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

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

Date introduced: 14 September 2006

House: House of Representatives

Portfolio: Families, Community Services and Indigenous Affairs and Veterans' Affairs

Commencement: The day on which the Act receives Royal Assent except for schedule 1 which commences on 1 January 2007 and Schedule 2 which commences on the 28th day after Royal Assent.

Purpose

To implement two 2006 Budget measures that amend the assets test and the Crisis Payment and to implement several compliance and fraud measures.

Background

Assets Test

Under the assets test, which was introduced in 1985, the value of the residential family home is exempt when assessing the assets to be tested. When the family home is located on a large block of land, such as a farm or rural residential block, land around the home up to the amount of 2 hectares is also exempt.

The proposal in this Bill allows for the exemption of all the land on the same title document as the family home where:

- the claimant is of age pension age and claiming Age Pension, Carer Payment or Service Pension,
- they have a long term attachment to the land of at least 20 years, and
- they can show that land with commercial potential is being used to generate an income.

The measure would be of assistance to people owning land in rural residential areas, those with bush blocks with little commercial potential, retired farmers with small holdings and retired farmers who still live on their farm while it is being worked by someone else. Any income generated from the asset test exempt land would be assessed under the income test.

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This measure is expected to increase expenses by \$173 million over four years.¹

Search and seizure powers

Schedule 2 of the Bill provides for search and seizure powers for investigations relating to the family assistance, social security and student assistance provisions. The stated intention is to allow authorised officers to 'effectively investigate and prosecute offences in regard to programs administered under those provisions'.²

The prevalence of search and seizure powers in Commonwealth legislation is a matter that has been of concern to the Parliament for some time. In 2000 the Senate Scrutiny of Bills Committee released its 'Fourth Report of 2000: Entry and Search Provisions in Commonwealth Legislation'.³ The Committee made several recommendations and noted that:

There is a public interest in the effective administration of justice and government. However, there is also a public interest in preserving people's dignity and protecting them from arbitrary invasions of their property and privacy, and disruption to the proper functioning of their businesses and work. Neither of these interests can be insisted on to the exclusion of the other, and proper and fair laws which authorise the entering and searching of premises can only be made where the right balance is struck between these two interests.⁴

In its response in August 2003, the Government rejected many of the Committee's recommendations.⁵ On 25 March 2004, the Senate again referred the issue to the Committee in the form of the Inquiry into Entry, Search and Seizure Provisions in Commonwealth Legislation.⁶ The Committee has taken submissions and conducted public hearings, all of which can be accessed on its website. The Committee has not yet reported.

Although the Government rejected many of the recommendations made in the Committee's Report 2000, the Attorney-General has made reference to the report in his Department's 'A Guide to Framing Commonwealth Offences, Civil Penalties and Enforcement Powers'.⁷ That document suggests that:

Where an instructing agency is preparing proposals for entry and search provisions, it should take account of the views of the Senate Scrutiny of Bills Committee, most notably reflected in the Committee's Report 4/2000: *Inquiry into Entry and Search Provisions in Commonwealth Legislation*.⁸

Principles recommended to be considered in the Committee's report include that:

- legislation should only authorise entry to premises under warrant or by consent, or in a limited range of other circumstances such as a condition of a license,

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- legislation that confers coercive powers should require that these powers may only be exercised by appropriately qualified persons,
- the power to appoint an authorised officer should only be exercisable by a Departmental Secretary or equivalent, eg an Industrial Registrar under the *Workplace Relations Act 1996*. There should be a requirement that the appointment be in writing,
- there should be a requirement that an authorised officer who enters premises be in possession of an identity card, issued for that purpose, which incorporates a recent photograph of the person. The officer should be required to show the occupier this card before entry,
- legislation providing for entry by consent should require that the occupier be informed of the right to refuse consent, and that consent be voluntary,
- where legislation provides for entry to premises with consent, there should not be a requirement to cooperate with the officer/inspector and failure to cooperate should not be an offence,
- provisions allowing entry and search of premises without consent should require that the occupier be given a copy of any warrant and be informed, in writing if practicable, of his/her rights and responsibilities. These requirements should only be able to be waived in very limited circumstances, eg where there are reasonable grounds to believe compliance would endanger a person's safety,
- legislation should allow an authorised officer to use reasonable force to execute a warrant. Where legislation provides that an authorised officer may obtain assistance to enter premises and execute powers under warrant, the person assisting should be authorised to use force against 'things' but not 'persons',
- seizure should only be allowed under a warrant, even if entry and search without warrant are permitted. Where entry is allowed without warrant, the legislation may provide that items may be secured, pending a warrant application,
- the power to issue warrants to enter and search premises should normally be conferred on State and Territory magistrates acting in their personal capacity,
- entry, search and seizure powers should generally be contained in an Act rather than subordinate legislation, and
- the search warrant provisions of Part 1AA of the *Crimes Act*, which are applicable to police, define the outer limits of the powers and the minimum limitations and obligations that should apply to search warrant powers.

Broadly speaking, these principles appear to have been followed in the drafting of the provisions in the Bill.

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Crisis Payment

This payment was introduced in 1999 and replaced the double payment for released prisoners. It provides financial assistance over and above normal income support entitlements to income support recipients in severe financial hardship if it is necessary for them to:

- leave their home and set up a new home because of events such as domestic violence or a house fire, or
- re-establish themselves after release from prison or psychiatric confinement.

The current rate of the payment is about \$230 and can be paid up to four times in a twelve month period.

This Bill amends the eligibility criteria so that those experiencing domestic violence will be able to receive the payment where they remain at home. The payment will help with the cost of securing the home and other expenses.

Exchange of information between agencies

Under the social security law and data matching legislation, information can be exchanged between various government agencies to assist with the administration of welfare payments. This is mainly done so that information from different agencies can be compared so that cases where incorrect entitlements are being received can be identified. This Bill allows the Department of Health and Ageing to provide information to Centrelink or one of the departments with responsibility for social security payments. The objective is to compare data on people permanently entering residential aged care with data on recipients of Carer Allowance. If Carer Allowance recipients do not notify Centrelink when the person they care for leaves their care they can build up overpayment debt.

The Bill also allows Medicare Australia access to protected information held by the Child Support Agency.

For the purposes of administering welfare payments information can be gathered on a range of topics under the Social Security Law. This Bill adds information about real property interests to the existing list set out in the *Social Security (Administration) Act 1999* (SSAA).

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Main provisions

Item 6 of Schedule 1 inserts **new section 11A** into the *Social Security Act 1991*. This section sets out the new provisions concerning what is included under the term 'principal home' for the purposes of the assets test.

Schedule 2 amends the *A New Tax System (Family Assistance) (Administration) Act 1999*; the SSAA and the *Student Assistance Act 1973*, to implement the new provisions for search and seizure powers in relation to investigations under those Acts. Essentially, the Bill establishes the same regime for each of those Acts. Details of the provisions are outlined from page 11 of the Explanatory Memorandum.⁹

Item 3 of Schedule 3 inserts **new paragraphs 1061JHA** into the *Social Security Act 1991*. The new section provides for eligibility for a crisis payment where a person who has been subjected to domestic violence remains in their home after the family member involved in domestic violence has been removed or has left.

Item 1 of Schedule 4 inserts **new paragraphs 86-3 (ca) and (cb)** into the *Aged Care Act 1997*. The new subsections allow for information to be provided to Centrelink.

Items 3 and 4 of Schedule 4 insert **new paragraph 150(3)(bb)** into the *Child Support (Assessment Act) 1989* and **new subsection 16(3)(bb)** into the *Child Support (Registration and Collection) Act 1988*. The new subsections allow for information to be provided to Medicare Australia.

Item 4 of Schedule 4 inserts **new paragraph 195(2)(ha)** into the *Social Security (Administration) Act 1999*. This allows for the gathering of information about the real property interests certain classes of people.

Concluding comments

The provisions in this Bill to allow some exemption of non-productive land under the assets test and the expansion of access to the Crisis Payment is beneficial legislation.

The search and seizure provisions in the Bill seem to comply with previously released Attorney General guidelines, which in turn comply with recommendations previously made by the Senate Scrutiny of Bills Committee's Inquiry into Entry, Search and Seizure Provisions in Commonwealth Legislation.

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Endnotes

1. Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006, *Explanatory Memorandum*, Outline.
<http://parlinfoweb.parl.net/parlinfo/browse.aspx?NodeID=154>
2. *ibid.*, p. 11.
3. Senate Standing Committee for the Scrutiny of Bills, Fourth Report of 2000, *Entry and Search Provisions in Commonwealth Legislation*, Canberra, 6 April 2000.
<http://www.aph.gov.au/Senate/committee/scrutiny/bills/2000/b04.pdf>
4. *ibid.*, p. 67.
5. Government Response to the Senate Senate Scrutiny of Bills Committee Fourth Report 2000, *Entry and Search Provisions in Commonwealth Legislation*, Canberra, August 2003.
http://www.aph.gov.au/Senate/committee/scrutiny/bills/2000/Govt_Response_Final.pdf
6. http://www.aph.gov.au/Senate/committee/scrutiny/inquiries/entry_search.htm
7. Minister for Justice and Customs, *A Guide To Framing Commonwealth Offences, Civil Penalties and Enforcement Powers*, Canberra, February 2004.
[http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/07B8DF7C133D46C8CA256E5F000339F0339FC/\\$FILE/Consolidated+Guide+++February+2004.pdfC/\\$FILE/Consolidated+Guide+++February+2004.pdf](http://www.ag.gov.au/agd/WWW/rwpattach.nsf/personal/07B8DF7C133D46C8CA256E5F000339F0339FC/$FILE/Consolidated+Guide+++February+2004.pdfC/$FILE/Consolidated+Guide+++February+2004.pdf)
8. *ibid.*, Chapter 9.
9. Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006, *Explanatory Memorandum*, op. cit., p. 11.

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