

1994

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**CRIMES (SEARCH WARRANTS AND POWERS OF ARREST)
AMENDMENT BILL 1994**

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

(Circulated by authority of
the Minister for Justice, the Hon Duncan Kerr)

CRIMES (SEARCH WARRANTS AND POWERS OF ARREST)
AMENDMENT BILL 1994

GOVERNMENT AMENDMENTS

General Outline

The main purpose of the amendments is to extend the requirement at proposed subsection 3G to make an announcement before entering premises to execute warrants to also cover situations where the constable is entering premises without a warrant for the purposes of arresting a person. Opportunity has also been taken to remove any doubt that the provisions of the Bill may be used as an alternative to powers under other laws. Both amendments resulted from comments received on the Bill since it was introduced last year.

NOTES ON CLAUSES

Amendment (1)

This amends proposed section 3D by inserting new subsection 3D(1A) which removes any doubt that the powers and associated safeguards available under Part 1AA may be used when investigating Commonwealth offences under other Commonwealth legislation notwithstanding the availability of similar powers under that legislation. Proposed subsection 3D(1) preserves the operation of those other laws, but given that Part 1AA is the latest and most comprehensive legislation, and it is desirable that the police are able to use a single set of procedures, it was considered necessary to remove any doubt about that Part 1AA may be used as an alternative. The other laws have been preserved as they have yet to be fully reviewed to consider whether they are still needed, and if so, whether they should be changed to conform with the policy of the Bill. It is necessary to consider these issues with care as these other laws are primarily used by investigating officials from a variety of agencies other than the police.

Amendment (2)

This repeals proposed section 3G which requires police to make an announcement before entry onto premises when executing a warrant. The amendment proposes that the section be relocated to Division 5 where it would be described as proposed section 3ZPA and extended to cover situations where the police enter premises to arrest a person.

Amendment (3)

This inserts proposed section 3ZPA which is exactly the same as proposed section 3G which would be repealed by Amendment (2) except it has been extended to cover arrest. The requirement is a safeguard to give the occupiers of the premises the opportunity to allow the police to enter without using force, thus minimising the chances of property damage or tragic circumstances where the occupant is surprised by the entry (which was a problem identified in the Gundy case).

The section retains the proviso allowing the police to dispense with the requirement in circumstances where a person's safety is at risk (including the safety of the police) or where to do so would frustrate the effective execution of the warrant or the arrest.

Amendment (4)

This corrects a typographical error in a cross-reference at proposed section 3ZV.



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