

EXPOSURE DRAFT

ZE240.

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Counter-Terrorism and Other Legislation Amendment Bill 2023

(Government)

- (1) Schedule 1, page 3 (line 4), omit the heading, substitute:

Part 1—Prescribed security zones and other matters

Crimes Act 1914

[post-entry warrants]

- (2) Schedule 1, page 6 (after line 10), at the end of the Schedule, add:

Part 2—Post-entry warrants

Crimes Act 1914

11 Section 3UA

Insert:

assessment officer: see subsection 3UJC(1).

nominated AAT member means a person in relation to whom a nomination is in force under section 3UJE.

post-entry warrant: see subsection 3UEB(1).

12 After section 3UEA

Insert:

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3UEB Emergency entry to premises without warrant—post-entry warrants

Requirement to apply for post-entry warrant

- (1) A police officer who has entered premises under, or purportedly under, subsection 3UEA(1) must:
 - (a) apply to an assessment officer for a warrant (a ***post-entry warrant***) under this section in relation to the entry to the premises; and
 - (b) do so as soon as practicable after the exercise, or purported exercise, of powers under section 3UEA in relation to the premises.
- (2) The application must:
 - (a) be in writing; and
 - (b) set out:
 - (i) the nature of the matters suspected by the police officer for the purposes of paragraphs 3UEA(1)(a) and (b); and
 - (ii) the grounds on which the police officer held the suspicion; and
 - (c) state whether the police officer is:
 - (i) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*); or
 - (ii) a special member (within the meaning of that Act); or
 - (iii) a member, however described, of a police force of a State or Territory; and
 - (d) if the police officer is a member mentioned in subparagraph (c)(iii) of this subsection—identify the relevant State or Territory; and
 - (e) state the police officer's name, rank, identification number (however described) and police station (if applicable and necessary); and
 - (f) state the police officer's contact details, including details of how the assessment officer may give to the police officer the following:
 - (i) any request in writing under subsection (4) of this section for information or documents;
 - (ii) the post-entry warrant or a notice of refusal to issue the warrant; and
 - (g) if the police officer is a member, or special member, mentioned in subparagraph (c)(i) or (ii) of this subsection—include details of how the assessment officer may give to the Commissioner the post-entry warrant or a notice of refusal to issue the warrant; and
 - (h) if the police officer is a member mentioned in subparagraph (c)(iii) of this subsection—include details of how the assessment officer may give to the Commissioner of Police in the police force of the relevant State or Territory, or the person holding equivalent rank, the post-entry warrant or a notice of refusal to issue the warrant; and
 - (i) set out any information that:
 - (i) is known to the police officer; and
 - (ii) the police officer considers may assist the assessment officer to give, to any current or former owners or occupiers of the premises who have been affected by the exercise, or purported exercise, of the powers under section 3UEA in relation to the premises, the post-entry warrant or a notice of refusal to issue the warrant; and
 - (j) set out the time, date and place of the entry; and
 - (k) set out any other information, and be accompanied by any documents, the police officer considers relevant to the application.

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- (3) The information in the application must be sworn or affirmed by the police officer.

Requesting further information or documents

- (4) The assessment officer may request, in writing, that the police officer provide further information or documents relating to the application, and that the police officer do so in a particular way.
- (5) If the police officer is unable to provide some or all of the further information or documents requested, the police officer must, within a reasonable period, notify the assessment officer:
- (a) of the information or documents that cannot be provided; and
 - (b) of the reasons why the information or documents cannot be provided.
- (6) If the assessment officer is notified in accordance with subsection (5) that some or all of the further information or documents cannot be provided, the assessment officer must (unless there is another reason not to) continue to consider the application despite having not received the further information or documents.

Issue of warrant

- (7) The assessment officer must:
- (a) issue the post-entry warrant if, and only if, the assessment officer is satisfied, on the balance of probabilities, that in entering the premises the police officer suspected, on reasonable grounds, the matters mentioned in paragraphs 3UEA(1)(a) and (b); and
 - (b) otherwise, refuse to issue the post-entry warrant.
- (8) The issue of, or refusal to issue, the post-entry warrant does not affect whether or not the exercise, or purported exercise, of powers under section 3UEA was valid.

Note: Section 138 of the *Evidence Act 1995* (discretion to exclude improperly or illegally obtained evidence) may apply to evidence obtained as a result of the exercise, or purported exercise, of powers under section 3UEA of this Act.

Content of warrant

- (9) The post-entry warrant, if issued, must include the following:
- (a) the information mentioned in paragraphs (2)(c), (d), (e) and (j);
 - (b) a statement of the reasons for issuing the warrant;
 - (c) a statement that the warrant has been issued under this section.

Notification requirements

- (10) If the assessment officer issues the post-entry warrant, the assessment officer must give a copy of the warrant to the persons mentioned in subsection (12) as soon as reasonably practicable after issuing the warrant.
- (11) If the assessment officer refuses to issue the post-entry warrant:
- (a) the assessment officer must give written notice of the refusal to the persons mentioned in subsection (12) as soon as reasonably practicable after refusing to issue the warrant; and
 - (b) the notice must include a statement of reasons for refusing to issue the warrant; and
 - (c) in the case of a notice given to a person mentioned in paragraph (12)(d)—the notice must also contain information about any right the person may have to:

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- (i) make a complaint to the Commonwealth Ombudsman under the *Ombudsman Act 1976*; or
 - (ii) take civil or other action;
- in relation to the entry to the premises or the exercise, or purported exercise, of powers under section 3UEA in relation to the premises.
- (12) For the purposes of subsections (10) and (11), the persons are the following:
- (a) the police officer;
 - (b) if the police officer is a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*) or a special member (within the meaning of that Act)—the Commissioner;
 - (c) if the police officer is a member, however described, of a police force of a State or Territory—the Commissioner of Police in that police force or the person holding equivalent rank;
 - (d) any current or former owners or occupiers of the premises:
 - (i) whom the assessment officer considers have been affected by the exercise, or purported exercise, of the powers under section 3UEA in relation to the premises; and
 - (ii) to whom the assessment officer considers it is practicable to give the post-entry warrant or notice of refusal (as the case requires).

Protection of information

- (13) Despite subsections (9) and (11), a post-entry warrant or notice of refusal must not include information if disclosure of that information is likely to prejudice national security (within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*).

13 At the end of subsection 3UJB(2)

Add:

- ; (e) the number of applications made by AFP police officers under section 3UEB for post-entry warrants;
- (f) the number of post-entry warrants issued under section 3UEB in response to applications made by AFP police officers;
- (g) the number of refusals to issue a post-entry warrant under section 3UEB in response to applications made by AFP police officers.

14 After Subdivision CA of Division 3A of Part IAA

Insert:

Subdivision CB—Matters relating to post-entry warrants

3UJC Assessment officers

- (1) An *assessment officer* is:
- (a) a person:
 - (i) who is a Judge of the Federal Court of Australia, or a Judge of the Supreme Court of a State or Territory; and
 - (ii) in relation to whom a consent under subsection 3UJD(1), and a declaration under subsection 3UJD(2), are in force; or
 - (b) a nominated AAT member.

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- (2) A function or power conferred on a Judge by this Division is conferred on the Judge in a personal capacity and not as a court or a member of a court.
 - (3) A Judge has, in relation to the performance or exercise of a function or power conferred on an assessment officer by this Division, the same protection and immunity as if the Judge were performing that function, or exercising that power, as, or as a member of, a court (being the court of which the Judge is a member).

Note: A member of the Administrative Appeals Tribunal has the same protection and immunity as a Justice of the High Court (see subsection 60(1) of the *Administrative Appeals Tribunal Act 1975*).

3UJD Consent of Judges

- (1) A Judge of the Federal Court of Australia, or of the Supreme Court of a State or Territory, may, by writing, consent to be declared an assessment officer by the Minister administering the *Judiciary Act 1903* under subsection (2).
- (2) The Minister administering the *Judiciary Act 1903* may, by writing, declare a Judge in relation to whom a consent under subsection (1) is in force to be an assessment officer for the purposes of this Division.
- (3) A consent or declaration under this section is not a legislative instrument.

3UJE Nominated AAT members

- (1) The Minister administering the *Administrative Appeals Tribunal Act 1975* (the **AAT Minister**) may, by writing, nominate a person who holds one of the following appointments to the Administrative Appeals Tribunal to issue post-entry warrants and perform related functions under this Act:
 - (a) Deputy President;
 - (b) full-time senior member.
- (2) Despite subsection (1), the AAT Minister must not nominate a person who holds an appointment as a full-time senior member of the Tribunal unless the person:
 - (a) is enrolled as a legal practitioner of the High Court, of another federal court or of the Supreme Court of a State or of the Australian Capital Territory; and
 - (b) has been so enrolled for not less than 5 years.
- (3) A nomination ceases to be in force if:
 - (a) the nominated AAT member ceases to hold an appointment described in subsection (1); or
 - (b) the AAT Minister, by writing, withdraws the nomination.

15 Subsection 3UK(1)

Before “3UF”, insert “3UEB or”.

16 Application—post-entry warrants

Section 3UEB of the *Crimes Act 1914*, as inserted by this Schedule, applies in relation to an entry to premises that occurs after the commencement of this item.

[post-entry warrants]