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STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL
AFFAIRS

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

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**SENATE STANDING COMMITTEE ON
LEGAL AND CONSTITUTIONAL AFFAIRS**

Friday, 10 November 2006

Members: Senator Payne (*Chair*), Senator Crossin (*Deputy Chair*), Senators Bartlett, Brandis, Kirk, Ludwig, Scullion and Trood

Participating members: Senators Allison, Barnett, Bernardi, Bob Brown, George Campbell, Carr, Chapman, Conroy, Eggleston, Chris Evans, Faulkner, Ferguson, Ferris, Fielding, Fierravanti-Wells, Fifield, Heffernan, Hogg, Humphries, Hurley, Johnston, Joyce, Lightfoot, Ludwig, Lundy, Ian Macdonald, Mason, McGauran, McLucas, Milne, Murray, Nettle, Parry, Patterson, Robert Ray, Sherry, Siewert, Stephens, Stott Despoja, Watson and Webber

Senators in attendance: Senators Bartlett, Ludwig, Payne and Trood

Terms of reference for the inquiry:

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

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Committee met at 9.04 am

CHAIR (Senator Payne)—Good morning ladies and gentlemen and welcome to this hearing of the Senate Standing Committee on Legal and Constitutional Affairs. This is the hearing for the Senate Standing Committee on Legal and Constitutional Affairs inquiry into the Families, Community Services and Indigenous Affairs and Veterans' Affairs Legislation Amendment (2006 Budget Measures) Bill 2006. The inquiry was referred to the committee by the Senate on 11 October 2006 for report by 22 November 2006. Schedule 2 of the bill proposes the introduction of significant new search and seizure powers for Centrelink officers, and it is this schedule of bill that has been the main focus of submissions. The committee has received 13 submissions for the inquiry, and all of those submissions have been authorised for publication and are available on the committee's website.

I remind all witnesses that, in giving evidence to the committee, they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false or misleading evidence to a committee. The committee does prefer all evidence to be given in public but, under the Senate's resolutions, witnesses have a right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera.

If a witness objects to answering a question, the witness should state the ground upon which the objection is taken and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee determines to insist on an answer, a witness may request that the answer be given in camera. Such a request may also be made at any other time.

[9.06 am]

BLUCK, Mr Frederick Paul, Director, Legal and Policy, Office of the Commonwealth Ombudsman

BROWN, Ms Vicki, Senior Assistant Ombudsman, Office of the Commonwealth Ombudsman

FLEMING, Mrs Helen, Senior Assistant Ombudsman, Office of the Commonwealth Ombudsman

GOODRICK, Mr Robert, Director of Inspections, Office of the Commonwealth Ombudsman

THOM, Dr Vivienne, Acting Commonwealth Ombudsman, Office of the Commonwealth Ombudsman

CHAIR—Welcome. The Commonwealth Ombudsman has lodged a submission with the committee, which we have numbered 13. Do you need to make any amendments or alterations to the submission?

Dr Thom—No.

CHAIR—I invite you, Dr Thom, to make a brief opening statement and then we will go to questions from members of the committee.

Dr Thom—Thank you. Firstly, we would like to thank the committee for the opportunity to comment on this bill. The role of the Commonwealth Ombudsman is to foster good public administration that is accountable, lawful, fair, transparent and responsive. To this end, we investigate complaints about public administration. We also inspect the records of law enforcement agencies to ensure their compliance with the legislation that authorises them to exercise intrusive powers secretly.

In the last financial year, some 42 per cent of complaints we received were about Centrelink alone. This underlines the impact the administration of Centrelink has on a large segment of the Australian population. Against this background, our submission focuses on schedule 2 of the bill, which includes provisions permitting Commonwealth officials to enter and search premises and to seize material which may be evidence of an offence.

The grant of intrusive powers to Commonwealth officials always warrants careful consideration and this is all the more justified where the powers given are unusually extensive. It could perhaps be said that powers of entry, search and seizure such as these are in fact more disruptive and have a greater immediate impact than eavesdropping powers, which are exercised covertly against those suspected of serious crime. The more extensive the powers, the greater the risk that there they may be misused or abused, and the greater the risk of misuse or abuse, the greater the risk of damage to public confidence in Commonwealth administration as well as suffering and possible financial harm to the victims.

In the end, it is for the government and the parliament to judge community values and weigh the risks to individuals and businesses and to public confidence in administration against the public interest in pursuing and containing social security and similar fraud. In the

case of the proposed legislation, a figure of some \$8.3 million in savings over four years is contemplated in the explanatory memorandum. As against this, we note that the number of people drawing benefits under the programs which will be affected also runs to several million. One reason provided by FaCSIA for granting powers of entry, search and seizure to departmental officials is that the law enforcement agencies are not in a position to investigate fraud to the extent that Centrelink considers appropriate.

The assumption by officials of powers normally reserved for specialist law enforcement agencies is itself a development that should be carefully considered by lawmakers. The explanatory material states that the parliament has already given entry and search and seizure powers to officials of other agencies. However, we question the value of comparison with existing legislation. Of the examples given, the power given to Medicare Australia is perhaps the most relevant and the broadest. However, this relevance is qualified by the fact that that main focus of that legislation is clearly the providers of medical services—that is, businesses.

The Child Support Agency has a power to enter homes, but only if an employer is suspected of keeping employment records on the premises rather than at a business location. The other instances of officials wielding intrusive powers are quite removed from the circumstances in which this legislation would be used. The existing social security law and related legislation already contains a considerable range of powers to enable Centrelink officials to gather the information they need. Although some are supported by criminal law type sanctions, the financial consequences of others where an administrative step is taken—for example, if payment is denied—is probably as much a penalty as many of the fines that could be imposed.

Other aspects of the bill that warrant particular scrutiny include the impact on those who share homes or workplaces with people who will be the subject of those powers. These could include children, the elderly and people with mental illnesses. The powers will be exercisable by officials spread over a wide range of locations. In our experience, the training of officers and the very culture of the organisation will be critical factors in the reasonable use of these powers. If the bill becomes law, it is important that people whose premises are about to be entered be told expressly at that time of their right to complain to the Ombudsman. A second suggestion is that there should be regular monitoring by the Ombudsman of the use of the powers. This would require records of the process to be kept for the issue of warrants and other procedures, which would then be subject to audit at regular intervals.

This compliance monitoring could be done by the Ombudsman undertaking an own-motion investigation that would examine regularly the way in which the powers have been exercised. If there were significant and chronic compliance problems, a move to a closer level of scrutiny through an inspections regime might be justified. However, a review of how the legislation has worked in practice would be advisable before a full inspections regime is considered. There would of course be moderate funding implications for any approach which entailed a regular monitoring regime, particularly if a full inspections regime were instituted. We note that other submissions have raised similar concerns to ours.

Senator LUDWIG—In terms of your oversight of the issue of warrants and the like, you currently have that role in a range of areas. Could you briefly outline those areas in which you currently have that oversight role?

Ms Brown—We have an oversight role—actually an inspections role—in regard to the AFP’s use of telephone interception, operations, covert operations and surveillance devices and also stored communications, which is a recent amendment. Do you want more elaboration?

Senator LUDWIG—Is there anywhere where you do the issue of warrants?

Ms Brown—We do not issue warrants.

Senator LUDWIG—No, I mean oversight, other than TI and the like; in other words, ordinary search and seizure warrants and the like. In your opening address you indicated that there might be a role for the Commonwealth Ombudsman in this instance, but I am curious about whether you have a role in other instances.

Ms Brown—Not in relation to our inspections role, no.

Senator LUDWIG—And in this instance? Has Centrelink spoken to you in drafting the legislation about the role that the Commonwealth Ombudsman might have, or sought input from the Commonwealth Ombudsman in drafting the legislation to deal with search and seizure warrants?

Mrs Fleming—No.

Senator LUDWIG—Were you surprised by that?

Mrs Fleming—I cannot recall any instance when legislation has been drafted or proposed where we have been approached to comment on the draft legislation.

Senator LUDWIG—So it is not usual practice to come to the Commonwealth Ombudsmen and say: ‘Here are some intrusive powers. What do you think?’

Mrs Fleming—No. The only time we might get that is if, for instance, we were to see draft cabinet submissions where the legislation was contained. But in this instance we have not.

Senator LUDWIG—So you cannot find any similar organisation in the Commonwealth arena which is seeking a similar power to this, other than the AFP or the like, which already has it?

Dr Thom—We believe that, in those cases where they appear to have similar powers, generally the subject of the use of those powers is different. In the case of the ATO, for example, it may be in relation to businesses or people who are suspected of severe tax fraud. As we were saying, with Medicare Australia it is usually the providers of medical services—that is, businesses. With the Child Support Agency, they can enter private residences but that would usually be when they are used as an alternative to a business for keeping records. So our understanding is that these powers are not generally given to Commonwealth officials, other than, for example, law enforcement agencies, where they can be used against private individuals in their own private residences.

Senator LUDWIG—Do you receive many complaints from the public about Centrelink’s operations?

Dr Thom—It is understandable that we do receive a lot of complaints about Centrelink, given the broad nature of their business and the types of clients, but in fact 42 per cent of our

some 17½ thousand complaints last year were about Centrelink. But that has to be put into the context of the large numbers of transactions they conduct every year.

Senator LUDWIG—I am not sure whether you have analysed your figures to this extent, but how many relate to issues other than counter work or payment problems and those types of issues, issues which might be closer to this area, where there has been intrusiveness by overzealous Centrelink officers?

Mrs Fleming—It is fair to say that a not insignificant proportion of Centrelink complaints relate to issues where there is an exercise of discretion by Centrelink officials, especially in the marriage-like relationship area. A number of submissions have raised concerns that these powers might be used by Centrelink to discern whether there is a marriage-like relationship. In a number of those cases, it is the decision on which we receive the complaint and in others it is the conduct of the officials making those inquiries.

Senator LUDWIG—Could you elaborate on that issue of the conduct of the officials? Are you able to say what percentage of your complaints relate to those types of incidences? I know this might be asking too much on the short notice, but you may have already looked at this area.

Mrs Fleming—I thought you might ask that question this morning and I was unable to get anything readily. I can see whether we can break some figures down and provide that to the committee secretariat, perhaps. But I do not have a percentage.

Senator LUDWIG—I was unsure whether you would keep it to that level of specificity in your records. If you are able to, the committee would not mind having a look at that, but only if it does not extend to too much work. I know you are a busy organisation. You have an own-motion investigation currently underway into marriage like relationships. Are you able to say where that is up to at the moment?

Mrs Fleming—That is currently still being drafted within the office. We are reaching some degree of finality on that. But, as with any other report that we do, it would be sent in draft form to agencies that would be affected so that they have the opportunity to comment first before any report was finalised. We probably would be aiming at this stage for somewhere around the early new year, but do not hold me to that.

Senator LUDWIG—Do you keep figures on Customs, Medicare Australia the Child Support Agency and the Migration Act? Do you keep figures on the complaints you receive from members of the public about the exercise of powers by officials under that legislation?

Dr Thom—Unfortunately, our data is broken down by agency but not necessarily by the type of complaint. I will see if my colleagues have any more information.

Ms Brown—Our complaints data does not go into that detail.

Senator LUDWIG—And because the migration legislation covers such a wide area it would be difficult to narrow it any further.

Dr Thom—Absolutely.

Senator LUDWIG—Are you able to say whether the oversight arrangements under the proposed legislation are as wide as you would expect? If, for argument's sake, you look at the

AFP, in the new year an Australian law integrity commission will oversight more broadly allegations of corruption and the like. From my recollection, it has quite a detailed process in place dealing with the issue of warrants—how they are tracked, how they are maintained and the like. In other words, there is a whole mechanism for how they would do it. There is also a commissioner who has wide powers to discipline officers and make sure they exercise their duties carefully. There are penalties for stepping outside the line. The legislation is quite comprehensive. It deals with the conditions on warrants and it provides for the protection of children. As you can appreciate, with warrants there are sometimes videotapes. They have to be careful about how a videotape is secured and kept. They have a range of mechanisms in place to ensure that material is kept secure and, once it is no longer required, is destroyed. Having looked at the legislation and the department's submission, are you similarly of the view that the same safeguards are in place?

Dr Thom—We note that there is a particular safeguard in that the warrants must be obtained by application to a magistrate. That would, of course, put some scrutiny in place at that stage. Although it is not explicit in the legislation, there is of course the Ombudsman's oversight of all the administrative actions, so we could, of our own accord, do an own motion. Anybody who is subject to the use of these powers has the right to complain to the Ombudsman anyway, even if it is not explicit in the legislation. The other oversight would appear to be administrative processes within the department. From our experience—and I repeat the point—training and the culture of the organisation would be paramount in the fair, effective and reasonable use of these powers. It is not entirely clear to us at the moment what training and accountability procedures would be in place within the department.

Senator TROOD—Does the Ombudsman's office receive many complaints in relation to the exercise of the seizure powers that agencies have?

Ms Brown—We definitely receive complaints about the AFP's exercise of seizure powers. However, we do not have the numerical details that may assist you.

Senator TROOD—Can you give us a sense of whether that is a substantial number or a relatively small number of complaints? Can you make sense of that in any way?

Mr Bluck—I see a sample of what the office receives as being cases whereby people are seeking advice of one sort or another. There are not an enormous number, but I would note that the powers are generally exercisable only in a limited field as with businesses or with particular high-impact taxpayers. I also note that they tend to be serious and complex matters once they arise, because one is looking not only at the conduct of the exercise of the powers but also at the basis for exercising them: whether in fact it was proper for the officials to have gone out and conducted a search or demanded information from somebody.

Senator TROOD—So it is not just the execution of the power; it is whether or not there was a foundation for the power to be exercised in the first instance?

Mr Bluck—Yes.

Senator TROOD—What about in relation to other agencies? I notice with some interest and even concern that there seems to be a proliferation of agencies now requiring these kinds of powers. Have there been many other instances of people bringing to you concerns about other agencies' exercise of these powers?

Dr Thom—I suppose I would have to mention at this point some of the reports about Immigration. In terms of the compliance activities, there have been a number of reports about Immigration and some are still in the pipeline. There have been concerns over the last few years about the training of staff, guidelines and procedures as to the use of coercive powers, of detention powers.

Senator TROOD—You raised that point in your submission. It is one of the issues I wanted to pick up. As I understand it, you were raising your concern about the possibility that if these powers were given to Centrelink then presumably officers across the country would have the powers and there may well be differences in training and different levels of capability in relation to these officers, so there would potentially be a great degree of inconsistency in the way these powers were exercised. I suppose the question is whether you are already seeing much inconsistency. Can you disaggregate from your figures any of that information about different agencies? I suppose the question is whether or not this concern that you have raised is a serious one, or is it reasonable to make the assumption that in fact agencies that are given these kinds of powers can in fact train their officers effectively to exercise the powers responsibly?

Dr Thom—We make the general point that, where we have a large agency with a large number of people dispersed in geographic locations throughout Australia and that exercising these powers may be just one part of a job that is multifaceted, it would appear that it would be much harder to achieve consistency and high quality control than where you have specialist law enforcement agencies for which this is in fact one of the parts of their core business and you have fewer people exercising it at fewer locations.

Senator TROOD—Let us allow that that proposition is in fact a danger. What is the consequence of that? Why should we take that concern seriously?

Dr Thom—If staff are not absolutely clear about the nature and extent of these powers and the legal basis for these powers and if they do not understand the accountability and if they do not understand exactly who has delegation and who has authorisation and if they are not sure about how to make a fair and reasonable decision and if they do not have good record keeping and do not keep very good diaries as they are carrying out these processes, then there is a fair chance that there will be misuse or abuse of these powers. With a larger number of people more dispersed, it is much harder of course to maintain the quality.

Mrs Fleming—In this particular group, many Centrelink customers are amongst the most vulnerable people in our community. Because of a certain background—for instance, a lot of the migrant community come from countries where this is so—they may not challenge officials coming to their door. Many customers have mental illness. In some ways the need for training in this area is highlighted by the very group who potentially are affected, as perhaps contrasted with, for instance, the highly sophisticated tax type of cases where people are more aware of their rights.

Senator TROOD—Perhaps even expecting some intrusion. I notice you are making an argument for the fact that you might exercise a role if these powers were given and you suggest that this may require additional funding for the Ombudsman's office. Since I am a

sceptic about agencies getting extra funding for things, how easy would it be for you to take on these responsibilities if you did not get funding? Would it pose a great strain on the office?

Dr Thom—It would be entirely dependent upon how these powers were used—how frequently they were used and in what locations they were used. Usually for such an inspection role we would expect to inspect the actual site where the staff worked. If there were just a few places in Australia used very infrequently, we could probably absorb the additional costs. If, however, there were extensive use of these powers and an initial audit showed that in fact there were real problems, then that is the time when we would probably need additional funding. It really does depend upon the nature and extent of the use of these powers.

CHAIR—Dr Thom, in relation to your first recommendation about informing people whose premises are subject to the exercise of the powers of their right to complain to the Ombudsman at the time, is that included in other legislation where these powers have been provided?

Dr Thom—No, it is not included within the legislation.

CHAIR—Is it included in the processes?

Dr Thom—It is clear to people when they deal with the AFP at some stages that they have the right to complain. In detention centres we very widely advertise the fact that people have the right to complain to the Ombudsman. So it is not necessarily within the legislation, but certainly within certain areas people believe they have the right to complain and understand that.

CHAIR—Thank you very much.

Senator LUDWIG—This may have to be a question that I ask the department itself. I note in your submission the unusual situation—this is explored on page 6, towards the middle of the page—where their argument seems to be based on them wanting to have these powers to deal with certain issues. The interesting point you make is in terms of the more non-routine matters. The submission says:

... the thrust of the Explanatory Memorandum is that these existing powers are only sufficient to enable Centrelink officials to address “routine non-compliance” and that enhanced powers are needed if Centrelink officials are going to be able to effectively investigate more serious abuse.

To be able to say that, there needs to be clear justification for it. In other words, they need to be able to point to systemic problems that require these powers to deal with that area. They would also need to demonstrate that the current system is not sufficient to deal with it. Do the complaints that you receive justify that or tend to point to evidence that the department could use—that the types of complaints that you are getting point to the inability to deal with these types of abuses or problems that arise?

Dr Thom—I would not expect us to get complaints that would indicate that people are getting away with fraud that cannot actually be detected. I am not sure that I am following the line of questioning.

Senator LUDWIG—It is the reverse really. Do you graduate the types of complaints that you get on their seriousness?

Dr Thom—We do graduate them on their seriousness, but I do not think it is in a way that would be useful. It would not relate to the seriousness of the fraud, for example; it would relate to the seriousness of the administrative deficiency within the agency. So do not think there would be any correlation.

Senator LUDWIG—The point I was trying to get at is this: if someone is contesting the department about quite serious fraud and it is not from the AFP but the department itself.

Dr Thom—I see what you mean.

Mrs Fleming—In relation, again, to the marriage-like relationship type cases which potentially are the subject of these powers, our office's view would be that there are already quite extensive powers to enable Centrelink to come to a decision on that, because there are a number of indicia for an official to determine whether there is a marriage-like relationship. For instance, they can check with banks about bank details. They can check with employers, for instance, as to who, in the event that a worker is killed or injured, will be the beneficiary of any entitlements. So there are a number of measures already in place.

As Dr Thom has previously mentioned, in a lot of the cases to do with social security and related payments, in some ways the biggest power that Centrelink already has is the ability to suspend or cancel a person's payment and to require them to attend offices or to provide information. In a sense, there are already extensive powers there, so we question perhaps whether there is a need for search and seizure powers in these types of areas. The explanatory memorandum does not actually specify—and I think another submission has raised this point—what is routine non-compliance and what is not. What is serious abuse? Is it the dollar amount or is it the nature of the abuse? Is there a difference between perhaps, given that three agencies are responsible for this legislation, guidelines that might be issued by FaCSIA as compared to DEWR as compared to DEST?

Senator LUDWIG—Because all of them have the ability to withhold payment.

Mrs Fleming—They are the policy agencies responsible for directing Centrelink about payments.

Senator LUDWIG—It is a pretty focused issue. It will bring your attention to the department or Centrelink if your payment stops. By its very nature, then, these types of powers must be outside that issue. Do you have a view about that?

Dr Thom—You are saying that because they already have the power to stop payments, which in itself is quite a dramatic step for the recipient of payments, they are asserting—we have no comment on whether that is the case or not.

Senator LUDWIG—I will talk to the department about that. Thanks.

CHAIR—Dr Thom, I thank you and your officers very much for attending this morning and also for the submission from the Office of the Commonwealth Ombudsman, which, as ever, the committee finds very helpful.

Dr Thom—Thank you.

[9.39 am]

JONES, Mr Stephen, National Secretary, Community and Public Sector Union

RAHILL, Ms Alison, National Research Officer, Community and Public Sector Union

CHAIR—Welcome. The CPSU has lodged a submission with the committee, which we have numbered 11. Do you need to make any amendments or alterations to that?

Mr Jones—No, thank you.

CHAIR—I invite you to make a brief opening statement, then we will go to questions from members of the committee.

Mr Jones—Thank you. Senators, in approaching our submission on the bill, we started by asking ourselves this question: is it appropriate that the Commonwealth have the powers contained in the proposed legislation to prevent, detect and prosecute fraud? The answer to that question was quite obvious to us—that, yes, indeed, it was appropriate that the Commonwealth have such powers available to it but that they should be balanced against the rights of citizens to enjoy the privacy of their own homes, free from invasion of that privacy and from harassing inquiry.

In looking at the material, in talking to our members and in considering the submissions of other witnesses before this committee, we have come to the conclusion there is a good case to be made for the functions that are typically performed by the policing and law enforcement agencies, such as those contained in this bill, to continue to be performed by those agencies. That case might include the fact, as pointed out by a number of the submissions, that these sorts of functions are actually core functions for the policing agencies, not incidental or ancillary functions as would be the case when they are attached to the agency of Centrelink. Being core functions means that within those organisations they have processes and procedures, a well-trained workforce and the capacity to deal with and manage in an appropriate way the powers that are available to them under the legislation.

The Australian Federal Police, for example, has a history of conducting investigations like those covered by the bill in a way which enables the evidentiary material that flows from that investigation—the inquiry, the search and the seizure—to be admissible before a court of law. That is the essence or the crux of the purpose of this legislation. That is their bread and butter; that is what they do on a daily basis. When attached to another agency, that function would be an ancillary function as opposed to a core function.

Having made that point, that does not mean that another agency could not perform the functions and perform them in a way that the parliament required it to. But it does mean that it would be necessary to put in place significant legislative and administrative processes to ensure that the will of parliament was adhered to. It is our submission that an absolutely essential requirement of the persons performing these functions is that they are suitably qualified and experienced. It is crucial for the protection of the community and the officers performing this function that they have adequate training and experience in the use of force and in responding to potentially conflicting circumstances. They must be qualified and have

experience in dealing with material which will potentially become the subject of a litigation procedure so that that material is admissible before a court of law.

In addition, we picked up and adopted some of the material in a number of the submissions from welfare agencies that points to the importance of cultural awareness training, if I can use that term broadly. More specifically, it is important that officers who are engaging in exercising these powers have an awareness of the cultural and particular circumstances of the persons whom they are investigating and, in particular, that they have both the training and the capacity to deal with the needs and rights of children who may be living in the households which are subject to the search and seizure order. In our submission, we deal in brief with the need for the granting of such power to be accompanied by an appropriate level of restraint.

We note that the purported purpose of the power—and this is certainly as outlined in the department's submission—is to enable the department to appropriately detect, investigate and prosecute sophisticated and major fraud. However, nowhere in the legislation is that purported power reflected. In fact, it is quite a broad grant of power which does not necessarily attach itself to the investigation of complex and sophisticated fraud. It is in acknowledging that point that we think there needs to be some proportionality between the use of force and the breadth of a search and seizure power granted to each authorised officer. That proportionality should actually be reflected in the legislation.

There are a number of measures that might be looked at to ensure that there is some proportionality. There should be some judicial guidance within the legislation. I think that point is made at least by the New South Wales Council for Civil Liberties and the Legal Services Commissioner of South Australia. That is a submission that we adopt and support. In addition to that, there should be some mechanism for administrative and parliamentary oversight of the issuing and administration of the warrants. That was a point made by those giving evidence before us and a point that we adopt and support, although we are agnostic on the question of whether that is a function that should be performed by the Ombudsman or whether it is more properly a function performed by this committee or another agency of the Commonwealth.

A third point that we think is crucial in ensuring that there is some appropriate level of restraint on and control of the use of these powers is to ensure that the functions are performed directly by an officer of the Commonwealth. The bill in its current form would permit those functions effectively to be delegated to a person who was not an officer of the Commonwealth. I think in the submission of the New South Wales Council for Civil Liberties this is referred to as a cascading delegation. We share the concerns of the New South Wales council and believe that, for there to be effective control over the use of such a power, that ought to be performed by an officer of the Commonwealth. If it is not an officer of the Federal Police then it most certainly should be an officer performing functions and exercising their duties under the obligations of Public Service Act.

There are some concerns which are directly related to the private interests of our members, as opposed to the public interest, with regard to the use of these powers, the balancing of the powers and the rights that the Commonwealth has against individual citizens. They go directly to the health and safety of our members in the Centrelink agency if these powers are to be exercised by Centrelink employees.

The officers who are exercising these powers hitherto have not been required to or had any experience in the use of force as part of their normal daily functions. That would be a new requirement and one for which they have not been trained or prepared in the past and one that has significant consequences. But it does not end there. On a daily basis an assault is conducted against a Centrelink officer by a client of Centrelink. It occurs on a daily basis in offices right around the country—there will be an assault against a Centrelink employee. We foresee that the aggression, and the potential for that sort of behaviour to be directed at our members, is likely to be exacerbated for a disgruntled citizen who becomes the subject of one of these search and seizure investigations.

I think that point is made by Mr Stephen Lindsay Fuller, who is a Centrelink employee who has made a submission to this committee. He makes the point that it is not just what the individual Centrelink employee does when dealing with a customer of Centrelink in an office on a day-to-day basis. It can have an effect on the client aggression, but it is things that may happen well outside the workplace and certainly things that might happen in the course of a search and seizure investigation in a customer's house.

So that is a concern to us. In terms of the public interest, we adopt and share the concerns of those who came before us and those expressed other submissions to the committee about the interests of third parties—people who may not be subject to the inquiry and who may be living in one of the houses or premises subject to an investigation—and in particular the rights and needs of children.

Before I conclude, I will make a few brief comments on other submissions to the committee. The Queensland Council of Civil Liberties makes a very brief but powerful point that it is crucial that officers exercising these powers have training in the basic principles of natural justice. We adopt and support that point and would go one step further and say a full-blown law degree is not necessary, but the basics of ensuring that the evidence is going to be gathered so that it will ultimately be admissible before a court of law is a crucial part, if parliament decides that these powers should be exercised by non-police officers. That is absolutely crucial. Otherwise the powers will be defeated in the execution.

The NSW Council of Civil Liberties makes the point in recommendation 1 about proportionality. In my oral submissions I have supported that point. It makes a very powerful point in recommendation 3 about the dangers of cascading delegations. We think this is a crucial point. There have been unfortunate incidents where powers of the Commonwealth in relation to the administration of immigration legislation in detention centres have been exercised by non-officers of the Commonwealth, with quite tragic personal and political consequences. We do not want to see that visited upon the Centrelink agency.

Mr Fuller, in his submission, makes the point about the importance of training and the danger of blowback. We think that is a very important point. The Welfare Rights Centre use some unfortunate language in their submission about the people who are performing the functions of Centrelink. We like to think of our members as public servants and not bureaucrats, and we take the opportunity to make that correction whenever we see it. Leaving that aside, I think the points that the Welfare Rights Centre make about the complexities of investigating marriage-like relationships do warrant the attention of the committee, and we

support the thrust if not the details of the submissions of the National Council of Single Mothers and the Welfare Rights and Advocacy Centre in that respect.

The Privacy Commission and the Catholic Social Service make some powerful submissions in relation to the police force having a history and an expertise in putting in place a regime of training and compliance. We think there is a powerful point made in that respect, which comes through in the thrust of my oral submissions. If parliament does not accept that that is the proper place for these functions to be exercised then we would hope the committee and ultimately parliament would take due regard of the submissions I have made on behalf of our members on the importance of training and regimes for ensuring that the purpose of the legislation is not defeated in its execution.

CHAIR—Thank you very much, Mr Jones. Ms Rahill, did you wish to add anything at this point?

Ms Rahill—No.

CHAIR—Thank you, that was a very comprehensive opening statement, Mr Jones. I assume your membership covers the absolute breadth of servants of the public. Have these sorts of powers and roles been given to others amongst your membership in recent years, and how has that played out?

Mr Jones—We are seeing an increase in the trend towards providing law enforcement type functions traditionally performed by police to other agencies, generally within the law enforcement realm but not exclusively. The two that come to mind are the Customs Service and the department of immigration. I will not repeat what has been said before by the Ombudsman. There have been some problems with the performance of policing like functions by civilians under those pieces of legislation.

In relation to the Customs legislation, all I can say is there are some new proposals in relation to the use of force in some investigations and they are accompanied by extreme controversy. The way the function was previously performed—I am not sure if the senator is aware of this—in the Customs Service, where the use of force was thought to be necessary to obtain entrance to a premises or seizure was necessary, was usually with the cooperation of a state police service or the Federal Police. A Federal Police officer or a state police officer would accompany the Customs officials to the premises to exercise the warrant and assist if there was any violence or threat of violence. That has been a satisfactory arrangement from our members' point of view. They are now being asked to effectively use coercive powers to gain entry and, accompanied with those new powers, there is a new requirement that they be armed in the exercise of those functions. I have deep concerns that our members have never been required to carry a revolver as a part of their functions. If that were to be a part of the application of this power, I would anticipate a similar response from our members in that area. But I hope that answers your question.

CHAIR—Flowing from that, you listed a number of aspects of what would be required in relation to training and qualifications and then experience—and there are some in your submission; they are all on the record, of course. It is a pretty comprehensive list if you start at, say, the protection of children who may be third parties at a location and then come back to natural justice; cultural awareness training; the ability to protect evidence which may pertain

to another investigation or another matter, let alone evidence that may pertain to the matter at hand; and the use of force and so on. In other agencies where your members are required to exercise powers such as these, how has the training process been carried out? Is it adequate in those instances?

Mr Jones—In the vast majority of cases, the power has been exercised by a Federal Police officer accompanying the public servant.

CHAIR—And that is the difference you make.

Mr Jones—That is the difference we make. In relation to the use of the immigration powers, the end point of that investigation or that exercise is generally the detention or deportation of somebody as opposed to bringing them before a court of law accompanied by the laws of evidence and the adversarial process.

CHAIR—I think it is an interesting point of difference.

Mr Jones—There is a point of difference there.

Senator LUDWIG—I note in the area of social security law that Centrelink already have many powers. The Commonwealth Ombudsman's submission, at page 6, indicated that the law:

... already contains a considerable range of powers to enable Centrelink officials to gather the information they need to make decisions and administer payments.

It goes on to say that they could do a denial of payment and also have powers under sections 192 and 195, and a range of other powers, to assist them in their work. Has it come to the attention of your union whether your members have been sufficiently trained in the exercise of those powers already? In other words, are there complaints that in exercising powers under existing laws your members provide information to the union or the union is pressing for additional safeguards as well?

Mr Jones—There are certainly complaints amongst our members, most recently about the introduction of the raft of new requirements accompanied by the Welfare to Work legislation and the inadequacy, in their apprehension, of the training to adequately prepare them for the administration of those functions. In a bipartisan vein, I would add that this is not a new complaint of Centrelink officers or their antecedents in the Department of Social Security. There has been a concern for many years that parliament often requires a raft of new changes, generally accompanying a budget process, to be implemented very quickly and the training and changing of systems simply cannot keep pace with the parliament's expectations. That will certainly be the case in this circumstance.

Senator LUDWIG—What about under the areas that the Commonwealth Ombudsman mentioned, where powers already exist—more particularly in the Medicare Australia Act 1973, where there is authority for grounds to obtain a warrant to enter a premises and search for and seize evidential material? There is also the Child Support Agency area, where they have the power under section 61 of the Child Support (Registration and Collection) Act 1988 to enter an employer's premises and to access and copy documents. Of course, we have already mentioned the Migration Act, but, regarding those other areas, have you had any

experience with your members about the exercise of those powers, their effectiveness and the training that might accompany those powers?

Mr Jones—From memory—I will stand corrected—the Ombudsman’s submission covers this in quite some detail, but in none of them is the use of force exercised by the public servant. I think it is exercised by a sworn officer or constable. I will stand corrected on that, but that is my understanding of how that particular power is exercised at the moment.

Senator LUDWIG—Although it is clear you are representing them, what are the types of issues that your members might have raised with you? Are they contained within the issues here or do they go broader as well?

Mr Jones—I was at pains not to verbally cover material that is in the written submission, but there is a broad issue of consultation about how such a power would be exercised—essentially, the selection process, the training and development and the accreditation of persons performing those functions, and, obviously, administrative procedures and ultimately the selection and remuneration of persons who are performing those functions. Employees of Centrelink are currently covered by a collective agreement, and that was settled before these new functions were proposed. I am sure there would be a concern amongst people performing work in that area that they were going to be appropriately trained and remunerated for the work that they were performing.

Senator LUDWIG—What about the oversight arrangements that are available to ensure that the power is exercised appropriately? Do you think that is sufficient within the current legislative regime to deal with the proposed powers?

Mr Jones—Could I answer that by referring to the comment I made at inception—that is, it will always be an ancillary function of Centrelink if the parliament determines that these functions should be performed there, as opposed to being a core function of a policing agency, which has systems, processes and a history of dealing with those sorts of functions. That is not to say that it cannot be performed within Centrelink, but resourcing, administrative and oversight requirements that are not there at the moment would have to be put in place.

Senator LUDWIG—So, if this bill were to proceed, your view would be that without putting those matters in place first—in other words, some lead time—your members would not be sufficiently trained and provided with the necessary support to be able to deal with the legislative framework being proposed?

Mr Jones—I would be concerned if a member of my family were subjected to an investigation by somebody exercising these powers if they were introduced tomorrow. There is no doubt about that.

Senator BARTLETT—Often when we talk about these sorts of powers there is a general discussion, not so much about whether the powers themselves are bad but just about whether we can make sure that they are used properly. I guess that goes to comments that you, previous witnesses and others have made about training. I want to ask you a couple of questions about the culture within the department. One of the witnesses from the Ombudsman’s office said that, if you get the culture and the training right, there is a much better chance of not having any problems. I am paraphrasing there. Do you have any views

about ways in which we can maximise the chances that organisational culture around these types of powers is made as strong as possible? Training is obviously one of the ways.

Mr Jones—I would like to make a general observation. The word ‘culture’ is used in a number of the submissions. It is a rather imprecise term, in my submission. Generally, when it is used it means one of two things, as I see it. The first is the mode of operation of an organisation, which might mean everything from administrative procedures to the way that people are recruited, conducted, trained, mentored and supervised. That is one meaning of the word ‘culture’. The other meaning of the word ‘culture’, as it appears, is the prevailing values within an organisation. In relation to the latter, I make this submission: Centrelink has an office in every town in the country; the employees of Centrelink are drawn from the communities which surround those towns in every office in the country. The values of the employees are generally a reflection of the communities from which they come.

In addition to that, their values are often shaped. Certainly the way they perform their work is shaped by the policy and the values of the government of the day. Often our members are criticised for the attitudes that they might adopt towards the administration of the functions that are performed. That is certainly the case with Centrelink. Our response always is to say: ‘They’re public servants. They are administering the policy of the government of the day. If you have a complaint then that is where it should be directed, not at the persons who are performing it.’

In relation to the mode of operation, if that is what you mean by ‘values’, there is certainly much that can be done to improve the induction, training, mentoring and development of staff within Centrelink, particularly because it is an agency which is always subject to major program changes. There will always be a major program change every year—generally every six months—affecting Centrelink. It is the nature of the program. We can always do a lot better in that respect.

Senator BARTLETT—I appreciate it is not really something you can legislate for. It would be pretty hard to move an amendment saying these powers can only be used once the culture gets the tick-off. I suppose the most notorious example is the immigration department. We had government ministers eventually saying there was a big problem with its culture. I would argue there has probably been a problem with the government ministers or with government policy and the law but I will not go down that path now. I suppose that is an example of where we had government ministers saying there was a problem with the culture of the department, whose officers are your members and are the people implementing the legislation. I suppose that is a definition of the type of culture I am referring to.

Mr Jones—Can I answer that point, without wanting to stray into the area that Senator Payne will no doubt tell me is irrelevant to the subject of this inquiry. When public servants are either explicitly or implicitly directed to exercise a policy, they cannot be blamed for doing it. If parliament does not like the way that they are exercising the explicit or implicit policy of the government then it is the role of the legislators to ensure the administrators of the legislation have appropriate guidance. I make that point in relation to legislation in respect of the Immigration portfolio and I make that warning in relation to the proposed legislation that is the subject of this inquiry.

Senator BARTLETT—I have a final point in this area to pursue, definitely going back to Centrelink. I used to work in its predecessor, the Department of Social Security, quite a while ago. Even back then it was certainly about the continual change in legislation and requirements and procedures. It was a continual struggle, due to the size of the organisation. It is the flipside of your point about there being so many officers in so many places and there being so many interpretations being put into areas where there is a fair bit of discretion. With regard to how Centrelink is now, do you feel there is sufficient organisational strength and adequacy of training for all of the other continual changes that occur?

Mr Jones—I could not give that guarantee to the committee. I could not be confident in making that statement.

Senator BARTLETT—With this type of power it is not just a different interpretation of someone's entitlement to a payment or whatever; it is a fairly significant step. In that sense maybe it would be easier, because it is a more discrete form of training.

Mr Jones—At the expense of repetition, I would answer in this way. Could Centrelink do it? Yes, it could. Has it been a core part of the functions of Centrelink to date? No. Therefore there would need to be a significant shift for Centrelink, and that would require resources and an effort in terms of staffing, training et cetera—stuff that I have indicated to date—that is not currently there. So it would require a shift for Centrelink. I am certain that they could do it. The question for parliament is whether this is the best agency, of all the agencies available to the Commonwealth, to have these functions exercised. That is the core question as we see it.

Senator BARTLETT—And your answer to that core question?

Mr Jones—My answer to that core question is: I think there is a compelling case to be made for this function to be exercised by the policing agencies of the Commonwealth, principally being the Australian Federal Police. There is a compelling case to be made for that. If parliament says, no, it must be done elsewhere, then there will be consequences associated with that.

Senator TROOD—Mr Jones, I thought you were saying that on balance there was a case for the department to have these powers. Have I misunderstood your position on this? I understood you would prefer the power to remain where it is, but you could see a case why Centrelink should have the power.

Mr Jones—I would not characterise my submission as going that far. I would characterise my submission as being that, in a sense, we are agnostic—to use that word again—as we think there is a compelling case for it to be retained as a function of the Australian Federal Police.

If that is not to be the case then parliament should return to the bill and ensure that sufficient guidance is given both to the judicial officers and to the department to ensure it is adequately administered. In addition to that, there needs to be appropriate oversight. In addition to that, we believe that it is appropriate for this committee to make recommendations to the executive, the minister and senior levels of the department about how they believe the power should be exercised.

Senator TROOD—I noted from your opening remarks that you were agnostic on the matter of oversight, but I did not realise that your agnosticism was as broad as you are now putting it.

Mr Jones—My organisation does not have a view about whether the oversight should be conducted by the Ombudsman. We have not investigated that particular point.

Senator TROOD—I understand that. Perhaps you could share with us why you think the powers are better left where they are now. Presumably you have come to some sort of view that they are not necessary. Does that mean you are not persuaded that there is sufficient sophisticated fraud or behaviour that requires attention?

Mr Jones—I opened my verbal submission by saying words to the effect that, should these powers be available to the Commonwealth for the purpose of detecting, preventing and prosecuting fraud, the answer is yes. Yes, they should. The question about where they should be administered and performed, I think, is open. I think on balance that agencies such as the Australian Federal Police, who have performed this function to date and for whom it is core business, to use the language, have a market advantage.

Senator TROOD—Does the CPSU have any independent view as to the extent of the kinds of problems that this legislation is seeking to deal with? Is it so profound that the powers proposed in the bill are justified?

Mr Jones—I will answer the question in this way: there have been compliance mechanisms within the department for just about as long as the department has existed in its many iterations. Our members have performed those functions. With emerging technologies, the sophistication with which these compliance functions have been performed has evolved and interagency relationships have improved. We understand that the proposal to grant these powers came from the department, and the department was so moved because (a) it believed the Australian Federal Police did not have the resources to adequately assist in the performance of the functions and (b) reportedly the parliament wanted a renewed focus on major and sophisticated fraud. We are not talking about the garden, run-of-the-mill stuff that Centrelink has been investigating for years but rather about the new major, sophisticated fraud. They wanted the capacity to attack that. Do I believe that fraud such as this is occurring? Yes, I do. Can I quantify that? No, I cannot.

Senator TROOD—I suppose that is the issue, isn't it? How widespread is the sophisticated fraud and is it deeply rooted?

Mr Jones—That is a question better put to the department.

CHAIR—Thank you very much for your appearance here today and also for your submission, Mr Jones and Ms Rahill.

[10.20 am]

JOHNSON, Federal Agent Ray, Manager, Special Operations, Australian Federal Police

QUAEDVLIEG, Federal Agent Roman, Acting Assistant Commissioner, and National Manager, Economic and Special Operations, Australian Federal Police

WHOWELL, Mr Peter, Manager, Legislation, Australian Federal Police

CHAIR—Welcome. I thank the AFP for coming to assist the committee at this hearing today. I understand that you have not lodged a submission, but we appreciate your presence here nonetheless. I now invite you to make an opening statement.

Federal Agent Quaedvlieg—As the committee is aware, the proposed search powers for Centrelink officers that are included in this bill have received some critical media coverage and were the subject of some exploratory questions during the AFP appearance at estimates last week. During that estimates hearing, the committee agreed that this was probably the best forum for the AFP to assist the committee. As the commissioner advised, the AFP was not consulted in relation to the development of this bill. The AFP became aware of this bill when it was introduced into the House of Representatives.

At this stage the AFP has had no formal discussions with the Department of Families, Community Services and Indigenous Affairs, nor with Centrelink, in relation to any implementation measures should this bill be passed by parliament. The AFP did receive one informal telephone contact from Centrelink in early 2006 seeking the AFP's views on the proposal. At that time the AFP indicated that the responsible exercise of these powers needed to be underpinned by a rigorous and accountable framework which incorporated appropriate training, management oversight and record keeping. The AFP maintains that position today.

We also hold the view that, should this bill be passed by parliament it will require a fundamental renegotiation of the existing memorandum of understanding the AFP currently has with Centrelink. We do acknowledge that other Commonwealth agencies have similar powers to those proposed here for Centrelink, albeit of varying scope and extent, and we also believe that Commonwealth agencies should be appropriately empowered to fulfil their roles and functions.

We note, however, that the Commonwealth agencies have the option of having those powers conferred either upon themselves or on other agencies that are better equipped and better resourced to undertake these types of activities, such as the AFP. For example, in the case of the execution of search warrants, the AFP undertakes this role and responsibility on behalf of a range of Commonwealth agencies. The AFP currently has this arrangement with Centrelink and, to date, it is not aware of any difficulties in meeting this requirement, particularly in relation to the execution of search warrants. In fact, I can quote some statistics. In 2005-06 the AFP received 167 referrals from Centrelink and we accepted 161 of them, the majority of which related to the execution of search warrants. Thus far in the 2006-07 financial year we have received 57 referrals from Centrelink and we have accepted 56 of those referrals. Again, the lion's share of those referrals were requests for assistance with search warrants.

We reiterate that, where these types of powers are directly conferred upon other agencies staff, those powers must be exercised judiciously and that a necessary part of ensuring this is the establishment of appropriate governance and accountability frameworks. The AFP, in the execution of these sorts of powers, has oversight by AFP policy, guidelines and practices, which are developed over many years of operational experience; they are overseen by experienced AFP operational managers; they are overseen by the AFP internal professional standards framework; they are overseen by the Ombudsman in its role of investigating complaints about the AFP; they are overseen by the courts, through the consideration of the admissibility of evidence obtained during the execution of these powers; and they are also guided by the Commonwealth Director of Public Prosecutions guidelines for the execution of search warrants to ensure they maintain current law and practices.

To ensure that AFP officers are able to exercise these and other powers, the AFP ensures that its agents are trained properly, that specific skill sets such as the use of force are regularly recertified, that internal procedures for planning and executing search warrants are current with the law and best practice and that these are clearly communicated to all staff. Thank you for the opportunity to make an opening statement. My colleagues and I welcome the opportunity to answer your questions.

CHAIR—We appreciate that opening statement. Do you have a copy you could table for the committee?

Federal Agent Quaedvlieg—Yes, we will make that available.

CHAIR—The bill describes an authorised officer as being required to be someone the secretary considers has suitable qualifications or experience but does not really give any more information, on the face of it, as to what that might really mean. You have gone through some details about what is required for a member of the Australian Federal Police to exercise similar powers. You have referred to the requirement, in the AFP's view, that persons exercising these powers should have appropriate training and appropriate management oversight and that there should be appropriate record keeping. Does the bill give you any reassurance that that is provided for in this legislation?

Federal Agent Quaedvlieg—No, the bill does not give me any reassurance of that. I do have some comments to make in relation to training. Let me preface my comments by saying that the application and use of intrusive powers are such that they form the very foundation skills of federal agents. These are skills which are inculcated in our federal agents throughout their basic recruit training of 18 weeks. These powers are refined and reinforced during their first 12 months of probationary activity out in the field, where they are oversighted by experienced AFP operational managers. They are required to fulfil those training competencies prior to being awarded a Diploma of Public Safety (Policing). These core skills are also refreshed and reinvigorated during regular advanced training and regular refresher courses. I think it would be naive to assume that the provision of a truncated, one-off training course in the exercise of these types of powers would equip Commonwealth officers to appropriately and judiciously exercise those powers responsibly.

I would like to expand a little on training. We believe that training competencies can be divided into two areas: evidential and operational. I will step through a couple of these points.

In terms of evidential competencies, we believe there is a requirement for officers exercising these powers to have competency in the drafting of affidavits for presentation and swearing before magistrates and the collection and presentation of evidence for compilation into evidential briefs. We believe they require training in evidence management and the development of agency guidelines on evidence handling, logging and storage. Suitable storage facilities and evidence handling practices need to be available to guarantee non-contamination of evidence in judicial proceedings. They are the evidential requirements.

I have some grave concerns in relation to operational requirements and competencies, and I will step through a couple of those. There is a requirement to have an in-depth knowledge of operational planning, including investigation plans, tactical plans, risk assessment training and emergency procedures. I say that because, again, it cannot be assumed that an attendance at a residence is going to be a sterile and clinical environment in which there are going to be white-collar individuals who are going to be cooperative and facilitate the exercise of these powers by the attending Commonwealth officers. What needs to be remembered is that, in all likelihood, there will be poly-criminality at these premises. There could be convergences with other criminalities which are more dangerous, such as amphetamine labs. There could be needle stick injuries, contamination and communicable diseases. These are all operational safety issues which expose Commonwealth officers to litigious exposure at some later point in time—and I can go into that further if you wish.

This places a responsibility on agencies to have an appropriate occupational health and safety framework in place. There needs to be appropriate first aid identification, with the issue and maintenance of the appropriate safety and protective equipment and clothing, and training in how and when to use it correctly. There is an entire juggernaut, a machine, that sits behind use of force training and use of force application. The AFP has an established and longstanding operational safety training department that provides these skills and provides a revalidation of these skills in its federal agents. The application of use of force needs to be conducted across a continuum, from verbalisation at the lower end to use of physical force at the higher end. The ability and skill to transpose those various options is something that needs to be inculcated through the training regimes I have already outlined.

Finally, training implications that may need to be considered include negotiation training, training in post-incident trauma and complaints handling. Another issue that was discussed this morning was contingency planning in the event of a search not going according to plan. There is no contingency in place for back-up support of either state or Commonwealth police agencies, and we are not confident that the departments or the agencies under FaCSIA actually have that back-up capability at this point.

CHAIR—Of course, once you take all of that very useful training evidence you have just given us into account, you then need to make sure you are recertifying the officers regularly as to their capacity to do that. What is the recertification process that the AFP engages in in that regard?

Federal Agent Quaadvlieg—Recertification in the use of force is annual. It is set to a standard of criteria that needs to be met. If those criteria are not met in that revalidation, those federal agents are taken offline and not permitted to engage in operational activities.

CHAIR—There is an implication around these measures that one of the reasons the department concerned decided to pursue these powers in their own right, for their own officers, is that the AFP is either too busy or too pressed with antiterrorism matters and a range of other activities. This committee is very familiar with all of those through its processes. I think you said that in the 2005-06 financial year you accepted 161 referrals for search warrants and in the current financial year so far you have accepted 56. What impact does that have on the AFP's workload, and is it an accurate representation to say that you cannot manage that?

Federal Agent Quaadvlieg—I believe that that assertion may well be untested in terms of the capacity of the AFP to take on additional work from Centrelink.

CHAIR—Well, it would be if they had not asked you, yes.

Federal Agent Quaadvlieg—And that is my point: I think the statistics over the last financial year and this financial year indicate that we currently have the capacity to meet those referrals. I acknowledge the argument from Centrelink that there is a body of work that has not been referred to the AFP, but I do not have a sense of what quantity that might be—hence my comment that I think our capacity to undertake that additional work is untested at this point and it may be a premature comment to make.

CHAIR—It would be hard for you to get a sense of it if they had not asked you about it, really, wouldn't it!

Federal Agent Quaadvlieg—That is correct.

CHAIR—The last question I have pertains to the provisions in the bill under new division 1 of part 4A which deals with searches without a search warrant. Can you advise the committee what powers your organisation has to search premises without a warrant, in what sorts of matters you would exercise those powers and, if you can and if it is appropriate, how many times, say, in the last year, the AFP might have searched premises without a warrant? If it is not appropriate and you need to take that on notice, I understand.

Federal Agent Quaadvlieg—I will take the question about statistics on notice. We have provisions under the Crimes Act to execute searches without search warrants. They are very similar to the present draft of this proposed bill in terms of requiring consent. There are some provisions in other acts for us to conduct searches without a warrant, but ordinarily it is linked to emergent circumstances. But I can take that question on notice and provide the committee with some detailed explanation around that, if you wish.

CHAIR—Thank you very much.

Senator LUDWIG—In respect of the last question, what are the types of emergent circumstances, from your general experience, in which you would expect to use a warrant without having gone through the processes? In other words, what types of circumstances would usually require you to search without a warrant?

Federal Agent Quaadvlieg—Let me preface my comment by saying that the AFP's starting premise is that we will in all cases seek to obtain a search warrant prior to our attendance at a residence. If there are insufficient grounds to obtain a search warrant or to ground an affidavit to obtain a search warrant and we are trying to finalise inquiries, we may

attend at a premises and seek consent to exercise a search. As you can well imagine, that consent is not ordinarily provided. However, if we are there and we form a view that there is a risk to life or we form a reasonable suspicion that there is evidence on site that is critical to the investigation and may be destroyed, and we have the necessary authority to search, then we will exercise that. But I indicate that is a very rare occasion.

Senator LUDWIG—I think there were 50-odd current referrals to you from Centrelink. Are you able to say the nature of those types of referrals, broadly? I do not want to compromise any ongoing operational matters.

Federal Agent Quaadvlieg—I can give you some outline of that. We will deal with this current financial year. Of the 56 referrals that we have received this financial year, seven were for forensic assistance to Centrelink. That is in the like of document examination and that type of thing.

Senator LUDWIG—Is that to prove the document—

Federal Agent Quaadvlieg—Ownership—that is correct—or document examination in terms of forgeries that may have been committed upon particular documents. Six of those referrals were criminal investigations, including one financial investigation. Of the other 42 referrals, 35 were for the execution of search warrants.

Senator LUDWIG—Do you keep any statistics about when the request is made for a search warrant and the time it takes for the Australian Federal Police to agree and respond? Although it does not go to it, I am sure you have had a look at FaCSIA's submission. There are two parts under the heading 'Current Centrelink fraud investigation'. Senator Payne dealt with one issue, which was:

Under current arrangements, Centrelink is dependent on the Australian Federal Police (AFP) or other State or Territory agencies to obtain search warrants.

They go on to say:

Historically, many search warrants have been executed by AFP officers, often with the assistance of Centrelink officers. 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.

That was the matter Senator Payne asked you to comment on, but if you wanted to add more on it, I would be happy for that. The second part seems to be implicit in their submission. They say:

For example, Centrelink identified suspicious activity operating within a particular industry in October 2004. However, without the necessary powers to pursue the matter, the investigation waited for 13 months to piggy back onto a State operation ...

It seems to be a suggestion that there are time delays, that in this instance the state police were not acting quickly enough. What is the nature of the time between a request from Centrelink and the response by the Australian Federal Police?

Federal Agent Quaadvlieg—The answer is: yes, we retain those statistics, not in an easily accessible format, but I will take the statistical question on notice and come back to you. I can provide some general comments in relation to that. Our relationship with Centrelink is grounded in a memorandum of understanding. That service level agreement outlines the

respective agencies' obligations. The AFP applies itself to that memorandum of understanding conscientiously. There are no inordinate delays in terms of responses to the referrals that I have spoken of. Yes, occasionally there is a delay caused by an extraneous event such as a CHOGM or a Commonwealth Games. If our response to a Centrelink request is going to be delayed by such an event, we will liaise with Centrelink officers directly through our client service liaison team. We will ascertain whether there is any urgency around the search warrant application for either the erosion of evidence or any other factor. If there is, we will take that into account and make special arrangements. If we get agreement from Centrelink that there is no urgency in relation to the request, we agree on a mutually convenient time, so I reject the assertion that the AFP is tardy in its response to Centrelink referrals.

Senator LUDWIG—In terms of complaints, have FaCSIA raised issues with you about slowness of response to warrants requests? Have they indicated that they are unhappy with the Australian Federal Police's response to date? Are there complaints on record from them?

Federal Agent Quaadvlieg—There are no complaints on record in specific terms. We conduct an annual client satisfaction survey across the Commonwealth. We receive responses. I do not have those statistics at hand but I can tell you that we perform at a reasonably high level consistently in relation to client satisfaction and I have no record of any complaints from FaCSIA in relation to our responses.

Senator LUDWIG—If it does not take too much, can you dig up the client satisfaction survey that you received from FaCSIA?

Federal Agent Quaadvlieg—I can do that.

Senator LUDWIG—Is that on the public record or is it able to be put on the public record? By all means, you can check.

Mr Whowell—We would have to check that and it would also probably have to go to the way that the survey is done: whether it is an anonymous survey or whether we can match results to the actual survey respondent. I am not sure how the survey methodology works.

Senator LUDWIG—Take it on notice. If it can be made available then the committee will be pleased to receive it. If there is a problem, let us know. You have got another oversight arrangement coming along, haven't you?

Federal Agent Quaadvlieg—Yes, in the form of ACLE.

Senator LUDWIG—That is going to also provide another level of oversight of your operations dealing with search warrants. It has a range of significant powers to investigate Australian Federal Police operations. The Australian Commission for Law Enforcement is not far away.

Federal Agent Quaadvlieg—I cannot answer that question but I can say that we welcome the implementation of that. I think it will be a valuable complement to our internal professional standard framework and the Ombudsman's oversight.

Senator LUDWIG—Are you able to comment on the range of powers it will have to be able to investigate corruption issues within the Australian Federal Police? I was seeking to get on the record the nature and range of the oversight and the particular powers that oversight

will have. I am sure you have already had a look at it from the perspective of how you will inform your officers of it.

Federal Agent Quaadvlieg—We have, and I will ask Mr Whowell to answer that question.

Mr Whowell—Forgive me, it has been a while since I have looked at the particular amendment bill. From memory, ACLE have been given their own powers to conduct searches. They have been given their own powers to seek, like an onus to produce power. They have access to telephone intercepts as well, and I think, but I cannot be sure, they have surveillance devices. So they have a full range of law enforcement type powers that I think are appropriate to the nature of the problem that the organisation has been set up to look into, those being police corruption or law enforcement agency corruption.

Senator LUDWIG—That is for the Australian Federal Police, but it will not have similar powers to look into the operation of search warrants or searches without warrant by FaCSIA, will it, because it is only limited to the Australian Federal Police and ASIO?

Mr Whowell—It is limited to the Australian Federal Police and the Crime Commission.

Senator LUDWIG—Sorry: the Australian Crime Commission, not ASIO. Do you have any concerns, if the powers are exercised by FaCSIA in domestic dwellings or commercial premises and the like, about the types of issues they might come across and the security of evidence? They might stumble across other matters outside their current issue. I guess you could come across drugs or a range of other criminal enterprises going on, from money-laundering all the way down. Are you concerned about the ability of FaCSIA to secure the crime scene, notify the Australian Federal Police, get a response and otherwise deal with the issue at hand? Of course in the current scheme you would have an Australian Federal Police officer on site with the FaCSIA officer to be able to undertake those duties.

Federal Agent Quaadvlieg—There is a graduated answer to that. I had initially some concerns in relation to FaCSIA agencies being able to appropriately conduct a risk assessment of a premises that they intended to search. We go through a process where we check our intelligence holdings in our databases to get an indication as to whether the occupants of those premises have a propensity to violence, whether there are firearms recorded, whether there are persons there who have criminal histories and what those criminal histories may be. So I have a concern that under these powers Commonwealth officers may be walking ill-informed into a situation which they are not prepared for.

As per my opening comments, in relation to the convergence of criminality it is often quite often the case that the committing of crimes against these particular statutes we are discussing is not conducted in isolation. There is a convergence of multiple crimes by persons. I would have concerns in relation to the preservation of the integrity of crime scenes by officers who do not have the appropriate training and wherewithal to understand what it is that they are actually looking at. For instance, an amphetamine lab may for the layman appear quite obvious, but in a lot of cases it is not. It may be a fragmented laboratory set up with chemicals that are stacked around the house. It may not at first sight be obvious that it is an amphetamine lab. There are OH&S issues associated with trying to dismantle or contain one of those scenarios. So, yes, I do share that concern.

Senator LUDWIG—In terms of the broader issue, where criminal intelligence is available to the Australian Federal Police and you also have access to a range of databases which can assist you in your operations, when requests for search warrants are conducted do you go through a process of checking your criminal databases? You may go to CrimTrac or to ACC for broader issues. You might go to ACC and ask them to check their criminal intelligence on an issue in the initial request for a search warrant or when you look at it a bit further. Is that the type of thing you might do? It depends on, I suspect, the type of search warrant, but I am talking about one dealing with serious fraud.

Federal Agent Quaedvlieg—It is a fundamental practice that we engage in, before we execute any search warrants, that we check and correlate our databases to know the situation that we are going into. In relation to that matter, there may be an argument here that if these powers were granted to Centrelink then there may be a reduction in the number of search warrants that the AFP would be requested to execute. I suspect, however, that there will be a commensurate increase in requests to the AFP to conduct risk assessments on behalf of these agencies by searching its databases and providing the type of information that you speak of.

Senator LUDWIG—That was my next question. Does FaCSIA have access independently to your criminal intelligence databases?

Federal Agent Quaedvlieg—No.

Senator LUDWIG—So they would have to enter into a memorandum of understanding to either access them or have a way of asking the Australian Federal Police or the state and territory police about the issues at hand?

Federal Agent Quaedvlieg—Certainly Centrelink, through our service level agreement, can come to us with a request and seek that information. We do not get a lot of those requests. If other FaCSIA agencies required that type of information, we would have to enter into a service level agreement with them. Mr Whowell might be able to explain this in more detail, but we are obviously bound by privacy principles in terms of what information we can share. It does need to be for a law enforcement purpose.

Senator LUDWIG—It is a little early to ask, but because FaCSIA have not come to you with their view of how this power would work or what the nature of the power is that they want to use to deal with particular cases, it is difficult for you to be able to respond by saying, ‘These are the arrangements we could put in place to deal with it, these are the requests we might have to meet before you use that power and this is the memorandum of understanding that we might have to enter into.’ In other words, it might be just as easy to issue a search warrant. There is no gain because, if you deal with all of the matters at hand, you then still might be required to go through a check of your criminal database and come back with an assessment. The assessment might say, ‘We think that an Australian Federal Police officer should be available because of the nature of the investigation, because of the likely people involved, because the place that you want to enter might have known criminals involved,’ or some such issue. In other words, you may end up being drawn back in anyway. Have you considered any of those issues?

Federal Agent Quaedvlieg—That is quite possible. I did receive a telephone call yesterday evening from Centrelink in relation to what the AFP’s view on this may be. I made

those points as well. But even beyond that, we would have to provide a training capability. I do not have any sense of the extent or scope of what Centrelink or FaCSIA agencies may be seeking. The point I would make is that, if it resulted in a dilution or erosion of our own capability to train and maintain our own staff, with our growing responsibilities, the development of a curriculum and the maintenance of revalidation of use of force type training for another agency is not a situation we would readily countenance without in-depth consideration of the funding, effort and time it would take to do that.

Senator TROOD—Does the existing memorandum of understanding that you have have a time or an expectation of time for response to requests that you may receive for the execution of any of the activities you undertake?

Federal Agent Quaedvlieg—I have not read the MOU of late. I do know that there is an expectation of a timely response by the AFP. We do conscientiously provide that. I think there may be a stipulation of some time in that, but if I can take that on notice I will come back to the committee with that answer.

Senator TROOD—If it is timely then your evidence is that, for the most part, you believe you have been timely. Is that the situation?

Federal Agent Quaedvlieg—It is. We certainly have had no specific complaint in relation to a pattern or trend of untimely responses to requests.

Senator TROOD—You said in relation to 2005-06, I think, that there were 166 requests. Is that right?

Federal Agent Quaedvlieg—There were 167, of which we accepted 161.

Senator TROOD—It was 167 and you executed 161, so obviously six have gone missing. What is the story in relation to those six?

Federal Agent Quaedvlieg—Those six were rejected on the basis that they did not meet the threshold for AFP involvement. I do not have the detail, but it may have been something like referral for a criminal investigation which did not meet our priorities or thresholds, or it may have been a search warrant that was more appropriately exercised by a state jurisdiction.

Senator TROOD—Are you able to give us any evidence as to whether or not you have seen a great deal of evidence in relation to the sophisticated fraud against Centrelink and the wider range of fraudulent activities which these powers seem to be directed at trying to prevent and identify? Do you have any experience with that?

Federal Agent Quaedvlieg—I think the answer to that question is that, if the case reaches a threshold where Centrelink believes it is of a suitable level to be referred to the AFP then, yes. These cases that I am specifically referring to do indicate serious and complex fraud being committed. What I do not have a sense of and what I have been unable to obtain from Centrelink is the invisible body of work that is being referred to that it is requesting these powers for. We in the AFP do not have any sense of what that may be.

Senator LUDWIG—If it were serious you would expect to see it, wouldn't you?

Federal Agent Quaedvlieg—We have an expectation under the Commonwealth Fraud Control Guidelines that Commonwealth agencies will refer matters of a serious and complex nature to the AFP.

Senator TROOD—But you are not in any doubt, I take it, that there is a problem here in relation to social security fraud, some of which relates to the agency work of Centrelink?

Federal Agent Quaedvlieg—No. Again, it is difficult for me to be specific and quantify what body of work may exist in these agencies beyond what has been referred to the AFP. I can indicate that we have 10 outposted officers in Centrelink offices nationally. We receive reporting back from those officers. That reporting has not indicated an overwhelming existence of serious fraud matters that the AFP should be cognisant of. But, again, I reiterate that we do not have any reporting from Centrelink or Commonwealth agencies under the FaCSIA umbrella of what the problem is that they are trying to fix.

Senator TROOD—Did I understand you to say that you have officers posted in Centrelink offices at the moment?

Federal Agent Quaedvlieg—We do. We have 10 outposted agents at Perth, Adelaide, Darwin, Melbourne, Hobart, Sydney, Newcastle, Brisbane, Cairns and Queanbeyan. The purpose of those outposted officers in those Centrelink agencies is not to execute search warrants but to provide investigation capability, to provide skills transfer to Centrelink staff and investigators, and to provide guidance and mentoring in relation to inquiry and interview procedures and techniques and the preparation of affidavits and briefs of evidence. They are there to refine and improve the process of referrals to the AFP, and they are also there as a single liaison point for Centrelink offices or regions to come to the AFP with requests for assistance.

Senator TROOD—And that all takes place under the existing memorandum of understanding; is that right?

Federal Agent Quaedvlieg—That is correct. We have recently done a review of those outpostings, and that review has demonstrated the value of those outpostings both to Centrelink and to the AFP.

Senator TROOD—So if Centrelink wanted to use your agency to execute some of these search warrants, for example, they would go through these outposted officers initially?

Federal Agent Quaedvlieg—That is right—to ascertain whether the matter reaches an appropriate threshold, to ensure that the request is couched in the correct way and to ensure that the AFP has the availability and the capacity to do it. Then, yes, it comes to us through the outposted agents.

Senator TROOD—I think you said you had one telephone call about this proposal.

CHAIR—Last night.

Senator TROOD—Actually I was not sure about that. You did have a telephone call last night, but I thought that was perhaps a second telephone call.

Federal Agent Quaedvlieg—You are correct, Senator.

CHAIR—You must have been overwhelmed, Federal Agent.

Federal Agent Quaedvlieg—I received a telephone call in early 2006, and then an eleventh-hour phone call last night.

Senator TROOD—In relation to the—

Senator LUDWIG—What time was it?

CHAIR—Five minutes to midnight I suspect, Senator.

Federal Agent Quaedvlieg—No, it was not that late. I think it was about 6 pm.

CHAIR—I was not being that literal.

Senator TROOD—When you had your telephone call in early 2006, was there any suggestion that these outposting arrangements might continue? Was there any discussion as to the relationship between the agency and the Federal Police that might be in place should these powers be granted?

Federal Agent Quaedvlieg—There was not a great deal of discussion about that. The point was raised by me that, should these powers be granted, we would like sight of the bill and that may require a renegotiation of the existing MOU. But certainly there was no approach made in relation to expanding any arrangements at that time.

Senator TROOD—So you took this telephone call?

Federal Agent Quaedvlieg—That is correct.

Senator TROOD—And did you express any reservation about the direction in which this was moving?

Federal Agent Quaedvlieg—I expressed reservations in relation to ensuring that, if the powers were granted, an appropriate governance and accountability framework would be in place for training, occupational health and safety and the evidential and operational practices; but, beyond that, it was a very short discussion.

Senator TROOD—You said in your opening remarks a ‘rigorous and accountable framework’. I made a note to that effect.

Federal Agent Quaedvlieg—That is correct.

Senator TROOD—Perhaps it is too early, but is there evidence that that might be in place, or are you still waiting for that evidence?

Federal Agent Quaedvlieg—I have no evidence of that. In the phone call that I received last night there was a reference to the fact that, if these powers were passed by parliament, extensive discussion with the AFP would be required in relation to these types of training and advice arrangements.

Senator TROOD—So the expectation was that the AFP would do the training of the authorised officer?

Federal Agent Quaedvlieg—That was my understanding, yes.

Senator TROOD—From whom did the telephone call come? Who was the officer?

Federal Agent Quaadvlieg—The telephone call yesterday evening was from the Deputy CEO of Centrelink, Aurora Andruska. I do not have the name of the person whom I took the call from in February, but I can probably ascertain that for you, if you wish.

Senator TROOD—I am not pressed on that matter at the moment.

Senator LUDWIG—Have you had an opportunity to look in detail at the powers that are being proposed in this bill? Are those powers comparable to the powers that an Australian Federal Police agent would already have available to them, or do they exceed those in some respects? From what the legislation says about powers in relation to the issue of warrants, there do not seem to be any conditions attached to that—but I will deal with that separately.

Federal Agent Quaadvlieg—I have had a look at those powers and the short answer is: yes, they are comparable. However, there are some differences. The proposed powers appear to limit officers in terms of the specific offences and the specific type of material that can be seized. The AFP has a wider capability in seizing forensic evidence, evidence of proceeds and other indictable offences at the time of the execution. There seems to be a deficiency in these current powers, which I think are under sections 103V, W and Z. Where items have been seized as a result of a search, there is a framework in place under our current powers where we have directions on how we would retain and return that material. That seems to be a deficiency in these powers. The other major difference that I observed was that, with the AFP having access to the use of firearms, in our warrant applications we need to make reference to the fact that firearms may be used, and that is obviously not the case in this set of proposed powers.

Senator LUDWIG—You have procedures in place to deal with certain types of materials that you might seize, then store and, if they are no longer required, return. Do you find evidence of the same procedures for that in this legislation?

Federal Agent Quaadvlieg—No, I did not see that. We have mechanisms, systems, processes and policies in place as to our responsibilities for the retention, storage and return of property. We have dedicated property and exhibit officers and offices. We certainly have stringent guidelines in relation to how we deal with that type of property. I do not see that replicated in the proposed powers. But I should point out that our arrangements or the infrastructure around that has been a corollary to our powers. I do not think you will find that articulated in our powers either; it is something we have introduced post.

Senator LUDWIG—Where warrants are sought by the Australian Federal Police, the magistrate can also put conditions on them in terms of the times you might exercise that power or the way you might use that search warrant. Is that similar in this bill, or is it that the magistrate does not have the power to put a condition on that? And do you have a view about that?

Federal Agent Quaadvlieg—Yes, you are correct. The magistrate does have power to impose conditions on warrants that the AFP seeks. I did note in these powers when I was reading them last night that there are some conditions on times between when warrants can be executed and a sunset clause on the expiration of that warrant. To answer your question: yes, we are bound by provisions that a magistrate may impose upon us. I do not see that strongly

coming through this proposed legislation other than what I have referenced, but I would presume that a magistrate would exercise his discretion in that event in any case.

CHAIR—As there are no further questions, thank you very much, gentlemen, for attending today and for your opening statement, which will assist the committee. If we have any further issues that we need to raise with you, we will do that on notice.

[11.07 am]

FORBES, Ms Linda, Representative and Casework Coordinator, National Welfare Rights Network

RAPER, Mr Michael William, President, National Welfare Rights Network

Evidence was taken via teleconference—

CHAIR—Welcome.

Mr Raper—Chair, I submit apologies for one of the people who was intending to be here and was listed to be present. Unfortunately, Jackie Finlay is very ill this morning and is unable to be with us.

CHAIR—Thank you. The National Welfare Rights Network has lodged a submission with the committee, which we have numbered 2. Mr Raper, do you need to make any amendments or alterations to that submission?

Mr Raper—Chair, I have what you might call a very slight or minor amendment or alteration to the first paragraph of 2.2. We state that we think it would be a grave mistake to give Centrelink officers, as opposed to the police, ‘the power to enter, search and seize the private premises’. Clearly, we do not believe in any way that Centrelink would be seizing the private premises; nevertheless, I think the purport of what we are saying there is clear. I apologise for that.

CHAIR—Perhaps we could insert for you a ‘from’ after the word ‘seize’.

Mr Raper—Thank you, Chair.

CHAIR—Mr Raper, perhaps you would like to make an opening statement, then we will go to questions.

Mr Raper—Thank you, Chair. We appreciate the opportunity to appear by telephone. It is not our preferred method but it must be so, given the shortness of time and other commitments and also our lack of funding and inability to get a number of people to Canberra to participate. We have been able to do this in the past, and we really appreciate this opportunity at such short notice to do so again on this occasion. We are grateful to the committee for that.

Our submission is a fairly short point. There are many aspects of this piece of legislation that we have not gone into. We are really only dealing with one schedule, schedule 2, and we are really raising just a few concerns. We think they are fundamental, but it is really quite a contained and short point; we are not going into all of the rest of it.

The submission is clearly based on an understanding that the most likely—and this is from our experience—use of these powers by Centrelink, were they to have them, would be in relation to marriage-like relationship investigations, where it is believed by Centrelink that a person is living in a marriage-like relationship and Centrelink want to gain further evidence from that premises. To the extent that we are wrong, the submission is diminished. To the extent that we are right—that most of this search and seize would be in relation to these matters—I think our submissions are compelling. They are based on the fact that Centrelink

are different and that Centrelink issues, particularly this marriage-like relationship issue, are different from the type of search and seize powers used by other government agencies that already have the powers. We have made the point that they are distinguishable in that marriage-like relationship investigations are by nature very sensitive, very complex, very personal and very intrusive. So we say that Centrelink can be distinguished from other agencies that may have the power because of the nature of the issue that we are dealing with.

Secondly, Centrelink already have enormous powers to obtain information—more than probably any other agency and certainly sufficient, in our view. They can virtually ask anyone for any information that they want and basically you have to give it. In relation to interviews they conduct and the way they obtain information, Centrelink are not constrained by the limitations placed on the police. Hence we can get situations where two burly men interview a single woman about her sexual life and other intimate details. This already happens. They have enormous powers under section 192 of the Social Security (Administration) Act.

So those two things underpinned our submission and we put before you some information about the marriage-like relationship issues. I do not need to go over those. I am happy to take questions about those. Suffice to say that they are very complex, they are intrusive and they involve children, and so too would the home visits that we anticipate under this legislation, should this power be granted. As background again, it is important to note that FaCSIA concedes that some 40 per cent of people on parenting payments who are single have a diagnosed mental illness. So there is not just the risk to the police or the Centrelink officers that the police drew attention to in their submission just previously—which we were listening to—but also the risk to the people who would be the subject of this search and seize.

The second point, and probably the main point, of our submission is that we already have experience with the way Centrelink goes about its investigations. In our submission we draw on evidence from the ANAO audit reports about Centrelink and its, shall we say, systemic and operational shortcomings in relation to record-keeping systems, accuracy, attention to detail and the way it goes about its business. We do not say, by any means, that this is condoned by Centrelink management. We do not say that the breaches of privacy that we recently exposed are condoned—not at all. But despite the fact that it is not condoned by Centrelink management—in fact they take a very harsh view of it—our experience is that people who find their way into investigations within Centrelink are people who are essentially cowboys. Their attitude and approach to these investigations, for some reason, are very careless, very slapdash and very intrusive. It is cowboy activity basically and it should not be allowed or encouraged to go further. We have been working with Centrelink to try and address this and we know Centrelink is keen to address it, but it happens and our experience from our agencies throughout the country suggests that it continues. So we are very concerned about these cowboys in a sense becoming sheriffs and being given that power. They need to have the sheriff with them at all points in time.

Finally, we understand that investigations are occasionally needed. We do not support or condone fraud in the system in any way. We believe there should be correct powers to investigate it, but we believe those powers should remain with the police. I thought the submission made by the Australian Federal Police just prior to me, in relation to the systems they have set up and the amount of training that is involved, was very compelling. We do not

see why Centrelink needs in any way to duplicate this, and we do not see how it could. Based on our experience and the track record so far, we do not think the people within Centrelink who find their way into these investigations would be the sort of people who would particularly benefit from that training anyway. We would be very concerned if these powers were handed over to Centrelink officers. We do not think FaCSIA has made a case for Centrelink to have these powers.

We fully endorse the submission made by Centrelink officer Stephen Fuller. He made the same point—that Centrelink lacks the culture, the training ethos and the personnel to capably use the powers. He too says he would not trust—as we would not trust—the people in Centrelink involved in this type of activity with an extension of those powers. So we should leave it to the police. We think that is in the best interests of Centrelink as an organisation and the Centrelink staff who might be involved in this, given the risks they would be subjected to. We anticipate risks for the people who would be subjected to these searches. There are risks in relation to other criminal activities that might be on the premises. All of those issues lead us to recommend to the Senate that schedule 2 be removed from the bill. We have made further recommendations 6.2, 6.3, 6.4 and 6.5 in our submission as back-up should the Senate goes ahead and carry schedule 2 in the legislation.

CHAIR—Thank you, Mr Raper. Ms Forbes, do you wish to add anything?

Ms Forbes—I, like many of the case workers around the network, have represented, advocated, for many people who have large social security debts from marriage-like relationships. In the course of advocating for them, we have had to provide a lot of personal support for them as well. Their relationship with Centrelink becomes somewhat tarnished by the investigation, because it can be quite heavy-handed. Sometimes it is necessary that it is quite heavy-handed. Many of the women have a background of mental illness and they find the whole thing very difficult to deal with. It does tarnish their relationship with Centrelink. I think this would confuse in the minds of those individuals and in the public's mind the role and function of Centrelink. Is it a welfare agency, an agency for delivering income support, an agency for getting people back into work from welfare? There a lot of mixed messages coming out.

We believe the way the investigations are conducted now is the proper way. The search of home premises has to be accompanied by the Federal Police, for all the reasons put forward by Michael and from the representations to the Senate by the Federal Police. Only the Federal Police have the proper training. If to do more of this the Federal Police need more resourcing, then resource the Federal Police. The only way Centrelink could be properly resourced would be to give them identical training to the Federal Police, which would mean in effect that they become Federal Police. The proper agency for all of this is the Federal Police.

Senator BARTLETT—I do not know whether you were able to hear some of the evidence earlier today. We had a bit of a discussion with the CPSU about the issue of the culture within an organisation.

Mr Raper—We were not able to hear that. We heard the AFP, but that is all.

Senator BARTLETT—I will be interested in your response to what the AFP said as well, if you have one. I noted your comment about cowboys—or some such word—which can

apply to a minority of people in terms of attitudinal issues. One of the more intangible issues that comes up when you are looking at giving powers like this to people is about being able to be confident that, among other things, the organisation has a culture that will ensure that the powers are not misused, whether it be in a petty way or a more serious way. I realise that you cannot really legislate for that; it is like legislating for morality. Do you have any comments about the overall adequacy of Centrelink as an agency or the sorts of officers who would be undertaking these actions? If there are shortcomings there, what sorts of things do you think need to be done—whether it is training or other things—to minimise those problems?

Mr Raper—Thank you the opportunity to elaborate a little on our concerns. We have detailed in section 4 of our submission our concerns in relation to Centrelink's track record. We have also set out in various submissions, particularly our submission to the Ombudsman's inquiry into marriage-like relationships, our concerns, based on the experience of our caseworkers, about the behaviour of people who undertake these investigations. Despite the best intentions of Centrelink as an organisation, which is very committed to high standards of service delivery—I know that the management and a lot of people within Centrelink work very hard to ensure high standards—the people involved in the area of debt recovery, fraud and investigations generally, as per Stephen Fuller's submission and our submission as well, tend to hold negative attitudes. They tend to be incredibly prejudiced, judgemental and heavy-handed. These are not just my assumptions about their personality; it is based on the way they undertake interviews and the way they gain evidence. They set out with an assumption that the person is guilty and then try to find evidence to prove that is the case.

We have pointed out to Centrelink that there is that attitude and culture within those sections. Centrelink have tried to address that, but it remains there. It is our view, therefore, that no amount of training would change that. Given all of those concerns, it is our view that it would be inappropriate to try to train them up to the standard where they would not only be able to do their current job but also have the expanded power to go into private premises at 5 am—the time that many of these searches are conducted. As we have said, there is not at present a culture, a training ethos or the personnel within Centrelink capable of using those powers—in that section in particular. Does that address your question?

Senator BARTLETT—It does address it pretty clearly. I just want to clarify for the record—and I think your submission does this—that this is based on your day-to-day continual experience and not just your prejudice or that of your organisation.

Mr Raper—No, it is not. We have documented it in case studies. We have raised these matters with Centrelink; they are in our submissions to Centrelink. They are on the record. We are not just making it up. We have taken this to Centrelink with case studies in a whole briefing paper that we put to them, which is an annexe to our submission to the Commonwealth Ombudsman's investigation into marriage-like relationships in particular. We have documented in that submission as well the case studies and our concerns that go to the attitudes, behaviour and examples of inappropriate investigating behaviour from Centrelink people. These are not just assertions; the cases are there and they are documented. We summarised in this submission that it is already inappropriate and that, despite the fact that Centrelink have tried to change it, it continues to go on. It is difficult and therefore it should not be expanded.

Ms Forbes—I could just point out, too, that part of the problem would be a problem that exists now. That is that, once these investigations start, the officers of the compliance unit—where there is, of course, a strong compliance culture—really feel that they own the case and that they want to see the case resolved to Centrelink's advantage, which means gaining the evidence. For that reason, they can be quite pushy, not only with the clients but also with other staff. And other areas of Centrelink become quite deferential to those compliance officers, to the point that, during all of this, if the client already has a debt raised and it is just that Centrelink wants evidence in order to refer the case for charges to DPP, Centrelink often gets very confused about whether the client currently has a right to administrative review, where all this takes place. And we have had clients, often—and we have put this to ANAO several times—to whom Centrelink has refused the client administrative review while that investigation was taking place.

If added on to that you have a client who is sitting at home and has Centrelink officers knocking on their door, to whom they cannot refuse entry, to continue the investigation, it just further clouds what Centrelink's role is. Is it income support or is it more authoritative than that? I think the risk is that it will actually impact on what the government wants, which is for Centrelink to be the agency to get people out of welfare and back into work.

I have before me now the transcript of a search that was done for one of our clients, and it actually has all the elements that we are concerned about. This client has had a long-term problem with mental illness. She had recently made a suicide attempt, before the search. Centrelink had plenty of third-party evidence before the search was conducted. We would have thought it was inappropriate in this case to conduct that search, that there was plenty of evidence on which to raise the debt, but they had not even raised the debt yet.

For all this, no matter how inappropriate we feel the whole thing was, at least the Federal Police were there. When you look at the transcript, the Centrelink officers were not invited into the house until almost two hours after the Australian Federal Police had sat down to start talking to the client. And it is quite obvious, when you read the transcript, that the Federal Police officers had the subtlety to understand that she did not comprehend what was going on and encouraged her to ring her mother, and it was all done quite properly.

That is one where we think, 'If only Centrelink had been present in that search it could have gone terribly wrong.' And also, even with the Federal Police there, that woman could have become quite hysterical. She could have presented as being at risk of self-harm. And what would Centrelink officers do in that situation, without the intense and ongoing training that the Federal Police have, as they explained earlier?

Senator BARTLETT—Thank you for that.

Senator LUDWIG—The issue of the marriage like relationships clearly raises some concern with you. But I was wondering particularly why you think it would be that the use or the request of a power by FaCSIA is directed at that issue. What leads you to that suspicion?

Mr Raper—It is partly because that has been our experience to date with most of these. And it would be interesting for those statistics that the Australian Federal Police provided to be broken down, if it were possible, into the number of search warrants—which I think they indicated was about 35 so far this year—and whether they were private premises or business

premises and whether they related to marriage like relationships. So we do not know. But our experience suggests, from the cases that we get, where there has been a police raid or a search of a premises it has generally been in relation to an investigation about a marriage like relationship, and it is generally to ascertain whether or not the alleged partner is living in the premises and what evidence can be found.

We make the point in our submission that, in order to ascertain whether or not a person is living in a marriage like relationship, you have to go through a whole range of factors under the act: the financial arrangements, the accommodation and domestic arrangements, the social relationship, the sexual relationship, the relationship that each of the alleged partners may have with the children, and their commitment to each other, as tested in a range of different ways. So it is a very complex and, in a sense, subjective and subtle investigation.

Often these searches of premises are not the appropriate way, given the powers that Centrelink already has. However, Centrelink seems to find it desirable, in many cases, to go that extra yard to see if they can locate photographic evidence, documentary evidence or evidence of clothing from the alleged partner—none of which proves anything in itself, but nevertheless it is sought. So we call on our experience. To the extent that those assumptions are correct, our points stand. I think they probably are correct, in the majority of cases, but I also acknowledge that to the extent they are not correct our submissions are diminished.

Senator LUDWIG—I had an opportunity of asking Centrelink ahead of this hearing about the areas of investigation in which Centrelink currently uses the AFP and state agencies to obtain warrants. I asked for data for three years on the number of warrants sought and the types of warrants sort, including the types of buildings, dwellings or other premises that were to be searched. The answers were not particularly helpful because there seems to be a lack of statistical information. The answer was: ‘As indicated earlier, Centrelink does not have statistical information about the numbers of warrants sought. The primary investigation areas relate to identity fraud and the cash economy for small self-employed operators.’ Their response to my question (b) was: ‘The type of warrants sought relate to residential premises, commercial premises, conveyances and/or persons.’ I will take the opportunity of asking FaCSIA to see if they can narrow that down a bit more. Clearly, there are residential premises included in the types of warrants sought, but as to what they are for I am still unable to find out. I will certainly follow that up in any event.

Mr Raper—Thank you. It may well be, depending on the outcome should they have that data—and it concerns us that they do not; if they do not have that data, they have not made out the case for the need for these powers—that our recommendations are, firstly, that schedule 2 should not be in the bill but that, if it is, it should be limited to non-residential premises. That is to avoid this particularly sharp, intrusive, difficult, sensitive and scary area, where so much harm to Centrelink staff, Centrelink’s reputation and Centrelink customers is at risk. Perhaps our second recommendation then might come to bear if the Senate is looking for a way to address a part of the problem but not necessarily the whole of it. We make further recommendations about those powers in our submission at recommendations 3, 4 and 5 as well. They may address some of those issues.

Senator LUDWIG—Depending on the evidence provided today, you always have the opportunity to provide a supplementary submission, if the evidence points you to a different area, in any event.

Mr Raper—Thank you, Senator.

Ms Forbes—The concern we are really trying to emphasise is that it is the search of homes, as Michael was just saying, and not other premises that is such a risk to individuals in the community. It also places the Centrelink officers, who would be unaccompanied by the Federal Police, at great risk too. So we have used marriage like relationships as our primary example because marriage like relationships necessarily involve investigation of the nature of the person's household, which is highly personal. But our comments also even extend to an investigation of outright proper fraud, such as getting social security payments in more than one name. Even if it were probably perfectly apparent that the person is getting the social security payment in more than one name, the only way of getting that evidence is to enter their premises and, absolutely, the Federal Police should be involved in that search for the safety of the Centrelink officer and also for the safety of the client, who may well have a mental illness.

Senator LUDWIG—I accept that the direction that your submission was going was in respect of residential premises and the nature of the investigation by Centrelink. It may be that it was marriage like circumstances being investigated or other issues as well. The thrust of the submission would still be germane to the broad area, if I understand what you are now saying.

Mr Raper—Maybe it would help the Senate, too, to think of this not just in terms of the typical image of a sole parent with younger children and whether or not she is living with somebody. We find increasingly in these areas that there are issues around older couples who are living together for safety and security reasons. Centrelink may be concerned that they are in a marriage like relationship. These investigations could equally apply to an older couple sharing a household, which is increasingly the case. Centrelink might want to prove that they are in fact in a marriage like relationship, which is unfortunately the way that many of those officers go about the investigation—they want to prove their predetermined view of it, rather than actually investigate.

CHAIR—Mr Raper and Ms Forbes, that concludes questions to the National Welfare Rights Network. Thank you very much for your submission. I agree that teleconference is not the ideal way to engage in the committee process, but we understand that sometimes it is necessary. We appreciate you appearing in this way.

[11.37 am]

BROWNE, Dr Margaret, General Manager, Business Integrity, Centrelink

COULTER, Mr Trevor Gordon, Business Manager, Business Integrity Business Line, Centrelink

INNIS, Mr Sean, Acting Group Manager, Social Policy Group, Department of Families, Community Services and Indigenous Affairs

RICHARDSON, Mr Phil, Assistant Secretary and Policy Adviser, Department of Human Services

CHAIR—FaCSIA have lodged a submission with the committee, which has been numbered 6. Mr Innis, do you need to make any changes to that?

Mr Innis—No.

CHAIR—For the record, I remind senators that the Senate has resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions of that nature asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Officers of the department are also reminded that any claim that it would be contrary to the public interest to answer a question must be made by a minister and should be accompanied by a statement which sets out the basis for the claim. Do you all wish to make opening statements or do you have one opening statement?

Mr Innis—If it is all right, I would like to make a brief opening statement and then invite my Centrelink colleague to do the same. I am conscious that this bill contains four schedules, one on curtilage, one on search and seizure powers, one on crisis payments and one on miscellaneous changes. We have officers available to speak to any of those provisions if you would like. I am conscious also that you may wish to focus on schedule 2, the search and seizure powers.

CHAIR—I do not want to waste the time of your officers. I can fairly confidently assure you that it will be schedule 2 to which the committee's questions go. If you have officers here that you would rather see more effectively using their time elsewhere, then that is fine by us.

Mr Innis—We were asked to bring people along, but we are very happy for them to go home and do some work.

CHAIR—Given the way the hearing has developed this morning, I think that is most definitely going to be the case.

Mr Innis—Thank you. In relation to the search and seizure schedule, there are a few things that I would like to note up-front. The first is that we have provided a submission. That submission was provided in consultation with all of the relevant agencies. Obviously, we consulted Centrelink and DHS, but as well we consulted DEWR and DEST on the submission. I am conscious that the explanatory memorandum for this bill referred to \$8

million in savings. That was raised, I think, earlier in the day. The whole-of-government savings from the relevant measures are \$150 million over four years. The difference is that the bill only referred to FaCSIA related savings, not the savings from payments administered by other agencies. We would propose that that be noted. We have also provided answers to questions on notice. Because they were largely operational in nature, we provided them based on Centrelink responses.

The final thing I would like to note before making a general comment is that, whilst FaCSIA plays a general coordination role in relation to the Social Security Act, the powers of my secretary only relate to the payments for which my department is responsible. In detail I can only speak for those payments. Our expectation, however, is that there would be a consistent approach taken across all departments.

In relation to the powers, our view is that the measures are intended to assist government to address serious fraud. They are not to apply generally to the investigation of marriage like relationships and they are not intended to apply generally to investigations regarding overpayments or underpayments or other discrepancies of that nature. We are talking about serious fraud and deliberate attempts to defraud the Commonwealth.

The drafting of the legislation is based on similar powers in other arenas. This legislation does not involve anything novel in relation to search and seizure powers. Agencies are very aware of the responsibility to ensure that these powers are used appropriately. They are serious powers and they will be used seriously by the agency. I am conscious that secretaries of departments may only authorise an officer where they are satisfied that they have suitable qualifications or experience. Secretaries may also provide directions on the use of powers. That is something that our secretary will certainly be considering very carefully in terms of the behaviour of Centrelink or departmental officers engaging in a search and seizure activity.

Centrelink and the department propose to work closely with relevant experts in developing training and guidelines relating to the use of these powers. This will include the Australian Federal Police. The Australian Federal Police have a role in setting the overall guidance for how officers behave in this area. We will be taking very careful heed of that.

To give you a sense of that, it is not intended that the use of these powers will start until January 2008, in effect, to allow agencies time to build those training systems and to build the guidelines, and for secretaries to consider what directions may be given. I invite Margaret Browne to add anything she might like to.

Dr Browne—Some of the points I want to make would reinforce what my colleague has already said. One of the things that I think it is important to do is to place these powers in some sort of context. I think there is sometimes confusion between Centrelink's overall activities in reviewing entitlements and our investigations in regard to fraud. For example, Centrelink conducts about four million entitlement reviews every year. Only one half of one per cent of these cases—a very small subset—relates to suspected fraud. When we talk about suspected fraud we are most commonly talking about false or multiple identities, cash economy, undeclared income or assets and undisclosed domestic circumstances. This measure is targeted at the small number of people where Centrelink has a strong suspicion that they are

actively engaged in fraud. I probably do not need to remind the committee that fraud is a crime, so we are talking about criminal activity here.

The new search and seizure powers would not be used in every fraud investigation but only those circumstances where Centrelink have a strong suspicion of fraud. The powers will overcome a deficiency in Centrelink's current capability in investigating fraud, which is hamstrung where an individual or employer refuses to provide evidence voluntarily, and where the AFP have not been able to assist within the time lines needed, given other higher level priorities set by the government, such as terrorism. I want to make it clear right at the outset that we receive very good support from the AFP. We are not in any way critical. We understand the priorities they have been set by government. There is no questioning of that.

The protection of the integrity of the outlays, though, is critical to government and that is where our responsibilities come in. The three key risks across the major social security payments are undeclared income, undeclared assets and undeclared domestic circumstances. The government's existing prevention and detection activities are targeted at reducing the level of noncompliance and the level of fraud so that the system remains fair for all Australians. These act to ensure that the system supports only those who are eligible for benefits. Centrelink accept that the new search and seizure powers will require a higher level of responsibility and accountability in the exercise of powers. We are fully cognisant of the weight of that responsibility.

Centrelink is committed to working with the community and government stakeholders. We already work and will continue to work with the Australian Federal Police, with the Attorney-General's Department and with organisations such as Welfare Rights, with whom we have a very open and excellent working relationship. We are very aware that there are sensitivities around the exercise of these powers and around Centrelink exercising those powers and we will ensure the processes are designed appropriately, that there are sufficient checks and balances within the system to protect customer rights and that there are sufficient safeguards to protect our staff.

Of the 20,000 cases of potential fraud that Centrelink investigate every year, around 20 per cent, or 4,000 cases, are referred to the Commonwealth DPP. The quality of the evidence is paramount and we have a protocol with the DPP that covers the sorts of cases which are appropriate for us to refer to them. This element of the serious fraud measure—the element we are discussing now—is targeted to address a known gap. Where we have insufficient documentary evidence of fraud but strong grounds to believe evidence does exist, we need to have the power to gain access to the property and to the information in a much higher proportion of cases than we are able to now. Delays in the process of obtaining and executing warrants place at risk our ability to obtain the evidence we are seeking. Not being able to act promptly jeopardises our capacity to get the evidence we need to mount a successful prosecution or to prove the innocence of parties. It is important to emphasise here that even a few days delay can put at risk the ability to obtain that evidence—and this is particularly the case where there is, for example, seasonal work, records are likely to be destroyed or it is likely to be very difficult to get hold of them in the future.

We are very sensitive to the concerns that have been expressed by stakeholders. We are very aware of the importance of informing customers, and we will inform them, of the new

powers and of their rights. We will be developing training and operational guidelines, and we will certainly be working very closely with the AFP on this. They have an enormous amount of expertise in this area. We already use it and, subject to their ability to assist us, we will certainly use that in future. We will have rigorous monitoring and reporting regimes and we will provide, as we do now, ways for customers to lodge complaints or to appeal against Centrelink's decisions.

Centrelink is also concerned about the welfare of its staff and customers. For instance, in a recent operation that resulted in overpayments of \$232,842, we estimate that the level of individual customer debt could have been reduced by up to 30 or 50 per cent if the operation had not been delayed for 12 months. In other words, people end up with a much higher level of debt if we have to delay an operation significantly.

Finally, I want to emphasise, as my colleague did, that the arrangements would not be implemented before January 2008, which gives us more than 12 months to get prepared. And the Centrelink CEO will not authorise implementation of these arrangements to apply or execute warrants until he is satisfied that all requirements—particularly training and operational processes, assurance regimes, regimes to ensure safety—have been settled to his satisfaction after full and open consultation with our stakeholders. Thank you.

CHAIR—Thanks, Dr Browne. Mr Richardson, do you have anything to add?

Mr Richardson—No, nothing, thank you.

CHAIR—I think there are a number of questions coming out of this morning's discussion and some of the material the committee has been provided with by your organisations. Given the number of statements and some might even say assertions made about the situation of the Australian Federal Police and the role they currently have with the department and the agencies—both the role they normally carry out in law enforcement terms and the MOU—I think it is fair to say that I am surprised, and it may be that other members of the committee are too, that those statements and assertions can be made with absolutely the bare minimum of communication—I would not even use the word 'consultation'—with the AFP. I wonder how we have got to a point where such statements are made in submissions from one government agency about another without any consultation.

Mr Innis—Consultation occurred with the Attorney-General's Department, and often what happens in consultative processes between government departments is that the primary departments consult on the basis that the advice they receive back includes any relevant consultations with the agencies.

CHAIR—So you are blaming the Attorney-General's Department's for no consultation with the AFP—is that correct, Mr Innis?

Mr Innis—No, I am not. I am just explaining that when we consulted, our consultations occurred with the Attorney-General's Department.

CHAIR—Okay. We will make a note to follow that up with the Attorney-General's Department. Thank you for that advice. How can you say to the committee that the AFP is apparently no longer in a position to carry out its role without talking to them?

Mr Innis—Are you referring to the submission?

CHAIR—The submission, the answers to questions, yes—and your opening statement and that of Dr Browne.

Mr Innis—We have tabled a letter from the Commissioner of the Australian Federal Police—

CHAIR—I thought you might refer to that.

Mr Innis—to the former head of Centrelink indicating the priorities of the Federal Police. Clearly, from the perspective of the department, we would not necessarily want to distract AFP resources from the primary tasks outlined in that letter. More generally, though, I would not suggest that the case for this legislation rests on the inability of the AFP to provide a search and seizure service. It is an element of the case, but I would not suggest for a second that the government's view is that it relies on that.

CHAIR—Let me get this clear: on 11 September 2001, there were a range of evil and insidious terrorist attacks carried out in the United States which killed thousands of people. On 26 October 2001, the Commissioner of the Federal Police wrote to, in this case, Ms Vardon, the then CEO of Centrelink and one assumes a range of other chief executives across government, and indicated that those events were placing an increasing number of demands on the already stretched resources of the Australian Federal Police and so on—a perfectly legitimate and appropriate piece of correspondence in October 2001. You are here before the committee in November 2006 with what I most certainly—and I know other members of the committee—regard as an extremely serious proposition of that extension of powers to a government agency which involves very significant powers. You give to us, given that we had been discussing during the morning and it had come to your attention, a copy of a letter written post 11 September 2001 as evidence of the challenges faced by the AFP. You have put in your answers to questions on notice from this committee on page 2—and specifically in relation to page 2—some assertions in relation to the CCPM, which I might say the legal and constitutional committee of the Senate, this committee, has some passing familiarity with, but you have not asked the AFP at all, have you?

Mr Innis—I would have to refer that question to—

CHAIR—Dr Browne, have you?

Dr Browne—Asked the AFP exactly what, Senator?

CHAIR—If you can use these sorts of assertions to put your case.

Dr Browne—I do not believe we are making assertions; what we are saying is that we have received communication from the chief commissioner—

CHAIR—I am sorry, Dr Browne: I am not prepared to engage in a discussion where a letter of 26 October 2001 is presented to this committee to discuss a piece of legislation being brought forward in November 2006 where, to the best of the committee's knowledge and the best of its endeavours to find further information both with your organisations and with the Australian Federal Police, there appears to have been no further communication of any substance.

Dr Browne—That appearance would be deceptive.

CHAIR—I am waiting, Dr Browne, please.

Dr Browne—I was going to go on and say that there have been other circumstances where the AFP has had to address its priorities elsewhere such as the Commonwealth Games and when there are important meetings such as CHOGM—those sorts of events—where it is clearly understood between us that they are priorities for the AFP. We have no quarrel with that. We accept that absolutely. The other point that I would like to make is that our officers are aware of the priorities of the AFP and, in some cases, feel they are unable to ask for assistance, that it would not be appropriate for them to ask for assistance.

CHAIR—Has the AFP indicated it is not appropriate to ask for assistance?

Dr Browne—I do not believe that to be the case, no.

CHAIR—Thank you.

Dr Browne—And I do not think we are actually suggesting that.

CHAIR—You just did actually, Dr Browne.

Dr Browne—No, with respect—

CHAIR—No, you did. You said, ‘My officers think it’s not appropriate to ask the AFP for assistance.’ I said, ‘Has the AFP said it’s not appropriate to ask for assistance?’ and you said ‘No.’

Dr Browne—What I said was that at times our officers do not believe it is appropriate to ask. I did not say that they say the AFP has said it is not appropriate to ask.

CHAIR—That is what I asked you to clarify, because the AFP has not been asked. I refer to what is in your submission under the heading ‘Commonwealth legislation’ on what I think is probably page 3. Have you had an opportunity to consider the submission of the Commonwealth Ombudsman, who draws to the attention of the committee that the comparison that you make in relation to comparable powers is not really a legitimate one and that, in the Ombudsman’s view, only the Australian Customs Service and Medicare Australia have powers of the same scope? That is the first question, and it concerns when you are actually doing a one-on-one comparison with the sorts of powers that would be taken up. Secondly, the difference that is pointed out in that submission and in others is that the powers that you seek go to the capacity to enter private premises but overwhelmingly the powers in the legislation that you list there as comparable do not really go to the capacity to enter private premises. So there is a bit of a difference.

Dr Browne—I am not in a position to argue or state whether Australian Customs Service investigators and tax office investigators can go onto private premises or not. But I am able to say that they do have powers that are very similar to those which we are seeking for Centrelink officers. The second thing I would say is that, in any situation where we wished to enter a private residence, we would need to, as we do now, mount a case that was sufficiently strong to convince a magistrate that that was appropriate.

CHAIR—I ask you to look at the points that the Commonwealth Ombudsman makes about that particular aspect of the legislation and the comparisons that you draw in your submission and come back to the committee on notice.

Mr Innis—It is certainly true that they are most like the Medicare powers. That is certainly true.

CHAIR—Thank you, Mr Innis. Under ‘Safeguards’ you indicate that these are powers which will be made available to a ‘limited range of officers’. How many do you intend to have authorised to exercise these powers?

Dr Browne—It would be in the order of 20 officers across the country. We have 11 fraud investigation teams at the moment. It would be no more than one or two for each of those teams.

CHAIR—You say ‘limited range of officers’. As I read the legislation, it refers to the person authorised by the secretary. What about the assisting persons? How is it going to work? Are they going to be authorised officers at the same level?

Dr Browne—They would not have the same level of training or requirement but they would certainly have training. I should point out in that context that we already assist the Australian Federal Police when they execute warrants on our behalf, so that is not actually a new role.

Mr Innis—Chair, the assisting officers will not have the same level of powers. Assisting officers cannot execute a warrant. They can only support an authorised officer in that regard. So the power to execute a warrant would be limited to a small number of trained professionals.

Dr Browne—Yes, in the order of 20.

CHAIR—In the last two paragraphs of your submission, there is a line that says:

In addition to the safeguards imposed by the legislation, policy guidelines will be developed to ensure the necessary balance between the integrity of outlays and citizens’ rights to privacy.

What does that mean?

Dr Browne—It means that we have a very strong accountability to government for the integrity of outlays. We also have an accountability not to invade the privacy of our customers or indeed anybody. Over the last five years there have been no complaints by the Privacy Commissioner about Centrelink’s behaviour in fraud investigation, so I do not believe that that is a big issue. We will be increasing our training. It is not an issue now; I do not believe it will be in the future.

CHAIR—So you are not saying no complaints to the Privacy Commissioner but none that the Privacy Commissioner has then carried through?

Dr Browne—You are correct.

CHAIR—I want to ask a few questions on your responses to questions on notice. I refer to the example that you have used about the harvesting industry matter in—is it Victoria?

Dr Browne—Yes.

CHAIR—Okay. You are using that and one other in this set of answers to questions on notice as an example of an investigation where you have found it difficult to operate in the current environment when you are assisted in the execution of warrants by the AFP. In the second paragraph of your answer to question (b) on page 1 of that document it says:

Centrelink did not pursue a warrant because it would not have been able to be executed in time.

Whose responsibility would that have been? Why was that a problem?

Dr Browne—Whose responsibility for the decision?

CHAIR—For the decision and for the execution, and why was it a problem?

Dr Browne—The responsibility for the decision was Centrelink's. The responsibility for the execution would have been the AFP's because we do not have those powers.

CHAIR—And what was the delay?

Dr Browne—It is slightly complex, if you will just indulge me for a moment. The argument we are making in relation to this case—and, indeed, with any case—is that our preference is not to go to a situation of search and seizure. We try and use the least intrusive methods. We collect all the information we can—

CHAIR—And then you ask if you can go in.

Dr Browne—Before that, we ask for information. We can write, and we have information from other sources et cetera. Then we can ask if we can go in. That was our preference. That was the line we were pursuing. On this occasion, as you have seen, we were refused entry. At that stage, Centrelink officers—and we take responsibility for this—made a judgement that, because the harvesting season was so near the close, it would not happen in the time frame. The argument we are making is that if we had those powers we would consider two lines simultaneously so that we would be thinking much more as we went, 'Is this starting to emerge as a case where we're going to need to seek a warrant?' and we would be progressing that at the same time. We would always try to do it voluntarily but then we could move much more quickly to the other option. Does that answer your question, Senator?

CHAIR—Not specifically, in relation to this issue, I do not think, no.

Dr Browne—How can I help you further?

CHAIR—I cannot really work out from the answer whether the delay was because the harvesting season was coming to an end or because you could not get a warrant.

Dr Browne—They are related.

Senator LUDWIG—You chose not to get a warrant on the grounds of your view that there may be a time delay. But you never asked.

Dr Browne—We did not on this occasion ask. There are other occasions where we do. But on this occasion we did not.

Senator LUDWIG—So you do not know whether you would have got a warrant in time or not.

Dr Browne—We did not attempt to get one so we cannot say we would not have. It was a judgement.

Senator LUDWIG—You have said that, though.

CHAIR—You said it would not have been able to be executed in time, but you did not ask.

Dr Browne—We made a judgement.

CHAIR—Okay. You are using that as an example to persuade the committee that there is a problem with the current system and that is why you need the new powers but you did not actually ask whether the current powers would have responded to your need.

Senator TROOD—There was an AFP liaison person available to be consulted about this, wasn't there?

Mr Coulter—In relation to this particular case, we do in Victoria have an outposted AFP officer who the team is in constant contact with. The decision, I believe, in this case was made because there is a time in which the warrant has to be executed. This particular harvest has a very short life span of a matter of weeks. There is a continual conversation with AFP about their capacity to assist or not to assist, before we have even sought the warrant from the magistrate. Centrelink prepare the application for the warrant in some knowledge of AFP's capacity to assist at some point of time in the future.

CHAIR—The bottom line, as far as this one is concerned, is that you have used it as an example to inform the committee about why you need the powers, but you in fact did not seek to exercise the powers under the current arrangements at the time.

Mr Innis—It is probably worth emphasising again, whilst the relationship with the AFP in terms of their capability is an element of the justification for the bill, it is not the primary reason for the bill.

CHAIR—You see, Mr Innis, I do not want to interrupt but I want to clarify for you at least my perspective as the person currently asking questions, and that is to say that you are trying to persuade the committee that these are an appropriate set of powers for your organisations to take upon themselves, which are overwhelmingly and most appropriately policing powers. So the relationship with the AFP is, for this committee, very important. I clarify that for you.

Mr Innis—We accept that fully. We would accept also that the level of consultation in the past has not been ideal. I can say that there have been officer level discussions with the AFP since then and that we are intending to work very closely with the AFP into the future in developing the guidelines and the training of Centrelink officers. I have also been advised that the number of referrals accepted by the AFP has declined significantly over the last few years from around 150 in 1999-2000 to less than 25 in 2004-05.

CHAIR—In 2005-06 the AFP accepted 161 referrals, and in the current calendar year, 2006-07, they have already accepted 56 or 57 you have put to them. Where is the decline again, Mr Innis?

Dr Browne—Centrelink will answer that one, Senator. There are two ways in which we refer cases to the AFP. What my colleague is talking about is when we refer a case to the AFP to investigate. That is one set of circumstances. The other is where we ask them to execute a warrant on our behalf. I think between us we are probably talking about both.

CHAIR—You are.

Dr Browne—Yes. Could I just say something else?

CHAIR—I just need to say something to Mr Innis, then I will come back to you, Dr Browne. Mr Innis, it seems to me that the AFP will be entirely grateful for your reference to further communication in this process but, if they were given the perfectly reasonable

opportunity of having apparently the significant number of matters discussed with them that your officers, broadly speaking, are very concerned that they might not have time to do, they may in fact have been able to respond and even possibly adjust their resources accordingly, if they had been approached—a procedure to deal with it, as Senator Ludwig suggests.

Dr Browne—The point I would like to make there, very clearly and very firmly, is that we have excellent relations with the police. I am not talking about the consultation or lack thereof in the legislation. I am talking about Centrelink's operational relationships with the police. They are very, very good. On the ground, they work side by side, collaboratively, on a number of cases. I would like to ask Mr Coulter to go back to the particular case you were asking about. You asked why we did not ask, and he is going to talk a little more about that.

CHAIR—Let me just say, Dr Browne, I am pleased to hear your description of your relationship with the AFP, but I might just reiterate the remarks from the opening statement of the AFP to this hearing—and I quote from the printed version of your opening statement which you have supplied us with:

As the Commissioner advised you during Estimates, the AFP was not consulted in the development of the proposed search powers in this Bill. The AFP became aware of this proposal when the Bill was introduced into the House of Representatives. At this stage the AFP has not had any formal discussions with Centrelink or the Department of Families, Community Services & Indigenous Affairs about the implementation of the proposal if this Bill is passed by Parliament. One informal telephone contact was received by the AFP from Centrelink early in 2006 seeking the AFP general view on the provision of search powers to Centrelink officers.

So they may not necessarily characterise things quite the same way, in terms of the communication on this bill.

Dr Browne—I was not referring to that, Senator; I was referring to our operational relationships.

CHAIR—I know, but unfortunately for us, Dr Browne, we are dealing with the bill. Mr Coulter—you wanted to add something?

Mr Coulter—Only if you want to hear about that operational level, because it seems to me there are two different levels of communication going on here: one at an operational level, with the fraud teams and the AFP in each of the AFP's jurisdictions, and then we have a different level of conversation at a national level.

CHAIR—Sure. I think we have the general gist, in your response to Senator Trood on that, and if we do want to pursue it further we might come back to you.

Mr Innis—I might also observe that the drafting of the bill was based on existing examples of laws in place. So, whilst I fully accept that consultation with the AFP has not been as good as it could have been, the bill itself was drafted based on models that existed, as I have mentioned up-front. So we are utilising the expertise of what has gone before, if you like.

Mr Richardson—Could I dispute that? I would just comment that, in relation to the Commissioner Keelty's letter of 2001, there has been a range of additional pressures, besides the event that occurred in that year—

CHAIR—Additional pressures on whom, Mr Richardson?

Mr Richardson—Pressures on the AFP—

CHAIR—You are answering for the AFP about additional pressures, are you?

Mr Richardson—No, I am just saying that they have had discussions with Centrelink, and the point I am making is that these pressures have manifested themselves on the ground, certainly in the judgement of the Centrelink officers, and I think Mr Coulter would be able to talk more about this, but the accessibility of Centrelink to the AFP has been a lot less in the last five years or so than it was previously, and I think the practical effect of these other pressures and priorities on the AFP—and they are quite proper; we're not complaining about them; we do not suggest the AFP has its priorities wrong at all; they are correct and proper, but the effect of that on Centrelink's accessibility to the AFP has been that they have been less accessible to Centrelink than they have been in the past. And Mr Coulter, who has had the day-to-day operational involvement with many of the AFP officers over that period, could probably say something more about that.

CHAIR—I am a little confused. I am going to have to compare the record, I think, about how things are going in this relationship, because I am just not clear about how good it is and how effective the communication is or whether in fact there has been a diminution of communication and this is a problem.

Senator TROOD—Mr Richardson, you may well be right—there has been an increase in the demands on the AFP over the last five or six years. But there has also been a massive—absolutely massive—increase in the resources that the government has provided to the AFP to undertake its responsibilities.

Mr Richardson—Yes, and—

Senator TROOD—So it is not a case of the demands on the AFP's resources just increasing exponentially without there being some compensating response. I could show you a table which would show something like a 150 per cent increase, both in relation to its financial resources and in relation to its personnel.

Mr Richardson—I fully accept that. But the point I was trying to make was that the practical effect on the ground in an operational sense has been that there has been a noticeable and significant lessening in accessibility—in the experience of Centrelink officers like Mr Coulter, who have the day-to-day relationship—that has been noticeable over that period. I acknowledge both sides: the pressures have gone up and the resources have been increased. But the practical effect on the ground has been as I say, and I think Mr Coulter would be able to talk much more about that than I could.

CHAIR—Mr Richardson, could you please take on notice two questions from the committee. First, if there has been a noticeable reduction in Centrelink's access to AFP officers, what formal communications have there been between Centrelink and the AFP to consult on that and to address that problem? And, Dr Browne, I think you said in your opening statement that the AFP has not been able to assist with the timeliness needed on some matters, so my second question is that I would like to know what formal communications

there have been between your organisation and the Australian Federal Police on those specific matters where timeliness has not been the best.

Dr Browne—We will take those on notice.

CHAIR—Thank you very much. I am trying very hard to finish with a couple of questions and then go to my colleagues, and I suspect we may go a little over the scheduled time for the committee's conclusion. In a second example that you use in your response to questions on notice, you refer to what you describe as '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, you say, 'The search warrant was executed after a 12-month delay.' What was the reason for the delay?

Dr Browne—The information I have been given is that that was a case where we requested assistance and it was not available at the time.

CHAIR—And it took 12 months to obtain any assistance?

Dr Browne—That is the advice I have been given.

CHAIR—Could you take on notice, please, Dr Browne, to provide to the committee more information about that matter and as much as you are able to, and we will place the same matter on notice with the Australian Federal Police?

Dr Browne—Certainly.

Senator LUDWIG—Did you complain to the Federal Police at any time during the 12 months of the delay?

Dr Browne—I would need to take that on notice.

Senator LUDWIG—In answering that, could you also tell us whether you complained to anyone else about the delay. Did you seek the warrants from alternative places? Did you seek alternative methods of obtaining the evidence you were after? And, if you did complain to the AFP, what was the response that you received, and did you follow up on the response that you received?

Dr Browne—We are happy to take that on notice. We will make just one comment: only the AFP is able to execute a warrant.

CHAIR—We have a significant amount of evidence on the record from this morning and in a number of submissions about the training that will be needed for officers appointed as authorised officers—the extent to which management oversight will be necessary and the need for competent or probably super-competent recordkeeping—and the AFP gave us further evidence this morning, particularly in relation to training. Given that we are here today discussing the implementation of this process, what can you provide to the committee today or on notice that sets out in detail what plans you have for training and what will be required? For example, have you contemplated the recruitment process for officers who would be appropriately qualified for this role? Have you developed selection criteria and, if so, can we see them? In terms of the management oversight process, could you tell us what lines you would put in place there, and what plans you have for appropriate record keeping? I

understand that is a complex series of areas and I understand completely that you would want to take them on notice.

Mr Innis—I will make a general observation, if I may. In terms of the development of the training and the guidelines for operations, I would refer to an earlier comment we made that it is not intended that Centrelink officers commence using this power until January 2008 to provide appropriate time for the development of those guidelines. Secondly, in terms of governance, if you like, there are two levels. There is obviously the responsibility of the CEO of Centrelink. In addition to that, the bill provides for the secretary of the policy departments to provide directions in terms of the use of those powers. People will be developing very carefully what both of those levels of accountability should contain. Certainly, from the department's perspective, we will be thinking about how the direction should be used very carefully.

CHAIR—I understand that you are not intending officers to suddenly leap out the week after parliament gets up in December and start exercising their personal search and seizure powers and use of force provisions—I get that. But what the committee is being asked to do is make some assessment in relation to this legislation with blinkers on, to a degree. If we cannot see how you plan to make this very serious accretion of powers work then it is very hard for us to make a decision on that.

Dr Browne—I understand what you are saying. I would just draw your attention to the fact that we have been provided by the government with funds to develop training and develop the skills of our officers. We are committed to developing that training in consultation with experts—in particular, with the Australian Federal Police, who have an enormous depth of experience in this area. We already work with them in developing training for our current operations. We already comply with mandatory national standards which are set out in the Commonwealth fraud control guidelines. We will continue to do that.

We are also happy to consult with Welfare Rights. We have a record of consulting with Welfare Rights. A couple of years ago, when we were doing some work on training our debt officers, we actually asked them not only to help us develop the training package but also to participate in the training, which they did. It was very successful. Also, with prosecution training, we have enlisted their assistance. That would be the sort of way we would go forward.

CHAIR—Have you defined 'serious fraud'? One thing that the Ombudsman said to us this morning is that it is not clear from the submission, the bill or, really, from the EM—we are talking about serious non-compliance spinning into fraud—whether it is a monetary amount or whether it is the nature of the fraud that makes it serious. I had a look at the definitions and I just was not sure really where that comes down.

Dr Browne—I am just looking for the appropriate definition. While I am looking for it, the first point I would make is that there is a very clear distinction between compliance and fraud. Fraud is the situation where we suspect that there is an intent and a deliberate attempt to actually defraud the Commonwealth. Compliance can be accidental or careless.

CHAIR—Does the attempt have to have a dollar amount?

Mr Innis—I would not envisage that there would be a dollar amount. It would go more to the nature of the fraud and how deliberate it is. Obviously, the larger the dollar amount, the more likely it is that, if, through all of the other mechanisms, Centrelink could not get the appropriate evidence, it would be more likely that the officers would go to a magistrate and seek a warrant. Of course, the magistrate will only grant that if they are convinced that there is a reasonable case of gaining evidence that would lead to a conviction.

CHAIR—If you want to add anything to that, Dr Browne, I am happy if you take it on notice.

Dr Browne—I think that would be best. I do have it here somewhere, but I do not want to delay you.

CHAIR—I understand. I am drowning in the paper myself.

Dr Browne—I have it now. A fraud against the Commonwealth is defined as a dishonest obtaining of a benefit by deception or other means. I would also draw your attention to this measure being about serious fraud, so it is in fact a subsection of that. It is the sort of fraud at the bigger end. There is no dollar amount involved.

Senator LUDWIG—I am trying to get a sense of the type and nature of the offences that you want to use these powers against. They are at the serious end, as I understand it.

Dr Browne—Yes.

Senator LUDWIG—Help me with this, then: fraud control guidelines apply to your organisation. Is that right?

Dr Browne—Yes.

Senator LUDWIG—You put systems in place to deal with the guidelines and then you adhere to the guidelines. That is right, isn't it?

Dr Browne—And we have our own fraud control plan.

Senator LUDWIG—The fraud control guidelines indicate that if the fraud is of a serious or complex nature it is to be referred to the Australian Federal Police.

Dr Browne—Are you asking me that?

Senator LUDWIG—Yes.

Dr Browne—That is correct.

Senator LUDWIG—But you then want to deal with it in house. This is where I am getting confused. If it is at the lower end, if it is non-compliance issues, if it is less serious fraud, if it is a matter which goes to nonpayment, then I can understand that you might have your own task force investigate it—and you do. You then send a lot to the DPP. You have sent 4,000-odd cases to the DPP which they managed to prosecute. Those matters do not go through the AFP, do they?

Dr Browne—I need to clarify a couple of things here. One is that what Centrelink regards as serious fraud is actually at the lower end of what the AFP would describe as serious fraud. For example, their case categorisation and prioritisation model has a number of things that are higher than the sort of fraud that Centrelink is interested in. There is a spectrum here, and

what is at the serious end for us is at the less serious or less large end for the AFP. That is one point that needs to be made. The other is—

Senator LUDWIG—I am not sure what that point means, though. You are still meant to refer serious and complex fraud to the Australian Federal Police.

Dr Browne—Of the ones that we—

Senator LUDWIG—So your complaint is that because the CCPM does not deal with some of those means that there is a gap. But you have not spoken to the Australian Federal Police about that.

Dr Browne—There are a number of different levels of characterisation for fraud. We refer some of the ones at the very high end to the AFP. In the spectrum that Centrelink deals with, there is low to high; in the spectrum that the AFP deals with, there is low to high. What we regard as being at the high end is at their low end. Nevertheless, we refer the ones at the very high end of our spectrum to the AFP for investigation.

The other point that I need to make is that already we do—and this is not an exact statement—nine-tenths of the job on a lot of the cases. We receive tip-offs, we gather evidence, we use intelligence, we have some capacity to do surveillance, we can require under the social security laws some evidence to be provided and we can apply for a search warrant. The only thing that we are unable to do at the moment is to execute that warrant. It needs to be understood that this is just one element in relation to a small proportion of the total cases with which we deal.

Senator LUDWIG—What I am trying to understand, though, is not the AFP's determination of what 'serious' might be under their CCPM. In terms of the fraud control guidelines, you do not refer all serious fraud—as defined by your view—to the AFP, because some of it is less serious fraud. That is what I am trying to understand—what you hold back.

Dr Browne—We would hold back some of the cases that are less serious and complex; the more serious and complex ones are the ones we would refer to the AFP.

Senator LUDWIG—Okay. So under the Commonwealth fraud control guidelines you do not refer all serious and complex fraud to the AFP?

Dr Browne—The guidelines actually state:

Agencies must refer all instances of potential serious or complex fraud offences to the AFP, except in the following circumstances:

- agencies which can satisfy both the AFP and the CDPP that they have the capacity and the appropriate skills and resources needed to investigate criminal matters and meet the requirements of the CDPP in gathering evidence and preparing briefs of evidence (such as—

and then there is a list of agencies that includes Centrelink. So it is understood that there will be exceptions to that direction.

Senator LUDWIG—You do that, and you refer a range of cases to the Commonwealth Director of Public Prosecutions?

Dr Browne—We refer to the AFP to investigate some of those more complex cases where we do not believe we have the capability. We refer to the DPP cases where we believe we

have gained sufficient evidence to sustain a prosecution. And then the Office of the DPP makes a judgement about whether or not it agrees with that.

Senator LUDWIG—You are saying there is no gap in that process?

Dr Browne—I believe there is an emerging gap, in that the numbers the AFP has been able to accept to investigate have been declining. They are the figures to which my colleague referred earlier.

Senator LUDWIG—Have you raised that with the AFP?

Dr Browne—I am advised that when the AFP recently revised its case categorisation and prioritisation model we wrote to them expressing our concern that Centrelink matters would increasingly not fall within the matters they were able to assist us with.

Senator LUDWIG—Can you make that correspondence available to the committee?

Dr Browne—Yes, we can do that.

Senator LUDWIG—Did you get a response from the AFP?

Dr Browne—Yes, we did.

Senator LUDWIG—And what was the nature of the response? Can it be made available to the committee?

Dr Browne—I will have to take that one on notice. I do not have that correspondence with me.

Senator TROOD—When was that correspondence?

Dr Browne—The case categorisation and prioritisation model was revised in 2005, so we would have provided that advice before that. I can get a precise date for you.

Senator LUDWIG—So it has not been in the last 12 months?

Dr Browne—It would not have been, because these were published in February 2005.

Senator LUDWIG—A broad question, then: what I am hearing from you is that you have a problem in investigating certain matters, getting sufficient evidence to prosecute and to pursue and get enough evidence to send to the DPP. That seems to be what you are saying. Have you examined other ways to achieve this and other ways to ensure compliance? If you have, do you have those papers or inquiries?

Dr Browne—There are a couple of things I would say there. Firstly, as my colleague has said already, the issue about whether or not the AFP is able to assist us is one element and one element only of this whole picture. In the last budget one of the measures that was approved by the government on behalf of one of our policy agencies was increased capacity and focus on serious fraud and increased capacity for cases to be prosecuted. It is not just about the AFP; it is about the government's intent that cases of social security fraud should be pursued more rigorously.

If I have understood you correctly, the second part of your question is really about compliance, not fraud. Yes, there are a number of activities that go on in that area. One of the most obvious is the Support the System that Supports You campaign that the government is funding. There have been a number of television and radio ads, and also pamphlets have been

distributed. I do not have the figures with me, but there has been a significant increase in the number of tip-offs we have received as a result of that campaign. Also, we have had customers themselves ringing us to update their circumstances. What I need to emphasise is that that is largely about voluntary compliance rather than fraud.

Senator LUDWIG—But, in terms of your activities, you have not looked broadly at other ways to achieve the end result.

Dr Browne—We look at a range of sources of intelligence, a range of evidence, and we establish, insofar as we are able to, a case which will stand up in court.

Senator LUDWIG—I accept that. But we have a bill which deals with search and seizure powers. These are broad powers, and it seems to me they have been copied from the criminal statutes and imported into your legislation. You have not imported the oversight arrangements that the police have, but you have certainly taken the search and seizure powers. You have not imported the framework and training model on which the police operate, though you have told me you are going to do that. In coming to the conclusion that you needed broader search and seizure powers, other than the two points where you say there is some evidence to suggest that the AFP have been tardy, where is the research and the conclusions that this is going to achieve a solution to the problem you have? Where is the document that sets out what the mischief is, how this legislation is going to overcome it and how you are then going to be able to deal with it? It seems to me that, without that, you have seized on one point of the argument without going to the Australian Federal Police—logically, I would have first gone to the Australian Federal Police; how you would operate is a matter for you—and saying: ‘We have a problem with getting search warrants. Can we look at procedures to ensure that we get search warrants more quickly? We have 10 officers in our various offices around the country. Can we have a couple more? If there is a problem, can we have them at different hours? Can we look at our memorandum of understanding and have reasonable discussions with you about the connection between Centrelink, or Human Services, and the AFP?’

Failing that, if you are still not dealing with the issues at hand, you might look a bit more broadly and ask: ‘What types of powers do we need? Do we need powers similar to Medicare? Do we need powers similar to Customs? Do we need to go from one point to an extreme point? How are we then going to ensure that officers are trained?’ You might generate a discussion paper on whether they should carry arms or not and on whether they should use force. You might have consultation with the community about those issues as well. You would also expect some discussions with the various stakeholders about maybe increasing the compliance in that area—or, where there is fraud, dealing with it in other ways. You might say to the AFP: ‘We want to refer all these matters to you. We want you to be able to deal with them and tell us why you can’t deal with them.’ Did you do any of that?

Mr Innis—I want to clarify something. There is no question of any officer using these powers using arms. In terms of the process you outlined in relation to the development of training and community consultation, the intention is to develop those guidelines between now and 2008, when officers will be authorised to go into the field, as it were, and seek from a magistrate a warrant to undertake a search and seizure activity. As my colleague has said, the intention is to consult on those guidelines with experts—the Australian Federal Police and

others—and stakeholders on the ground such as the welfare rights organisations. The issue you are raising with us is the timing of that activity.

Senator LUDWIG—It is broader than that. That is one part of it and, quite frankly, I would imagine you would do that first—but be that as it may. The other part, of course, is to identify the problem. I do not see any analysis that says you have actually identified your problem and spoken to the people where you think the problem exists. You have made a range of claims that there are problems. You have claimed that there is a problem with the AFP. Have you made any complaints to any of the state authorities? Have you raised it with any state or territory police force other than the one Dr Browne mentioned? Have you raised it with Minister Ellison in terms of his being tardy?

Mr Innis—The decision to introduce this bill was made by the government in the context of a broader package to enhance the government's focus on serious social security fraud. The officers at this table are not in a position to provide advice on the policy rationale for one approach versus another. We can explain how it would work, but I do not feel we are in a position to explain the base policy for suggesting that authorised officers within Centrelink should have a search and seizure power.

Senator LUDWIG—Then where did the search and seizure power come from? Did you ask for it?

Dr Browne—I certainly did not ask for it.

Senator LUDWIG—How about you, Mr Innis? Did you ask for this power?

Mr Richardson—Perhaps I could comment. It came from the perceived problem that you were talking about before. The issue that you seem to be seeking to reconcile is the AFP's apparent view that they are not aware of any problem in providing the support that Centrelink needs. That seems to be the gist of it.

Senator LUDWIG—We can move off the AFP. I really want to know why you need it and why you asked for it?

Mr Richardson—It is because Centrelink, in a number of investigations that it has undertaken in recent years, on the basis of evidence that it has already collected, has gone to premises where it believes more evidence would be available that would be useful in a prosecution and has been denied access to those premises. It has not been able to obtain—

Senator LUDWIG—I understand that. What I want to know is: where are the documents that say, 'I require this search and seizure power to be able to effectively do my job'?

Dr Browne—Perhaps I can offer some assistance here. As well as pursuing execution of search warrants with the AFP, as we do in some cases, the other way in which we seek to obtain the sort of evidence we need is to increasingly participate in joint operations with other agencies. The department of immigration and state police forces would be two very good examples. They frequently invite us to participate in operations which essentially are theirs and in which Centrelink officers participate as invitees. This works on many occasions and we do actually get evidence which can be used in prosecutions—there is no doubt about that.

However, there have been some issues raised around a number of things, such as the admissibility of evidence obtained in an operation which is being conducted under another

agency's powers. There is also the issue that extra work is involved for the other agency, in that they have to store the information on their premises because they are the ones who are authorised to have it. There have also been issues that have arisen around breaks in the continuity of evidence because of multiple handling across agencies. So there are a number of things there that limit the efficiency and effectiveness of what we do.

Senator LUDWIG—I will come back to the question I asked. Mr Innis: did you seek this power?

Mr Innis—No, the department did not.

Senator LUDWIG—Mr Richardson, did you seek this power? Did you identify the need for this power and seek the power?

Mr Richardson—I am a Centrelink officer on secondment to the department. Certainly I was involved in discussions about the difficulties we were having in going to properties—residences and businesses—where we were seeking to gain access to information which would be useful or vital in mounting sufficient evidence to refer a matter to the DPP for prosecution and where that access was denied. The difficulty that we have had with getting warrants quickly to assist us in this task has led to the suggestion that if Centrelink had powers to do this where it was looking at matters of serious fraud then the evidence would be forthcoming in a higher proportion of cases and we would be able to make the basis of a successful prosecution, thereby dealing with criminal offences and saving taxpayers' money.

Senator LUDWIG—So, Mr Richardson, what we have is a good idea with a post facto justification for it—is that what we are now looking at?

Mr Richardson—No. At the time we were drawing on the fact that Centrelink investigators had asked—it was not something we were postulating for the future: they had been on operations and they had sought access to premises and they had been denied.

Senator LUDWIG—I am not sure I have clear evidence before the committee about those matters, but if there are matters that you can point to which say that then the committee would be happy to receive that. I think Dr Browne has taken on notice that she will get some information on matters that we have raised—but it looks like, what, a maximum of three cases where you have been denied?

Dr Browne—I do not think we would be prepared to give a number here.

Senator LUDWIG—I would like to know the number—

Dr Browne—We will endeavour to get a number for you.

Senator LUDWIG—and the dates that it occurred and what you did about it at the time—what follow-up you put in place and whether you then looked at alternative ways with the AFP or other agencies to overcome your problems. Did you consult with the Office of the Privacy Commissioner in respect of this legislation?

Mr Innis—Yes.

Senator LUDWIG—You did?

Mr Innis—Yes.

Senator LUDWIG—And what was their view? Perhaps you could take that on notice and let me know what level of consultation you had.

Mr Innis—I can answer that. We received no comments from the Privacy Commissioner. I will provide it on notice if there is anything different.

Senator TROOD—I would be more persuaded by your account just a moment ago to Senator Ludwig in relation to these problems if it were not also the case that you would still have to get approval for a warrant and go and search et cetera. So there is still likely to be a delay under this bill, isn't there? It is not as though you are being given powers so that you can suddenly say there is a need to go and undertake a search and seizure activity and therefore you do not need to go and get approval for that.

Dr Browne—I think the point there is that we can already seek a warrant from a magistrate, so that is not actually different. It is in the execution of it that the difference lies.

Senator TROOD—I have been over this ground with my colleagues and I must say there has been no evidence adduced that convinces us that there is a difficulty here that might not have been resolved by a closer liaison with the AFP, which, on some accounts of the evidence, has been a relatively successful relationship. I think Mr Innis put evidence before the committee that you work closely together.

Dr Browne—What we are saying here is that the element of whether or not the AFP can assist is only a part of this argument. The government has clearly indicated where it wants the AFP's priorities to be and where it wants Centrelink's priorities to be, and that is the situation.

Senator TROOD—It is common ground that we all think government agencies should be prosecuting fraud where they find it and that they should be chasing fraudulent activity in relation to any part of social security down every rabbit hole that they find it necessary to go down. Dr Browne, I think you said in your opening remarks that half of one per cent was suspected fraud. Was that right?

Dr Browne—Yes.

Senator TROOD—That is obviously a very small part of the overall range of fraudulent activities which, as you also pointed out, was criminal activity. I agree with that proposition, that it is criminal activity, and I agree that it ought to be prosecuted. To my mind, two things follow from that. Firstly, you seem to be as an agency relatively successful in identifying fraudulent activity and chasing it down, and there is a small part of this activity which is criminal and serious fraud, as defined, for which you need to secure some additional support from another agency or have it yourself.

I would think that, in the interests of the better management of the whole agency, you would be better off focusing your attentions on the things you already do quite well and on importing that kind of ability from somewhere else, rather than acquiring a particular capacity which you do not have and which is going to require further training activity and require your putting systems and protocols in place which protect the use of these powers in ways that you do not do at the moment. It is going to require, on some of the evidence that Senator Bartlett secured, a change in some of the culture of the agency. Why would you want to do all of that way when it is a relatively small part of the problems that you confront and when you have a

relationship which allows you to prosecute that kind of fraud relatively successfully and to get on with your business?

Dr Browne—It is a relatively small part of the problems we face in the context that not all the problems we face are fraud. Look at the number of convictions which the DPP secured. For example, in 2005-06 it was 2,822 convictions in Centrelink cases and of those cases 2,359—the vast majority of them—were actually charges under the Crimes Act or the Criminal Code Act, so they were pretty serious. That is the first point I want to make. The second is that one of our policy agencies has indicated that they wish more cases to be referred to the DPP, so we do need more capability to actually pursue some of those cases to their conclusion more than we are able to do now.

Senator TROOD—I do not want to harp on the relationship with the AFP, but it seems to me that, with that goodwill and with exposing your difficulties to the AFP, they would not have been unwilling to try to cooperate more effectively in giving you the support you need so that you can have a higher success rate—although it is still pretty good, actually.

Dr Browne—It is pretty good if you define that in terms of the number of cases we refer which result in successful prosecutions. It is something like 98 per cent. But I think the issue is more around the cases we could refer if we could get what we believe to be that further evidence. That is really the issue. But certainly already we forward to the DPP by far the largest number of cases compared with other agencies. It is the increase there that we are really looking at.

Senator TROOD—But when you refer matters to the DPP it is not for all time, as it were. If the DPP looks over the evidence and says, ‘This is not strong enough,’ you are not precluded from trying to secure further evidence, are you?

Dr Browne—No, I am not suggesting that.

Senator TROOD—That could involve using seizure powers that are available to you via the AFP link.

Dr Browne—I agree with that. I guess the point we are making is that there is an increasing concern around identity fraud and cash economy fraud. These things are not going away. The government have indicated that they want us to be able to refer more of those cases. I absolutely take your point that you can go back and do it again, but the time you are spending then takes you away from something else that you might like to pursue. It is really an opportunity cost.

Senator TROOD—I applaud your determination to robustly pursue these things. I think it is most important that you do that. But, as I say, you seem to be doing it well. You seem to be—as you responded to Senator Ludwig—not taking an obvious course, which is to avail yourself of the services of an agency of government which is specifically targeted at investigating criminal activity which you, in your own evidence, say is precisely the kind of activity that you are concerned about.

Dr Browne—I am sorry; I missed the first part of the question. What exactly are you asking me?

Senator TROOD—All I am saying is that we have an agency here which is highly professional and widely acknowledged to be so. It has very substantial resources. Those resources have been increased considerably over recent years. It has precisely the kind of abilities that you need. With a little commitment to try and improve the relationship—which, on your account, seems already to be a relatively good one—those services would be available to you to do precisely what you wanted to do.

Dr Browne—What I would come back to there is that, notwithstanding our very good relationship, it is not the top priority for the AFP, and rightly so. The other thing to say, I think, is that we have agreed guidelines with the DPP about what cases we refer. Within those guidelines are certain expectations around evidence. The majority of the cases that we do not refer, because they do not meet the guidelines, are around lack of evidence.

Senator TROOD—How old are the guidelines?

Dr Browne—We would need to take that on notice.

Senator TROOD—Are these the guidelines that are contained within the MOU that exists between the two agencies?

Dr Browne—These are guidelines between us and the DPP, not the AFP.

Senator TROOD—I see. Can you take that on notice?

Dr Browne—Yes.

Senator TROOD—Thank you.

CHAIR—Senator Ludwig, do you have any further questions?

Senator LUDWIG—I might put some on notice, given the time.

CHAIR—Mr Innis and Dr Browne, there may be some questions which do end up going on notice once we have considered the transcript in particular. I am not sure when that will be available, but I will consult with my secretary about that. I want to follow up one question. In your response to Senator Trood, Dr Browne, when you were talking about activity in this area you said one of your policy agencies wanted to do more in this area. Which agency is that?

Dr Browne—That was DEWR, and they had put forward a budget measure.

CHAIR—Thank you. I thank all of the witnesses who have come to the hearing today. Thank you for the submissions and answers to questions on notice. Dotted throughout the last hour or so there is quite a number of other matters on notice the committee has asked you to take up, so our secretariat will be in communication about those. As I said, there may be more once we have had an opportunity to examine the transcript. If there is any further information which you would like to provide to the committee in addition to those then we would be grateful for that. We are due to report on 22 November, so we do have a reasonably tight turnaround as well, just to make the problems worse.

Mr Innis—We will certainly respond as quickly as we possibly can.

CHAIR—I am sure you will. Thank you very much, Mr Innis.

Mr Innis—Senator, in terms of the questions on notice, would you like them as a coordinated bunch or for Centrelink to answer ones germane to them direct and FaCSIA to do likewise?

CHAIR—I think it is probably easier to have them coordinated, then we will know what we do have and what we do not have.

Mr Innis—We are happy to do that.

CHAIR—Unless you think that unnecessarily delays the process?

Mr Innis—It requires an extra clearance loop—that is all.

CHAIR—Let's do it the other way then. Thank you very much for that very constructive suggestion. We will proceed to the report, unless there is anything further.

Dr Browne—I want to make a couple of clarifying points. It has just been pointed out to me by one of my colleagues that in the AFP's case categorisation document most of our cases fall in the lowest priority category, which are cases impacting on an individual only and other economic crimes. It is the lowest of four categories. The second point is that it has been pointed out to me that, in cases which are knocked back by the DPP, it is not always possible for us to get evidence the second time around, because we may have compromised the situation.

Mr Coulter—Senator Trood, you might have made that point in that sometimes the evidence may well have been destroyed because we would be obligated to interview the customer as part of procedural fairness to them before we presented the case to DPP, so it would not always be the case that we could go back and revisit the case to secure evidence by these means.

CHAIR—A question has just occurred to me. In the development of this policy and in managing the challenges that you have identified apparently in terms of having warrants executed, was any contemplation given, or is it possible to give any contemplation, to extending the relationship with the AFP to include the state police so that they could assist with the execution of warrants?

Mr Innis—Not that I am aware of.

CHAIR—Could you take that on notice, Mr Innis—and, if it is appropriate, Dr Browne—and advise the committee?

Mr Innis—We are happy to do that.

CHAIR—Thank you very much. If there is nothing further, I thank you very much for staying beyond the advertised concluding time and for your assistance to the committee.

Committee adjourned at 1.08 pm