



ASIO Legislation Amendment Act 2006

No. 54, 2006

An Act to amend the *Australian Security Intelligence Organisation Act 1979*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	2
Schedule 1—Restructuring amendments		3
Part 1—Main amendments		3
<i>Australian Security Intelligence Organisation Act 1979</i>		3
Part 2—Consequential amendments		49
<i>Australian Security Intelligence Organisation Act 1979</i>		49
<i>Crimes Act 1914</i>		49
<i>Criminal Code Act 1995</i>		50
<i>Foreign Evidence Act 1994</i>		50
Part 3—Saving and transitional provisions		51
Schedule 2—Other amendments		54
<i>Australian Security Intelligence Organisation Act 1979</i>		54
<i>Intelligence Services Act 2001</i>		62



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An Act to amend the *Australian Security Intelligence Organisation Act 1979*, and for related purposes

[Assented to 19 June 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *ASIO Legislation Amendment Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with
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column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	19 June 2006
2. Schedule 1	The day after this Act receives the Royal Assent.	20 June 2006
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	20 June 2006

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Restructuring amendments

Part 1—Main amendments

Australian Security Intelligence Organisation Act 1979

1 At the end of Subdivision A of Division 3 of Part III

Add:

34C Written statement of procedures

- (1) The Director-General may prepare a written statement of procedures to be followed in the exercise of authority under warrants issued under this Division.

Consultation

- (2) The Director-General must consult the following persons about the preparation of the statement:
 - (a) the Inspector-General of Intelligence and Security;
 - (b) the Commissioner of Police appointed under the *Australian Federal Police Act 1979*.

Approval by Minister

- (3) The Director-General must give the statement to the Minister for approval.
- (4) The Minister must approve or refuse to approve the statement.

Approved statement is a legislative instrument

- (5) A statement prepared by the Director-General and approved by the Minister is a legislative instrument made by the Minister on the day on which the statement is approved, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the statement.

Briefing of Parliamentary Joint Committee on Intelligence and Security

- (6) The Director-General must brief the Parliamentary Joint Committee on Intelligence and Security on the statement after it is approved by the Minister. The briefing may be done orally or in writing.

2 Subdivisions B and C of Division 3 of Part III

Repeal the Subdivisions, substitute:

Subdivision B—Questioning warrants

34D Request for questioning warrant

Seeking of Minister's consent to request for warrant

- (1) The Director-General may seek the Minister's consent to request the issue of a warrant under section 34E in relation to a person.
- (2) To avoid doubt, this section operates in relation to a request for the issue of a warrant under section 34E in relation to a person, even if a request for the issue of a warrant under this Division has previously been made in relation to the person.
- (3) In seeking the Minister's consent, the Director-General must give the Minister a draft request that includes:
 - (a) a draft of the warrant to be requested; and
 - (b) a statement of the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued; and
 - (c) a statement of the particulars and outcomes of all previous requests for the issue of a warrant under this Division relating to the person; and
 - (d) if one or more warrants were issued under this Division as a result of the previous requests—a statement of:
 - (i) the period for which the person has been questioned under each of those warrants before the draft request is given to the Minister; and
 - (ii) if any of those warrants authorised the detention of the person—the period for which the person has been

detained in connection with each such warrant before the draft request is given to the Minister.

Minister's consent to making of request

- (4) The Minister may, by writing, consent to the making of the request, but only if the Minister is satisfied:
- (a) that there are reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and
 - (b) that relying on other methods of collecting that intelligence would be ineffective; and
 - (c) that there is in force under section 34C a written statement of procedures to be followed in the exercise of authority under warrants issued under this Division.

The Minister may make his or her consent subject to changes being made to the draft request.

Form of request

- (6) If the Minister has consented under subsection (4), the Director-General may request the warrant by giving an issuing authority:
- (a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
 - (b) a copy of the Minister's consent.

34E Issue of questioning warrant

Issue of warrant

- (1) An issuing authority may issue a warrant under this section relating to a person, but only if:
- (a) the Director-General has requested it in accordance with subsection 34D(6); and
 - (b) the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

What the warrant authorises

- (2) The warrant must, in the same terms as the draft warrant given to the issuing authority as part of the request, require a specified person to appear before a prescribed authority for questioning under the warrant immediately after the person is notified of the issue of the warrant, or at a time specified in the warrant.

Warrant must authorise certain actions by the Organisation

- (4) Also, the warrant must, in the same terms as the draft warrant given to the issuing authority as part of the request:
- (a) authorise the Organisation, subject to any restrictions or conditions, to question the person before a prescribed authority by requesting the person to do either or both of the following:
 - (i) give information that is or may be relevant to intelligence that is important in relation to a terrorism offence;
 - (ii) produce records or things that are or may be relevant to intelligence that is important in relation to a terrorism offence; and
 - (b) authorise the Organisation, subject to any restrictions or conditions, to make copies and/or transcripts of a record produced by the person before a prescribed authority in response to a request in accordance with the warrant.

Warrant to be signed and to specify the period it is in force

- (5) Also, the warrant must:
- (a) be signed by the issuing authority who issues it; and
 - (b) specify the period during which the warrant is to be in force, which must not be more than 28 days.

Subdivision C—Questioning and detention warrants

34F Request for questioning and detention warrant

Seeking of Minister's consent to request for warrant

- (1) The Director-General may seek the Minister's consent to request the issue of a warrant under section 34G in relation to a person.

- (2) To avoid doubt, this section operates in relation to a request for the issue of a warrant under section 34G in relation to a person, even if a request for the issue of a warrant under this Division has previously been made in relation to the person.
- (3) In seeking the Minister's consent, the Director-General must give the Minister a draft request that includes:
 - (a) a draft of the warrant to be requested; and
 - (b) a statement of the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued; and
 - (c) a statement of the particulars and outcomes of all previous requests for the issue of a warrant under this Division relating to the person; and
 - (d) if one or more warrants were issued under this Division as a result of the previous requests—a statement of:
 - (i) the period for which the person has been questioned under each of those warrants before the draft request is given to the Minister; and
 - (ii) if any of those warrants authorised the detention of the person—the period for which the person has been detained in connection with each such warrant before the draft request is given to the Minister.

Minister's consent to making of request

- (4) The Minister may, by writing, consent to the making of the request, but only if the Minister is satisfied:
 - (a) that there are reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and
 - (b) that relying on other methods of collecting that intelligence would be ineffective; and
 - (c) that there is in force under section 34C a written statement of procedures to be followed in the exercise of authority under warrants issued under this Division; and
 - (d) that there are reasonable grounds for believing that, if the person is not immediately taken into custody and detained, the person:

- (i) may alert a person involved in a terrorism offence that the offence is being investigated; or
- (ii) may not appear before the prescribed authority; or
- (iii) may destroy, damage or alter a record or thing the person may be requested in accordance with the warrant to produce.

The Minister may make his or her consent subject to changes being made to the draft request.

- (5) In consenting to the making of a request, the Minister must ensure that the warrant to be requested is to permit the person to contact a single lawyer of the person's choice (subject to section 34ZO) at any time that:
- (a) is a time while the person is in detention in connection with the warrant; and
 - (b) is after:
 - (i) the person has been brought before a prescribed authority for questioning; and
 - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
 - (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34ZO that the person be prevented from contacting the lawyer.
- (6) If, before the Director-General seeks the Minister's consent to the request (the *proposed request*), the person has been detained under this Division in connection with one or more warrants (the *earlier warrants*) issued under this Division:
- (a) the Minister must take account of those facts in deciding whether to consent; and
 - (b) the Minister may consent only if the Minister is satisfied that the issue of the warrant to be requested is justified by information that is additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the proposed request.

This subsection has effect in addition to subsection (4).

Form of request

- (7) If the Minister has consented under subsection (4), the Director-General may request the warrant by giving an issuing authority:
- (a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
 - (b) a copy of the Minister's consent.

34G Issue of questioning and detention warrant

Issue of warrant

- (1) An issuing authority may issue a warrant under this section relating to a person, but only if:
- (a) the Director-General has requested it in accordance with subsection 34F(7); and
 - (b) the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

Previous detention

- (2) If the person has already been detained under this Division in connection with one or more warrants (the *earlier warrants*) issued under this Division:
- (a) the issuing authority must take account of those facts in deciding whether to issue the warrant requested; and
 - (b) the issuing authority may issue the warrant requested only if the authority is satisfied that:
 - (i) the issue of that warrant is justified by information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the request for the issue of the warrant requested; and
 - (ii) the person is not being detained under this Division in connection with one of the earlier warrants.

This subsection has effect in addition to subsection (1).

What the warrant authorises

- (3) The warrant must, in the same terms as the draft warrant given to the issuing authority as part of the request, do the following:
- (a) authorise a specified person to be:
 - (i) taken into custody immediately by a police officer; and
 - (ii) brought before a prescribed authority immediately for questioning under the warrant; and
 - (iii) detained under arrangements made by a police officer for the period (the *questioning period*) described in subsection (4);
 - (b) permit the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant.
- (4) The questioning period starts when the person is first brought before a prescribed authority under the warrant and ends at the first time one of the following events happens:
- (a) someone exercising authority under the warrant informs the prescribed authority before whom the person is appearing for questioning that the Organisation does not have any further request described in paragraph (7)(a) to make of the person;
 - (b) section 34R prohibits anyone exercising authority under the warrant from questioning the person under the warrant;
 - (c) the passage of 168 hours starting when the person was first brought before a prescribed authority under the warrant.

Contacting persons

- (5) The warrant may identify someone whom the person is permitted to contact by reference to the fact that he or she is a lawyer of the person's choice or has a particular legal or familial relationship with the person. This does not limit the ways in which the warrant may identify persons whom the person is permitted to contact.

Note 1: The warrant may identify persons by reference to a class. See subsection 46(3) of the *Acts Interpretation Act 1901*.

Note 2: Section 34K permits the person to contact the Inspector-General of Intelligence and Security and the Commonwealth Ombudsman while the person is in custody or detention, so the warrant must identify them.

Note 3: A warrant issued under this section must permit the person to contact a single lawyer of the person's choice, so the warrant must identify such a lawyer.

- (6) The warrant may specify times when the person is permitted to contact someone identified as a lawyer of the person's choice by reference to the fact that the times are:
- (a) while the person is in detention in connection with the warrant; and
 - (b) after:
 - (i) the person has been brought before a prescribed authority for questioning; and
 - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
 - (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34ZO that the person be prevented from contacting the lawyer.

Warrant must authorise certain actions by the Organisation

- (7) Also, the warrant must, in the same terms as the draft warrant given to the issuing authority as part of the request:
- (a) authorise the Organisation, subject to any restrictions or conditions, to question the person before a prescribed authority by requesting the person to do either or both of the following:
 - (i) give information that is or may be relevant to intelligence that is important in relation to a terrorism offence;
 - (ii) produce records or things that are or may be relevant to intelligence that is important in relation to a terrorism offence; and
 - (b) authorise the Organisation, subject to any restrictions or conditions, to make copies and/or transcripts of a record produced by the person before a prescribed authority in response to a request in accordance with the warrant.

Warrant to be signed and to specify the period it is in force

- (8) Also, the warrant must:
- (a) be signed by the issuing authority who issues it; and
 - (b) specify the period during which the warrant is to be in force, which must not be more than 28 days.

34H Person taken into custody under warrant to be immediately brought before prescribed authority

If the person is taken into custody by a police officer exercising authority under the warrant, the officer must make arrangements for the person to be immediately brought before a prescribed authority for questioning.

Subdivision D—Certain obligations and protections relating to a warrant issued under Subdivision B or C

Note: Subdivision E sets out other obligations and protections relating to a warrant issued under Subdivision B or C (as well as dealing with other matters).

34J Prescribed authority must explain warrant

- (1) When a person first appears before a prescribed authority for questioning under a warrant issued under this Division, the prescribed authority must inform the person of the following:
- (a) whether the warrant authorises detention of the person by a police officer and, if it does, the period for which the warrant authorises detention of the person;
 - (b) what the warrant authorises the Organisation to do;
 - (c) the effect of section 34L (including the fact that the section creates offences);
 - (d) the period for which the warrant is in force;
 - (e) the person's right to make a complaint orally or in writing:
 - (i) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986* in relation to the Organisation; or
 - (ii) to the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981* in relation to the Australian Federal Police;

- (f) the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant;
 - (g) whether there is any limit on the person contacting others and, if the warrant permits the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant, who the identified persons are and what the specified times are.
- (2) To avoid doubt, subsection (1) does not apply to a prescribed authority if the person has previously appeared before another prescribed authority for questioning under the warrant.
 - (3) The prescribed authority before whom the person appears for questioning must inform the person of the role of the prescribed authority, and the reason for the presence of each other person who is present at any time during the questioning. However:
 - (a) the prescribed authority must not name any person except with the consent of the person to be named; and
 - (b) the obligation to inform the person being questioned about a particular person's reason for presence need only be complied with once (even if that particular person subsequently returns to the questioning).
 - (5) At least once in every 24-hour period during which questioning of the person under the warrant occurs, the prescribed authority before whom the person appears for questioning must inform the person of the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant.

34K Directions by prescribed authority etc.

Directions relating to detention or further appearance

- (1) At any time when a person is before a prescribed authority for questioning under a warrant issued under this Division, the authority may give any of the following directions:
 - (a) a direction to detain the person;
 - (b) a direction for the further detention of the person;
 - (c) a direction about any arrangements for the person's detention;

- (d) a direction permitting the person to contact an identified person (including someone identified by reference to the fact that he or she has a particular legal or familial relationship with the person) or any person and to disclose information other than specified information while in contact;
 - (f) a direction for the person's further appearance before the prescribed authority for questioning under the warrant;
 - (g) a direction that the person be released from detention.
- (2) The prescribed authority is only to give a direction that:
- (a) is consistent with the warrant; or
 - (b) has been approved in writing by the Minister.
- However, the prescribed authority may give a direction that is not covered by paragraph (a) or (b) if he or she has been informed under section 34Q of a concern of the Inspector-General of Intelligence and Security and is satisfied that giving the direction is necessary to address the concern satisfactorily.
- (3) To avoid doubt, the mere fact that the warrant is issued under section 34E does not prevent a direction under subsection (1) of this section from being consistent with the warrant for the purposes of subsection (2) of this section.
- Note: A warrant issued under section 34E requires a person to appear before a prescribed authority for questioning under the warrant (rather than authorising the person to be taken into custody, brought before a prescribed authority and detained).
- (4) The prescribed authority is only to give a direction described in paragraph (1)(a) or (b) if he or she is satisfied that there are reasonable grounds for believing that, if the person is not detained, the person:
- (a) may alert a person involved in a terrorism offence that the offence is being investigated; or
 - (b) may not continue to appear, or may not appear again, before a prescribed authority; or
 - (c) may destroy, damage or alter a record or thing the person has been requested, or may be requested, in accordance with the warrant, to produce.
- (5) A direction under subsection (1) must not result in:
- (a) a person being detained after the first time when either of the following events happens:

- (i) someone exercising authority under the warrant informs the prescribed authority before whom the person is appearing for questioning that the Organisation does not have any further request described in paragraph 34E(4)(a) or 34G(7)(a) to make of the person;
 - (ii) section 34R prohibits anyone exercising authority under the warrant from questioning the person under the warrant; or
- (b) a person's detention being arranged by a person who is not a police officer.

Note: Section 34S also provides that this Division does not authorise a person to be detained for a continuous period of more than 168 hours.

Giving effect to directions

- (6) Directions given by a prescribed authority have effect, and may be implemented or enforced, according to their terms.
- (7) A police officer may take a person into custody and bring him or her before a prescribed authority for questioning under a warrant issued under this Division if the person fails to appear before a prescribed authority as required by the warrant or a direction given by a prescribed authority under this section.

Direction has no effect on further warrant

- (8) This section does not prevent any of the following occurring in relation to a person who has been released after having been detained under this Division in connection with a warrant issued under this Division:
 - (a) an issuing authority issuing a further warrant under this Division;
 - (b) the person being detained under this Division in connection with the further warrant.

Communications while in custody or detention

- (10) A person who has been taken into custody, or detained, under this Division is not permitted to contact, and may be prevented from contacting, anyone at any time while in custody or detention.
- (11) However:

- (a) the person may contact anyone whom the warrant under which he or she is detained, or a direction described in paragraph (1)(d), permits the person to contact; and
- (b) subsection (10) does not affect the following provisions in relation to contact between the person and the Inspector-General of Intelligence and Security or the Commonwealth Ombudsman:
 - (i) sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986*;
 - (ii) section 22 of the *Complaints (Australian Federal Police) Act 1981*; and
- (c) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security or the Commonwealth Ombudsman to make a complaint orally under a section mentioned in paragraph (b) if the person requests them.

Note: The sections mentioned in paragraph (11)(b) give the person an entitlement to facilities for making a written complaint.

34L Giving information and producing things etc.

- (1) A person must appear before a prescribed authority for questioning, in accordance with a warrant issued under this Division or a direction given under section 34K.

Penalty: Imprisonment for 5 years.

- (2) A person who is before a prescribed authority for questioning under a warrant issued under this Division must not fail to give any information requested in accordance with the warrant.

Penalty: Imprisonment for 5 years.

- (3) Subsection (2) does not apply if the person does not have the information.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) A person commits an offence if:
 - (a) the person is before a prescribed authority for questioning under a warrant issued under this Division; and

- (b) the person makes a statement that is, to the person's knowledge, false or misleading; and
- (c) the statement is made in purported compliance with a request for information made in accordance with the warrant.

Penalty: Imprisonment for 5 years.

- (5) Subsection (4) does not apply if the statement is not false or misleading in a material particular.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) A person who is before a prescribed authority for questioning under a warrant issued under this Division must not fail to produce any record or thing that the person is requested in accordance with the warrant to produce.

Penalty: Imprisonment for 5 years.

- (7) Subsection (6) does not apply if the person does not have possession or control of the record or thing.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

- (8) For the purposes of subsections (2) and (6), the person may not fail:

- (a) to give information; or
- (b) to produce a record or thing;

in accordance with a request made of the person in accordance with the warrant, on the ground that the information, or production of the record or thing, might tend to incriminate the person or make the person liable to a penalty.

- (9) However, the following are not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against this section:

- (a) anything said by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information;
- (b) the production of a record or thing by the person, while before a prescribed authority for questioning under a warrant,

in response to a request made in accordance with the warrant for the person to produce a record or thing.

34M Interpreter provided at request of prescribed authority

- (1) This section applies if the prescribed authority before whom a person first appears for questioning under a warrant issued under this Division believes on reasonable grounds that the person is unable, because of inadequate knowledge of the English language or a physical disability, to communicate with reasonable fluency in that language.
- (2) A person exercising authority under the warrant must arrange for the presence of an interpreter.
- (3) The prescribed authority must defer informing under section 34J the person to be questioned under the warrant until the interpreter is present.
- (4) A person exercising authority under the warrant must defer the questioning under the warrant until the interpreter is present.

34N Interpreter provided at request of person being questioned

- (1) This section applies if a person appearing before a prescribed authority under a warrant issued under this Division requests the presence of an interpreter.
- (2) A person exercising authority under the warrant must arrange for the presence of an interpreter, unless the prescribed authority believes on reasonable grounds that the person who made the request has an adequate knowledge of the English language, or is physically able, to communicate with reasonable fluency in that language.
- (3) If questioning under the warrant has not commenced and the prescribed authority determines that an interpreter is to be present:
 - (a) the prescribed authority must defer informing under section 34J the person to be questioned under the warrant until the interpreter is present; and
 - (b) a person exercising authority under the warrant must defer the questioning until the interpreter is present.

- (4) If questioning under the warrant commences before the person being questioned requests the presence of an interpreter and the prescribed authority determines that an interpreter is to be present:
- (a) a person exercising authority under the warrant must defer any further questioning until the interpreter is present; and
 - (b) when the interpreter is present, the prescribed authority must again inform the person of anything of which he or she was previously informed under section 34J.

34P Inspector-General of Intelligence and Security may be present at questioning or taking into custody

To avoid doubt, for the purposes of performing functions under the *Inspector-General of Intelligence and Security Act 1986*, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning or taking into custody of a person under this Division.

34Q Suspension of questioning etc. in response to concern of Inspector-General of Intelligence and Security

- (1) This section applies if the Inspector-General of Intelligence and Security is concerned about impropriety or illegality in connection with the exercise or purported exercise of powers under this Division in relation to a person specified in a warrant issued under this Division.

Note: For example, the Inspector-General may be concerned because he or she has been present at a questioning under section 34P.

- (2) When the person is appearing before a prescribed authority for questioning under the warrant, the Inspector-General may inform the prescribed authority of the Inspector-General's concern. If the Inspector-General does so, he or she must also inform the Director-General of the concern as soon as practicable afterwards.
- (3) The prescribed authority must consider the Inspector-General's concern.
- (4) The prescribed authority may give a direction deferring:
- (a) questioning of the person under the warrant; or
 - (b) the exercise of another power under this Division that is specified in the direction;

until the prescribed authority is satisfied that the Inspector-General's concern has been satisfactorily addressed.

Note: The prescribed authority may give directions under section 34K instead or as well. These could:

- (a) deal with the Inspector-General's concern in a way satisfactory to the prescribed authority; or
- (b) deal with treatment of the person while questioning is deferred; or
- (c) provide for release of the person from detention if the prescribed authority is satisfied that the Inspector-General's concern cannot be satisfactorily addressed within the remainder of the period for which the person may be detained under the warrant.

34R End of questioning under warrant

- (1) Anyone exercising authority under a warrant issued under this Division must not question a person under the warrant if the person has been questioned under the warrant for a total of 8 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 8 hours permits the questioning to continue for the purposes of this subsection.
- (2) Anyone exercising authority under a warrant issued under this Division must not question a person under the warrant if the person has been questioned under the warrant for a total of 16 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 16 hours permits the questioning to continue for the purposes of this subsection.
- (3) Anyone exercising authority under the warrant may request the prescribed authority to permit the questioning to continue for the purposes of subsection (1) or (2). The request may be made in the absence of:
 - (a) the person being questioned; and
 - (b) a legal adviser to that person; and
 - (c) a parent of that person; and
 - (d) a guardian of that person; and
 - (e) another person who meets the requirements of subsection 34ZE(7) in relation to that person; and
 - (f) anyone the person being questioned is permitted by a direction under section 34K to contact.

- (4) The prescribed authority may permit the questioning to continue for the purposes of subsection (1) or (2), but only if he or she is satisfied that:
- (a) there are reasonable grounds for believing that permitting the continuation will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and
 - (b) persons exercising authority under the warrant conducted the questioning of the person properly and without delay in the period mentioned in that subsection.
- (5) The prescribed authority may revoke the permission. Revocation of the permission does not affect the legality of anything done in relation to the person under the warrant before the revocation.
- (6) Anyone exercising authority under a warrant issued under this Division must not question a person under the warrant if the person has been questioned under the warrant for a total of 24 hours.

Release from detention when further questioning is prohibited

- (7) If the warrant is issued under section 34G, the prescribed authority must, at whichever one of the following times is relevant, direct under paragraph 34K(1)(g) that the person be released immediately from detention:
- (a) at the end of the period mentioned in subsection (1) or (2), if the prescribed authority does not permit, for the purposes of that subsection, the continuation of questioning;
 - (b) immediately after revoking the permission, if the permission was given but later revoked;
 - (c) at the end of the period described in subsection (6).

Subsection 34K(2) does not prevent the prescribed authority from giving a direction in accordance with this subsection.

Extra time for questioning with interpreter present

- (8) Subsections (9), (10), (11) and (12) apply if, because of section 34M or 34N, an interpreter is present at any time while a person is questioned under a warrant issued under this Division.
- (9) Anyone exercising authority under the warrant must not question the person under the warrant if the person has been questioned

under the warrant for a total of 24, 32 or 40 hours, unless the prescribed authority before whom the person was being questioned just before the duration of that questioning reached that total permits the questioning to continue beyond that total for the purposes of this subsection.

- (10) Subsections (3), (4) and (5) and paragraph (7)(b) apply in relation to permitting, for the purposes of subsection (9), the questioning to continue beyond a total mentioned in subsection (9) in the same way as they apply in relation to permitting the questioning to continue for the purposes of subsection (1) or (2).
- (11) Subsection (6) and paragraph (7)(c) apply as if that subsection referred to a total of 48 hours (instead of 24 hours).
- (12) Paragraph (7)(a) applies as if it referred to the time at which the duration of questioning reached the total mentioned in subsection (1), (2) or (9) beyond which the questioning is not permitted to continue.

34S Person not to be detained for more than 168 hours continuously

This Division does not authorise a person to be detained for a continuous period of more than 168 hours.

Subdivision E—Other provisions

34T Humane treatment of person specified in warrant

- (1) This section applies to a person specified in a warrant issued under this Division while anything is being done in relation to the person under the warrant or a direction given under section 34K.
- (2) The person must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment, by anyone exercising authority under the warrant or implementing or enforcing the direction.

34U Entering premises to take person into custody

- (1) If:
 - (a) either a warrant issued under section 34G, or subsection 34K(7), authorises a person to be taken into custody; and

- (b) a police officer believes on reasonable grounds that the person is on any premises;
the officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.
- (2) However, if subsection 34K(7) authorises a person to be taken into custody, a police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:
- (a) commencing at 9 pm on a day; and
 - (b) ending at 6 am on the following day;
- unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody under subsection 34K(7), either at the dwelling house or elsewhere, at another time.
- (3) In this section:
- dwelling house* includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.
- premises* includes any land, place, vehicle, vessel or aircraft.

34V Use of force in taking person into custody and detaining person

- (1) A police officer may use such force as is necessary and reasonable in:
- (a) taking a person into custody under:
 - (i) a warrant issued under section 34G; or
 - (ii) subsection 34K(7); or
 - (b) preventing the escape of a person from such custody; or
 - (c) bringing a person before a prescribed authority for questioning under a warrant issued under this Division; or
 - (d) detaining a person in connection with a warrant issued under this Division.
- (2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.

- (3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:
- (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or
 - (b) if the person is attempting to escape being taken into custody by fleeing—do such a thing unless:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and
 - (ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

34W Surrender of passport by person in relation to whom warrant is sought

- (1) If the Director-General has sought the Minister's consent to request the issue of a warrant under this Division in relation to a person, then, as soon as practicable after that person is notified of that action and of the effect of this subsection, the person must deliver to an enforcement officer every passport that:
- (a) is an Australian passport (as defined in the *Australian Passports Act 2005*), or a foreign passport, that has been issued to the person; and
 - (b) the person has in his or her possession or control.
- Penalty: Imprisonment for 5 years.
- (2) The Director-General must cause a passport delivered under subsection (1) to be returned to the person to whom it was issued, as soon as practicable after the first of the following events:
- (a) the Minister refuses to consent to request the issue of a warrant under this Division in relation to the person;
 - (b) an issuing authority refuses to issue a warrant under this Division in relation to the person;

- (c) if a warrant under this Division is issued in relation to the person—the end of the period specified in the warrant as the period during which the warrant is to be in force;
but the Director-General may cause the passport to be returned to that person earlier.
- (3) Subsection (2) does not require:
- (a) the return of a passport during the period specified in another warrant, issued in relation to the person under this Division, as the period during which the other warrant is to be in force; or
 - (b) the return of a passport that has been cancelled.
- (4) If a warrant under this Division is issued in relation to the person, a person approved under subsection 24(1) in relation to the warrant may, after a passport of the first-mentioned person is delivered under subsection (1) and before it is returned under subsection (2):
- (a) inspect or examine the passport; and
 - (b) make copies or transcripts of it.
- (5) In this section:
- enforcement officer* means any of the following:
- (a) a member of the Australian Federal Police;
 - (b) an officer of the police force of a State or Territory;
 - (c) an officer of Customs (within the meaning of the *Customs Act 1901*).

34X Person in relation to whom warrant is sought must not leave Australia without permission

- (1) A person commits an offence if:
- (a) the person has been notified:
 - (i) that the Director-General has sought the Minister's consent to request the issue of a warrant under this Division in relation to the person; and
 - (ii) of the effect of this subsection in connection with that action; and
 - (b) the person leaves Australia; and
 - (c) the leaving occurs after the person has been notified that the Director-General has sought the Minister's consent and of the

effect of this subsection in connection with that action, and before the first of the following events:

- (i) if the Minister refuses to consent to request the issue of a warrant under this Division in relation to the person—that refusal;
- (ii) if an issuing authority refuses to issue a warrant under this Division in relation to the person—that refusal;
- (iii) if a warrant under this Division is issued in relation to the person—the end of the period specified in the warrant as the period during which the warrant is to be in force; and
- (d) the person does not have written permission from the Director-General to leave Australia at the time the person leaves Australia.

Penalty: Imprisonment for 5 years.

- (2) The Director-General may give written permission for a person to leave Australia at a specified time. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

34Y Surrender of passport by person specified in warrant

- (1) As soon as practicable after the person specified in a warrant issued under this Division is notified of the issue of the warrant and of the effect of this subsection, the person must deliver to someone exercising authority under the warrant every passport that:
- (a) is an Australian passport (as defined in the *Australian Passports Act 2005*), or a foreign passport, that has been issued to the person; and
 - (b) the person has in his or her possession or control.

Penalty: Imprisonment for 5 years.

- (2) The Director-General must cause a passport delivered under subsection (1) to be returned to the person to whom it was issued, as soon as practicable after the end of the period specified in the

warrant as the period during which the warrant is to be in force, but may cause the passport to be returned to that person earlier.

- (3) Subsection (2) does not require:
- (a) the return of a passport during the period specified in another warrant, issued in relation to the person under this Division, as the period during which the other warrant is to be in force; or
 - (b) the return of a passport that has been cancelled.
- (4) After a passport is delivered under subsection (1) and before it is returned under subsection (2), a person approved under subsection 24(1) in relation to the warrant mentioned in subsection (1) of this section may:
- (a) inspect or examine the passport; and
 - (b) make copies or transcripts of it.

34Z Person specified in warrant must not leave Australia without permission

- (1) A person commits an offence if:
- (a) the person has been notified of:
 - (i) the issue of a warrant under this Division that specifies the person; and
 - (ii) the effect of this subsection in connection with the warrant; and
 - (b) the person leaves Australia; and
 - (c) the leaving occurs:
 - (i) after the person has been notified of the issue of the warrant and of the effect of this subsection in connection with the warrant; and
 - (ii) before the end of the period specified in the warrant as the period during which the warrant is to be in force; and
 - (d) the person does not have written permission from the Director-General to leave Australia at the time the person leaves Australia.

Penalty: Imprisonment for 5 years.

- (2) The Director-General may give written permission for a person to leave Australia at a specified time. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

34ZA Video recording of procedures

- (1) The Director-General must ensure that video recordings are made of the following:
- (a) a person's appearance before a prescribed authority for questioning under a warrant issued under this Division;
 - (b) any other matter or thing that the prescribed authority directs is to be video recorded.
- (2) The Director-General must ensure that, if practicable, video recordings are made of any complaint by a person specified in a warrant issued under this Division when he or she is not appearing before a prescribed authority for questioning under the warrant.

34ZB Power to conduct an ordinary search or a strip search

- (1) If a person has been detained under this Division, a police officer may:
- (a) conduct an ordinary search of the person; or
 - (b) subject to this section, conduct a strip search of the person.
- (2) An ordinary search of the person under this section must, if practicable, be conducted by a police officer of the same sex as the person being searched.
- (3) A strip search may be conducted if:
- (a) a police officer suspects on reasonable grounds that the person has a seizable item on his or her person; and
 - (b) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person in order to recover that item; and
 - (c) a prescribed authority has approved the conduct of the search.

- (4) The prescribed authority's approval may be obtained by telephone, fax or other electronic means.
- (5) A strip search may also be conducted if the person consents in writing.
- (6) A medical practitioner may be present when a strip search is conducted, and he or she may assist in the search.
- (7) If a prescribed authority gives or refuses to give an approval for the purposes of paragraph (3)(c), the prescribed authority must make a record of the decision and of the reasons for the decision.
- (8) Such force as is necessary and reasonable in the circumstances may be used to conduct a strip search under subsection (1).
- (9) Any item:
 - (a) of a kind mentioned in paragraph (3)(a); or
 - (b) that is relevant to collection of intelligence that is important in relation to a terrorism offence;that is found during a search under this section may be seized.

34ZC Rules for conduct of strip search

- (1) A strip search under section 34ZB:
 - (a) must be conducted in a private area; and
 - (b) must be conducted by a police officer who is of the same sex as the person being searched; and
 - (c) subject to subsections (3) and (4), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and
 - (d) must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
 - (e) must not be conducted on a person who is under 16; and
 - (f) if, in a prescribed authority's opinion, the person being searched is at least 16 but under 18, or is incapable of managing his or her affairs:
 - (i) may only be conducted if a prescribed authority orders that it be conducted; and
 - (ii) must be conducted in the presence of a parent or guardian of the person or, if that is not acceptable to the

person, in the presence of someone else who can represent the person's interests and who, as far as is practicable in the circumstances, is acceptable to the person; and

- (g) must not involve a search of a person's body cavities; and
 - (h) must not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has a seizable item on his or her person; and
 - (i) must not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to determine whether the person has a seizable item on his or her person.
- (2) For the purposes of subparagraph (1)(f)(ii), none of the following can represent the person's interests:
- (a) a police officer;
 - (b) the Director-General;
 - (c) an officer or employee of the Organisation;
 - (d) a person approved under subsection 24(1).
- (3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.
- (4) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.
- (5) If any of a person's garments are seized as a result of a strip search, the person must be provided with adequate clothing.

34ZD Power to remove, retain and copy materials etc.

- (1) In addition to the things that the Organisation is authorised to do that are specified in a warrant issued under this Division, the Organisation is also authorised:
- (a) to remove and retain any record or other thing produced before a prescribed authority in response to a request in accordance with the warrant, for the purposes of:
 - (i) inspecting or examining it; and

- (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant; and
 - (b) subject to section 34ZC, to examine any items or things removed from a person during a search of the person under this Division; and
 - (c) to retain, and make copies of, any item seized under paragraph 34ZB(9)(b); and
 - (d) to do any other thing reasonably incidental to:
 - (i) paragraph (a), (b) or (c); or
 - (ii) any of the things that the Organisation is authorised to do that are specified in the warrant.
- (2) A police officer may retain for such time as is reasonable any seizable item seized by the officer under paragraph 34ZB(9)(a).
- (3) A record or other thing, or an item, retained as mentioned in paragraph (1)(a) or (c) may be retained:
- (a) if returning the record, thing or item would be prejudicial to security—only until returning the record, thing or item would no longer be prejudicial to security; and
 - (b) otherwise—for only such time as is reasonable.

34ZE Special rules for young people

Rules for persons under 16

- (1) A warrant issued under this Division has no effect if the person specified in it is under 16.
- (2) If a person appears before a prescribed authority for questioning as a result of the issue of a warrant under this Division and the prescribed authority is satisfied on reasonable grounds that the person is under 16, the prescribed authority must, as soon as practicable:
 - (a) give a direction that the person is not to be questioned; and
 - (b) if the person is in detention—give a direction under paragraph 34K(1)(g) that the person be released from detention.
- (3) Subsection 34K(2) does not prevent the prescribed authority from giving a direction in accordance with paragraph (2)(b) of this section.

Rules for persons who are at least 16 but under 18

- (4) If the Director-General seeks the Minister's consent to request the issue of a warrant under this Division in relation to a person and the Minister is satisfied on reasonable grounds that the person is at least 16 but under 18, the Minister may consent only if he or she is satisfied on reasonable grounds that:
- (a) it is likely that the person will commit, is committing or has committed a terrorism offence; and
 - (b) the draft warrant to be included in the request will meet the requirements in subsection (6).
- (5) An issuing authority may issue a warrant under this Division relating to a person whom the authority is satisfied on reasonable grounds is at least 16 but under 18 only if the draft warrant included in the request for the warrant meets the requirements in subsection (6).

Note: Section 34E or 34G requires that a warrant issued under that section be in the same form as the draft warrant included in the request.

- (6) If subsection (4) or (5) applies, the draft warrant must:
- (a) if the warrant authorises the person to be taken into custody and detained—permit the person to contact, at any time when the person is in custody or detention authorised by the warrant:
 - (i) a parent or guardian of the person; and
 - (ii) if it is not acceptable to the person to be questioned in the presence of one of his or her parents or guardians—another person who meets the requirements in subsection (7); and
 - (b) authorise the Organisation to question the person before a prescribed authority:
 - (i) only in the presence of a parent or guardian of the person or, if that is not acceptable to the person, of another person who meets the requirements in subsection (7); and
 - (ii) only for continuous periods of 2 hours or less, separated by breaks directed by the prescribed authority.

Note: The prescribed authority may set the breaks between periods of questioning by giving appropriate directions under paragraph 34K(1)(f) for the person's further appearance before the prescribed authority for questioning.

- (7) The other person must:
- (a) be able to represent the person's interests; and
 - (b) as far as practicable in the circumstances, be acceptable to the person and to the prescribed authority; and
 - (c) not be one of the following:
 - (i) a police officer;
 - (ii) the Director-General;
 - (iii) an officer or employee of the Organisation;
 - (iv) a person approved under subsection 24(1).
- (8) If a person appears before a prescribed authority for questioning under a warrant issued under this Division and the prescribed authority is satisfied on reasonable grounds that the person is at least 16 but under 18, the prescribed authority must, as soon as practicable:
- (a) inform the person that the person:
 - (i) may request that one of the person's parents or guardians or one other person who meets the requirements in subsection (7) be present during the questioning; and
 - (ii) may contact the person's parents or guardians and another person who meets the requirements in subsection (7), at any time when the person is in custody or detention authorised by the warrant; and
 - (iii) may contact a single lawyer of the person's choice when the person is in detention authorised by the warrant; and
 - (b) if the person requests that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of the parent or guardian; and
 - (c) if the person does not request that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection (7); and
 - (d) direct under paragraph 34K(1)(d) that the person may contact someone described in subparagraph (a)(ii) of this subsection at any time described in that subparagraph; and

- (e) direct everyone proposing to question the person under the warrant that questioning is to occur only for continuous periods of 2 hours or less, separated by breaks directed by the prescribed authority.

Note: The prescribed authority may set the breaks between periods of questioning by giving appropriate directions under paragraph 34K(1)(f) for the person's further appearance before the prescribed authority for questioning.

- (9) Subsection 34K(2) does not prevent the prescribed authority from giving a direction in accordance with paragraph (8)(d) of this section.
- (10) To avoid doubt, paragraphs (6)(b) and (8)(e) do not affect the operation of section 34R.

34ZF Offences of contravening safeguards

- (1) A person commits an offence if:
 - (a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under this Division; and
 - (b) the person exercises, or purports to exercise, the authority; and
 - (c) the exercise or purported exercise contravenes a condition or restriction in the warrant on the authority; and
 - (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
 - (a) the person is a police officer; and
 - (b) the person engages in conduct; and
 - (c) the conduct contravenes section 34H; and
 - (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

- (3) A person commits an offence if:
 - (a) the person is identified (whether by name, reference to a class that includes the person or some other means) in a direction given by a prescribed authority under paragraph 34K(1)(c),

(d), (f) or (g) or subsection 34Q(4), 34ZE(2) or (8) or 34ZR(3) as a person who is to implement the direction; and

- (b) the person engages in conduct; and
- (c) the conduct contravenes the direction; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

- (4) A person commits an offence if:
 - (a) the person engages in conduct; and
 - (b) the conduct contravenes paragraph 34K(11)(c), subsection 34M(4), paragraph 34N(3)(b) or (4)(a) or subsection 34T(2); and
 - (c) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

- (5) A person commits an offence if:
 - (a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under this Division; and
 - (b) the person exercises, or purports to exercise, the authority by questioning another person; and
 - (c) the questioning contravenes section 34R; and
 - (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

- (6) A person (the *searcher*) commits an offence if:
 - (a) the searcher is a police officer; and
 - (b) the searcher conducts a strip search of a person detained under this Division; and
 - (c) the search is conducted:
 - (i) without either the approval of a prescribed authority or the consent of the detained person; or
 - (ii) in a way that contravenes subsection 34ZC(1); and
 - (d) the searcher knows of the lack of approval and consent or of the contravention.

Penalty: Imprisonment for 2 years.

- (7) A person (the *searcher*) commits an offence if:
-

- (a) the searcher is a police officer who is conducting or has conducted a strip search of a person detained under this Division; and
- (b) the searcher engages in conduct; and
- (c) the conduct contravenes subsection 34ZC(5); and
- (d) the searcher knows of the contravention.

Penalty: Imprisonment for 2 years.

(8) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

34ZG Complaints about contravention of procedural statement

- (1) Contravention of the written statement of procedures in force under section 34C may be the subject of a complaint:
 - (a) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*;
or
 - (b) to the Commonwealth Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981*.
- (2) This section does not limit the subjects of complaint under the *Inspector-General of Intelligence and Security Act 1986* or Part III of the *Complaints (Australian Federal Police) Act 1981*.

34ZH Providing reports to the Minister

The Director-General must give the Minister, for each warrant issued under this Division, a written report on the extent to which the action taken under the warrant has assisted the Organisation in carrying out its functions.

34ZI Providing information to the Inspector-General

The Director-General must, as soon as practicable, give the following to the Inspector-General of Intelligence and Security:

- (a) a copy of any draft request given to the Minister under subsection 34D(3) or 34F(3) in seeking the Minister's consent to request the issue of a warrant under this Division;
- (b) a copy of any warrant issued under this Division;
- (c) a copy of any video recording made under section 34ZA;
- (d) a statement containing details of any seizure, taking into custody, or detention under this Division;
- (e) a statement describing any action the Director-General has taken as a result of being informed of the Inspector-General's concern under section 34Q.

34ZJ Reporting by Inspector-General on multiple warrants

- (1) This section imposes requirements on the Inspector-General of Intelligence and Security if:
 - (a) a person is detained under this Division in connection with a warrant issued under this Division; and
 - (b) one or more other warrants (the *later warrants*) are issued later under section 34G in relation to the person.
- (2) The Inspector-General must inspect a copy of the draft request given to the Minister under subsection 34D(3) or 34F(3) for each of the warrants, to determine whether the draft request for each of the later warrants included information described in paragraph 34F(6)(b).

Note: Paragraph 34F(6)(b) describes information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last warrant that:

- (a) was issued under this Division before the seeking of the Minister's consent to the request proposed in the draft request; and
 - (b) was a warrant in connection with which the person was detained under this Division.
- (3) The Inspector-General must report on the outcome of the inspection in his or her annual report for the year in which he or she carries out the examination. For this purpose, *annual report* means a report under section 35 of the *Inspector-General of Intelligence and Security Act 1986*.

34ZK Discontinuing action before warrants expire

If, before a warrant issued under this Division ceases to be in force, the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist, the Director-General must:

- (a) inform the Minister, and the issuing authority who issued the warrant, accordingly; and
- (b) take such steps as are necessary to ensure that action under the warrant is discontinued.

34ZL Certain records obtained under warrant to be destroyed

The Director-General must cause a record or copy to be destroyed if:

- (a) the record or copy was made because of a warrant issued under this Division; and
- (b) the record or copy is in the possession or custody, or under the control, of the Organisation; and
- (c) the Director-General is satisfied that the record or copy is not required for the purposes of the performance of functions or exercise of powers under this Act.

34ZM Status of issuing authorities and prescribed authorities

- (1) An issuing authority or prescribed authority has, in the performance of his or her duties under this Division, the same protection and immunity as a Justice of the High Court.
- (2) If a person who is a member of a court created by the Parliament has under this Division a function, power or duty that is neither judicial nor incidental to a judicial function or power, the person has the function, power or duty in a personal capacity and not as a court or a member of a court.

34ZN Certain functions and powers not affected

- (1) This Division does not affect a function or power of the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*.

- (2) This Division does not affect a function or power of the Commonwealth Ombudsman under the *Complaints (Australian Federal Police) Act 1981*.

34ZO Limit on contact of lawyer of choice

- (1) The person (the *subject*) specified in a warrant issued under section 34G may be prevented from contacting a particular lawyer of the subject's choice if the prescribed authority before whom the subject appears for questioning under the warrant so directs.
- (2) The prescribed authority may so direct only if the authority is satisfied, on the basis of circumstances relating to that lawyer, that, if the subject is permitted to contact the lawyer:
- (a) a person involved in a terrorism offence may be alerted that the offence is being investigated; or
 - (b) a record or thing that the person may be requested in accordance with the warrant to produce may be destroyed, damaged or altered.
- (3) This section has effect despite paragraph 34K(11)(a).
- (4) To avoid doubt, subsection (1) does not prevent the subject from choosing another lawyer to contact, but the subject may be prevented from contacting that other lawyer under another application of that subsection.

34ZP Questioning person in absence of lawyer of person's choice

- (1) To avoid doubt, a person before a prescribed authority for questioning under a warrant issued under this Division may be questioned under the warrant in the absence of a lawyer of the person's choice.

Note: As the warrant authorises questioning of the person only while the person is before a prescribed authority, the prescribed authority can control whether questioning occurs by controlling whether the person is present before the prescribed authority.

- (2) This section does not permit questioning of the person by a person exercising authority under the warrant at a time when a person exercising authority under the warrant is required by another section of this Division not to question the person.

Example: This section does not permit the person to be questioned when a person exercising authority under the warrant is required by section 34M or section 34N to defer questioning because an interpreter is not present.

34ZQ Involvement of lawyers

- (1) This section applies if the person (the *subject*) specified in a warrant issued under this Division contacts another person as a legal adviser as permitted by the warrant or a direction under paragraph 34K(1)(d).

Contact to be able to be monitored

- (2) The contact must be made in a way that can be monitored by a person exercising authority under the warrant.

Legal adviser to be given copy of the warrant

- (4) A person exercising authority under the warrant must give the legal adviser a copy of the warrant. This subsection does not:
- (a) require more than one person to give the legal adviser a copy of the warrant; or
 - (b) entitle the legal adviser to be given a copy of, or see, a document other than the warrant.

Breaks in questioning to give legal advice

- (5) The prescribed authority before whom the subject is being questioned must provide a reasonable opportunity for the legal adviser to advise the subject during breaks in the questioning.

Note: The prescribed authority may set the breaks between periods of questioning by giving appropriate directions under paragraph 34K(1)(f) for the person's further appearance before the prescribed authority for questioning.

- (6) The legal adviser must not intervene in questioning of the subject or address the prescribed authority before whom the subject is being questioned, except to request clarification of an ambiguous question.

Removal of legal adviser for disrupting questioning

- (9) If the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning, the authority may direct a

person exercising authority under the warrant to remove the legal adviser from the place where the questioning is occurring.

- (10) If the prescribed authority directs the removal of the legal adviser, the prescribed authority must also direct under paragraph 34K(1)(d) that the subject may contact someone else as a legal adviser. Subsection 34K(2) does not prevent the prescribed authority from giving the direction under paragraph 34K(1)(d) in accordance with this subsection.

If legal adviser also represents young person

- (11) If section 34ZR also applies to the legal adviser in another capacity in relation to the subject, this section does not apply to conduct of the legal adviser in that other capacity.

34ZR Conduct of parents etc.

- (1) This section applies in relation to a person (the *representative*) who:
- (a) is either:
 - (i) the parent or guardian of a person (the *subject*) specified in a warrant issued under this Division; or
 - (ii) another person who meets the requirements in subsection 34ZE(7) in relation to the subject; and
 - (b) either:
 - (i) is or has been contacted by the subject as permitted by the warrant or a direction under paragraph 34K(1)(d); or
 - (ii) is or has been present when the subject was before a prescribed authority for questioning under the warrant.
- (2) If a prescribed authority considers the representative's conduct is unduly disrupting questioning of the subject, the authority may direct a person exercising authority under the warrant to remove the representative from the place where the questioning is occurring.
- (3) If the prescribed authority directs the removal of the representative, the prescribed authority must also:
- (a) inform the subject that the subject:
 - (i) may request that one of the subject's parents or guardians or one other person who meets the

- requirements in subsection 34ZE(7), other than the representative, be present during the questioning; and
- (ii) may contact a person covered by subparagraph (i) to request the person to be present during the questioning; and
 - (b) if the subject requests that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of the parent or guardian; and
 - (c) if the subject does not request that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection 34ZE(7); and
 - (d) direct under paragraph 34K(1)(d) that the subject may contact a person covered by subparagraph (a)(i) of this subsection to request the person to be present during the questioning.

Subsection 34K(2) does not prevent the prescribed authority from giving the direction under paragraph 34K(1)(d) in accordance with this subsection.

34ZS Secrecy relating to warrants and questioning

Before the expiry of the warrant

- (1) A person (the *discloser*) commits an offence if:
 - (a) a warrant has been issued under this Division; and
 - (b) the discloser discloses information; and
 - (c) either or both of the following apply:
 - (i) the information indicates the fact that the warrant has been issued or a fact relating to the content of the warrant or to the questioning or detention of a person in connection with the warrant;
 - (ii) the information is operational information; and

- (d) if subparagraph (c)(ii) applies but subparagraph (c)(i) does not—the discloser has the information as a direct or indirect result of:
 - (i) the issue of the warrant; or
 - (ii) the doing of anything authorised by the warrant, by a direction given under subsection 34K(1) in connection with the warrant or by another provision of this Division in connection with the warrant; and
- (e) the disclosure occurs before the end of the period specified in the warrant as the period for which the warrant is to be in force; and
- (f) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 5 years.

In the 2 years after the expiry of the warrant

- (2) A person (the **discloser**) commits an offence if:
 - (a) a warrant has been issued under this Division; and
 - (b) the discloser discloses information; and
 - (c) the information is operational information; and
 - (d) the discloser has the information as a direct or indirect result of:
 - (i) the issue of the warrant; or
 - (ii) the doing of anything authorised by the warrant, by a direction given under subsection 34K(1) in connection with the warrant or by another provision of this Division in connection with the warrant; and
 - (e) the disclosure occurs before the end of the 2 years starting at the end of the period specified in the warrant as the period during which the warrant is to be in force; and
 - (f) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 5 years.

Strict liability

- (3) Strict liability applies to paragraphs (1)(c) and (2)(c) if the discloser is:
 - (a) the person (the **subject**) specified in the warrant; or
 - (b) a lawyer who has at any time been:

- (i) present, as the subject's legal adviser, at the questioning of the subject under the warrant; or
- (ii) contacted for the purpose of the subject obtaining legal advice in connection with the warrant; or
- (iii) contacted for the purpose of the subject obtaining representation in legal proceedings seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant.

Otherwise, the fault element applying to paragraphs (1)(c) and (2)(c) is recklessness.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*. For *recklessness*, see section 5.4 of the *Criminal Code*.

Extended geographical jurisdiction—category D

- (4) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1) or (2).

Definitions

- (5) In this section:

operational information means information indicating one or more of the following:

- (a) information that the Organisation has or had;
- (b) a source of information (other than the person specified in the warrant mentioned in subsection (1) or (2)) that the Organisation has or had;
- (c) an operational capability, method or plan of the Organisation.

permitted disclosure means any of the following:

- (a) a disclosure made by a person in the course of any of the following:
 - (i) exercising a power, or performing a function or duty, under this Act;
 - (ii) doing anything the person is authorised to do by a warrant issued under this Act;
 - (iii) doing anything the person is required or permitted to do by a direction under subsection 34K(1);

- (iv) exercising a power (including a power to make a complaint), or performing a function or duty, under the *Complaints (Australian Federal Police) Act 1981* or the *Inspector-General of Intelligence and Security Act 1986*;
 - (b) a disclosure that is:
 - (i) made in the course of the questioning of a person under a warrant issued under this Division; and
 - (ii) made by a person who is present at the questioning when making the disclosure;
 - (c) a disclosure to a lawyer for the purpose of:
 - (i) obtaining legal advice in connection with a warrant issued under this Division; or
 - (ii) obtaining representation in legal proceedings seeking a remedy relating to such a warrant or the treatment of a person in connection with such a warrant;
 - (d) a disclosure for the purpose of the initiation, conduct or conclusion (by judgment or settlement) of legal proceedings relating to such a remedy;
 - (e) a disclosure that is permitted by a prescribed authority to be made;
 - (f) a disclosure to one or more of the following persons, by the representative mentioned in subsection 34ZR(1) or by a parent, guardian or sibling of the subject mentioned in that subsection, of information described in paragraph (1)(c) or (2)(c) of this section in relation to the warrant mentioned in that subsection:
 - (i) a parent, guardian or sibling of the subject;
 - (ii) the representative;
 - (iv) a prescribed authority;
 - (v) a person exercising authority under the warrant;
 - (vi) the Inspector-General of Intelligence and Security;
 - (vii) the Commonwealth Ombudsman;
 - (g) a disclosure permitted by the Director-General;
 - (h) a disclosure permitted by the Minister;
 - (i) a disclosure prescribed by the regulations.
- (6) For the purposes of paragraph (e) of the definition of *permitted disclosure* in subsection (5), a prescribed authority may give

written permission, not inconsistent with the regulations (if any), for:

- (a) a person contacted as described in subsection 34ZQ(1); or
- (b) the representative mentioned in subsection 34ZR(1);

to disclose specified information to a specified person. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The prescribed authority may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

- (7) For the purposes of paragraph (g) of the definition of ***permitted disclosure*** in subsection (5), the Director-General may give written permission for a disclosure. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

- (8) For the purposes of paragraph (h) of the definition of ***permitted disclosure*** in subsection (5), the Minister may, after obtaining advice from the Director-General, give written permission for a disclosure. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Minister may, after obtaining advice from the Director-General, revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.

- (10) Regulations made for the purposes of paragraph (i) of the definition of ***permitted disclosure*** in subsection (5) may prescribe a disclosure by reference to one or more of the following:

- (a) the person making the disclosure;
- (b) the person to whom the disclosure is made;
- (c) the circumstances in which the disclosure is made;
- (d) the purpose of the disclosure;
- (e) the nature of information disclosed;

- (f) an opinion of a specified person about the possible or likely effect of the disclosure.

This subsection does not limit the way in which such regulations may prescribe a disclosure.

Offences apply to original and previously disclosed information

- (11) To avoid doubt, subsections (1) and (2) apply whether or not the discloser has the information that he or she discloses as a result of a disclosure by someone else.

Relationship with other laws prohibiting disclosure

- (12) This section has effect in addition to, and does not limit, other laws of the Commonwealth that prohibit the disclosure of information.

Implied freedom of political communication

- (13) This section does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.

34ZT Lawyers' access to information for proceedings relating to warrant

The regulations may prohibit or regulate access to information, access to which is otherwise controlled or limited on security grounds, by lawyers acting for a person in connection with proceedings for a remedy relating to:

- (a) a warrant issued under this Division in relation to the person;
or
- (b) the treatment of the person in connection with such a warrant.

34ZU Rules of Court about proceedings connected with warrants

Rules of Court of the High Court or the Federal Court of Australia may make special provision in relation to proceedings for a remedy relating to a warrant issued this Division or the treatment of a person in connection with such a warrant.

34ZV Law relating to legal professional privilege not affected

To avoid doubt, this Division does not affect the law relating to legal professional privilege.

34ZW Jurisdiction of State and Territory courts excluded

- (1) A court of a State or Territory does not have jurisdiction in proceedings for a remedy if:
 - (a) the remedy relates to a warrant issued under this Division or the treatment of a person in connection with such a warrant; and
 - (b) the proceedings are commenced while the warrant is in force.
- (2) This section has effect despite any other law of the Commonwealth (whether passed or made before or after the commencement of this section).

34ZZ Cessation of effect of Division

This Division ceases to have effect 3 years after it commences.

Part 2—Consequential amendments

Australian Security Intelligence Organisation Act 1979

3 Subsection 24(3) (definition of *relevant warrant*)

Omit “, 29 or 34D”, substitute “or 29 or under Division 3”.

4 Paragraph 94(1A)(a)

Omit “section 34C”, substitute “Division 3 of Part III”.

5 Paragraph 94(1A)(a)

Omit “section 34D”, substitute “that Division”.

6 Paragraph 94(1A)(b)

Omit “section 34D”, substitute “that Division”.

7 Paragraph 94(1A)(c)

Omit “that meet the requirement in paragraph 34D(2)(a) (about requiring a person to appear before a prescribed authority)”, substitute “under section 34E”.

8 Paragraph 94(1A)(d)

Omit “that meets the requirement in paragraph 34D(2)(a)”, substitute “under section 34E”.

9 Paragraph 94(1A)(e)

Omit “that meet the requirement in paragraph 34D(2)(b) (about authorising a person to be taken into custody, brought before a prescribed authority and detained)”, substitute “under section 34G”.

10 Subparagraph 94(1A)(f)(i)

Omit “that meets the requirement in paragraph 34D(2)(b)”, substitute “under section 34G”.

Crimes Act 1914

11 Paragraph 15YU(1)(a)

Omit “subsection 34G(5)”, substitute “subsection 34L(4)”.

Criminal Code Act 1995

12 Paragraph 105.25(1)(b) of the *Criminal Code*

Omit “section 34D”, substitute “Division 3 of Part III”.

Note: The heading to section 105.25 is altered by omitting “**section 34D**” and substituting “**Division 3 of Part III**”.

13 Paragraph 105.26(2)(b) of the *Criminal Code*

Omit “section 34D”, substitute “Division 3 of Part III”.

14 Paragraph 105.26(4)(a) of the *Criminal Code*

Omit “section 34D”, substitute “Division 3 of Part III”.

Foreign Evidence Act 1994

15 Subsection 3(1) (paragraph (a) of the definition of *designated offence*)

Omit “subsection 34G(5)”, substitute “subsection 34L(4)”.

Part 3—Saving and transitional provisions

16 Saving—ongoing operation of existing Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*

Despite the amendments made by Part 1 of this Schedule, Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979* (as in force immediately before the commencement of this item) continues to apply after that commencement in relation to the following as if those amendments had not been made:

- (a) a consent sought under subsection 34C(1) of that Act before that commencement;
- (b) a request made under subsection 34C(4) of that Act before that commencement;
- (c) a warrant issued under section 34D of that Act before that commencement;
- (d) any other thing done under that Division before that commencement in connection with:
 - (i) a warrant issued under section 34D of that Act before that commencement; or
 - (ii) questioning under such a warrant or detention in connection with such a warrant.

17 Transitional—regulations

- (1) This item applies to regulations in force for the purposes of section 34VAA or 34VA of the *Australian Security Intelligence Organisation Act 1979* immediately before the commencement of this item.
- (2) The regulations have effect, after that commencement, as if they had been made for the purposes of section 34ZS or 34ZT of that Act, as the case requires, after that commencement.

18 Transitional—Rules of Court about proceedings connected with warrants

- (1) This item applies to Rules of Court of the High Court or the Federal Court of Australia in force for the purposes of section 34W of the

Australian Security Intelligence Organisation Act 1979 immediately before the commencement of this item.

- (2) The Rules have effect, after that commencement, as if they had been made for the purposes of section 34ZU of that Act after that commencement.

19 Transitional—exercise of authority under warrants

- (1) This item applies to an approval in force under subsection 24(1) of the *Australian Security Intelligence Organisation Act 1979* immediately before the commencement of this item to the extent that it relates to a warrant issued under section 34D of that Act.
- (2) The approval has effect, after that commencement, as an approval in force under subsection 24(1) of that Act relating to a warrant issued under Division 3 of Part III of that Act.

20 Transitional—existing Protocol

- (1) The Protocol is taken to continue in force after the commencement of this item under section 34C of the *Australian Security Intelligence Organisation Act 1979* as if it had been made under that section. For this purpose, the Protocol is taken to apply:
 - (a) in relation to warrants issued under Division 3 of Part III of that Act; and
 - (b) as if a reference in it to a provision of that Act (as in force immediately before the commencement of this item) were a reference to the corresponding provision of that Act (as in force after that commencement).
- (2) The Protocol ceases to be in force once a legislative instrument made by the Minister under section 34C of the *Australian Security Intelligence Organisation Act 1979* takes effect.
- (3) In this item:

Protocol means the written statement of procedures:

 - (a) referred to in paragraph 34C(3)(ba) and subsection 34C(3A) of the *Australian Security Intelligence Organisation Act 1979* (as in force immediately before the commencement of this item); and
 - (b) that was tabled in the House of Representatives by the Minister on 12 August 2003.

21 Transitional—annual report

In relation to the year ending on 30 June 2006:

- (a) paragraphs 94(1A)(c) and (d) of the *Australian Security Intelligence Organisation Act 1979* also apply in relation to warrants issued under section 34D of that Act (as in force before the commencement of this item) that met the requirement in paragraph 34D(2)(a) of that Act (as so in force); and
- (b) paragraphs 94(1A)(e) and (f) of that Act also apply in relation to warrants issued under section 34D of that Act (as in force before the commencement of this item) that met the requirement in paragraph 34D(2)(b) of that Act (as so in force).

Schedule 2—Other amendments

Australian Security Intelligence Organisation Act 1979

1 Subparagraph 25A(4)(a)(iii)

Repeal the subparagraph, substitute:

- (iii) any other electronic equipment; or
- (iv) a data storage device;

2 Paragraph 25A(4)(a)

Omit “target computer; or”, substitute “target computer;”.

3 Subparagraph 25A(4)(a)(iv)

Repeal the subparagraph.

4 Section 34A

Insert:

complaints agency means an Ombudsman, agency or body:

- (a) that is appointed or established by a law of a State or Territory; and
- (b) that is permitted or required to investigate complaints about the police force or police service of the State or Territory; other than an agency or body prescribed by the regulations for the purposes of this definition.

5 After subsection 34D(4)

Insert:

- (5) In consenting to the making of a request, the Minister must ensure that the warrant to be requested is to:
 - (a) permit the person to contact a single lawyer of the person’s choice at any time the person is appearing before a prescribed authority for questioning under the warrant; and
 - (b) permit the person to contact a single lawyer of the person’s choice (subject to section 34ZO) at any time that is a time the person is in detention in connection with the warrant and a time after:

- (i) the person has informed the prescribed authority concerned, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
- (ii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34ZO that the person be prevented from contacting the lawyer.

Note: Section 34K allows for detention in connection with a warrant issued under section 34E.

6 After subsection 34E(2)

Insert:

Contacting a lawyer

- (3) The warrant must specify that the person is:
 - (a) permitted to contact a single lawyer of the person's choice at any time the person is appearing before a prescribed authority for questioning under the warrant; and
 - (b) permitted to contact a single lawyer of the person's choice (subject to section 34ZO) at any time that is a time the person is in detention in connection with the warrant and a time after:
 - (i) the person has informed the prescribed authority concerned, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
 - (ii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34ZO that the person be prevented from contacting the lawyer.

Note: Section 34K allows for detention in connection with a warrant issued under this section.

7 Subparagraph 34G(3)(a)(iii)

Omit "(the *questioning period*)".

8 Subsection 34G(4)

Omit "questioning period", substitute "period".

9 At the end of paragraph 34J(1)(e)

Add:

- or (iii) to a complaints agency in relation to the police force or police service of the State or Territory concerned;

10 Subsection 34J(3)

Repeal the subsection, substitute:

- (3) The prescribed authority before whom the person appears for questioning must inform the person of the role of the prescribed authority. In particular, the prescribed authority must inform the person that the role of the prescribed authority includes:
 - (a) supervising the questioning of the person; and
 - (b) giving appropriate directions under section 34K in relation to the person.
- (4) The prescribed authority before whom the person appears for questioning must inform the person of the reason for the presence of each other person who is present at any time during the questioning. However:
 - (a) the prescribed authority must not name any person except with the consent of the person to be named; and
 - (b) the obligation to inform the person being questioned about a particular person's reason for presence need only be complied with once (even if that particular person subsequently returns to the questioning).

11 At the end of section 34J

Add:

- Note: For example, the person may be able to apply to the Federal Court of Australia under subsection 39B(1) of the *Judiciary Act 1903*, or the High Court of Australia under paragraph 75(v) of the Constitution, for a remedy in relation to the warrant or the treatment of the person in connection with the warrant.

12 After paragraph 34K(1)(d)

Insert:

- (e) a direction to defer questioning of the person under the warrant;

13 After subsection 34K(8)

Insert:

Complaints while appearing before a prescribed authority for questioning

(9) If:

- (a) a person is appearing before a prescribed authority for questioning under a warrant issued under this Division; and
- (b) the person informs the prescribed authority that the person wants to make an oral or written complaint of the kind referred to in paragraph 34J(1)(e); and
- (c) the person requests facilities to make the complaint; and
- (d) the prescribed authority gives a direction under subsection (1) deferring questioning of the person under the warrant;

then anyone exercising authority under the warrant must give the person facilities for making the complaint.

14 Paragraph 34K(11)(c)

Repeal the paragraph, substitute:

- (c) subsection (10) does not affect the person's right to make a complaint to a complaints agency in relation to the police force or police service of the State or Territory concerned; and
- (d) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security or the Commonwealth Ombudsman to make a complaint orally under a section mentioned in paragraph (b) if the person requests them; and

Note: The sections mentioned in paragraph (b) give the person an entitlement to facilities for making a written complaint.

- (e) anyone holding the person in custody or detention under this Division must give the person facilities for contacting a complaints agency to make an oral or written complaint of the kind mentioned in paragraph (c) if the person requests them.

15 Subsection 34K(11) (note)

Repeal the note.

16 Subsection 34Q(4)

Omit “deferring”, substitute “suspending”.

17 At the end of section 34R

Add:

Time that is not questioning time

- (13) For the purposes of working out the time that a person has been questioned under a warrant, disregard the following times:
- (a) the time taken by a prescribed authority to inform the person of the matters referred to in section 34J;
 - (b) any time during which a prescribed authority has deferred questioning of the person under the warrant to allow:
 - (i) the change of a thing in equipment being used to record the questioning of the person; or
 - (ii) the person to make a complaint of the kind referred to in paragraph 34J(1)(e); or
 - (iii) the person to contact a lawyer or another person as provided by this Division; or
 - (iv) the person to receive medical attention; or
 - (v) the person to engage in religious practices as required by the person’s religion; or
 - (vi) the person to rest or recuperate;
 - (c) any time during which a prescribed authority has suspended questioning of the person under the warrant as mentioned in subsection 34Q(4);
 - (d) any other time determined by a prescribed authority before whom the person appears for questioning.

18 Subparagraphs 34ZE(8)(a)(ii) and (iii)

Omit “authorised by”, substitute “in connection with”.

19 Paragraph 34ZF(3)(a)

After “34K(1)(c), (d),”, insert “(e),”.

20 Paragraph 34ZF(4)(b)

Omit “paragraph 34K(11)(c),”, substitute “subsection 34K(9), paragraph 34K(11)(d) or (e),”.

21 Subsection 34ZO(1)

Repeal the subsection, substitute:

- (1) If:
- (a) a person (the *subject*) is specified in a warrant issued under section 34E and the person is in detention in connection with the warrant; or
 - (b) a person (the *subject*) is specified in a warrant issued under section 34G;

the subject may be prevented from contacting a particular lawyer of the subject's choice if the prescribed authority concerned so directs.

22 After subsection 34ZQ(2)

Insert:

- (3) Subsection (2) does not apply in relation to a warrant issued under section 34E if the contact is in circumstances covered by paragraph 34E(3)(a).

23 Subsection 34ZQ(5) (note)

Repeal the note, substitute:

Note: The prescribed authority may set breaks between periods of questioning by giving directions under section 34K. Paragraphs 34R(13)(b) to (d) also contain examples of procedural breaks in questioning.

24 After subsection 34ZQ(6)

Insert:

Breaks in questioning to address prescribed authority

- (7) During a break in the questioning of the subject, the legal adviser may request the prescribed authority for an opportunity to address the prescribed authority on a matter.

Note: The prescribed authority may set breaks between periods of questioning by giving directions under section 34K. Paragraphs 34R(13)(b) to (d) also contain examples of procedural breaks in questioning.

- (8) The prescribed authority must approve or refuse a request under subsection (7).

25 Subsection 34ZS(5) (at the end of paragraph (a) of the definition of *permitted disclosure*)

Add:

- (v) exercising a power (including a power to make a complaint), or performing a function or duty, under a law of a State or Territory appointing or establishing a complaints agency;

26 Subsection 34ZS(5) (paragraph (f) of the definition of *permitted disclosure*)

After “subsection 34ZR(1)”, insert “, by the subject mentioned in that subsection”.

27 Subsection 34ZS(5) (after subparagraph (f)(ii) of the definition of *permitted disclosure*)

Insert:

- (iii) the subject;

28 Subsection 34ZS(5) (at the end of paragraph (f) of the definition of *permitted disclosure*)

Add:

- (viii) a complaints agency;

29 After subsection 34ZS(8)

Insert:

- (9) In deciding whether to give permission to a person under subsection (6), (7) or (8), the prescribed authority, the Director-General or the Minister must take into account:
 - (a) the person’s family and employment interests to the extent that the prescribed authority, the Director-General or the Minister is aware of those interests; and
 - (b) the public interest; and
 - (c) the risk to security if the permission were given.

This subsection does not limit the matters that may be taken into account.

30 After section 34ZW

Insert:

34ZX Financial assistance

Application for assistance

- (1) At any time after a person specified in a warrant issued under this Division is notified of the issue of the warrant, the person may apply to the Minister for the provision of assistance under this section in respect of the person's appearance before a prescribed authority for questioning under the warrant.

Authorisation of assistance

- (2) The Minister may authorise the provision by the Commonwealth to the person of such financial assistance as the Minister determines.
- (3) The Minister may authorise the provision of assistance on such conditions (if any) as the Minister determines.

Guidelines

- (4) The Minister may, in writing, determine guidelines that are to be applied in authorising the provision of assistance under this section.

Limit on assistance

- (5) This section does not apply in relation to:
 - (a) any complaint the person makes that is of the kind mentioned in paragraph 34J(1)(e); or
 - (b) any remedy the person seeks that is of the kind mentioned in paragraph 34J(1)(f).

31 Before section 34ZZ

Insert:

34ZY Instruments are not legislative instruments

An instrument made under this Division (other than an instrument made by the Minister under section 34C) is not a legislative instrument.

32 Section 34ZZ

Omit "3 years after it commences", substitute "on 22 July 2016".

Intelligence Services Act 2001

33 Paragraph 29(1)(bb)

Repeal the paragraph, substitute:

(bb) to review, by 22 January 2016, the operation, effectiveness and implications of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and

[*Minister's second reading speech made in—
House of Representatives on 29 March 2006
Senate on 13 June 2006*]

(41/06)
