The person concerned has apologised to the submitter for their actions, and the committee has been provided with a copy of that apology.

Note on references

1.13 References in this report are to individual submissions as received by the committee, not to a bound volume. References to the committee Hansard are to the proof Hansard: page numbers may vary between the proof and the official Hansard transcript.

5 Correspondence from the Hon. Joe Hockey MP, Minister for Human Services to the Chair, 20 November 2006.

