

2004-2005-2006

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

## **ASIO Legislation Amendment Bill 2006**

**No.     , 2006**

*(Attorney-General)*

**A Bill for an Act to amend the *Australian Security Intelligence Organisation Act 1979*, and for related purposes**

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## Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	2
<b>Schedule 1—Restructuring amendments</b>		<b>3</b>
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
<b>Schedule 2—Other amendments</b>		<b>54</b>
<i>Australian Security Intelligence Organisation Act 1979</i>		54
<i>Intelligence Services Act 2001</i>		62

1     **A Bill for an Act to amend the *Australian Security***  
2     ***Intelligence Organisation Act 1979, and for related***  
3     **purposes**

4     The Parliament of Australia enacts:

5     **1 Short title**

6                     This Act may be cited as the *ASIO Legislation Amendment Act*  
7                     *2006*.

8     **2 Commencement**

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

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
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.	
2. Schedule 1	The day after this Act receives the Royal Assent.	
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	

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

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

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule  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

1  
2 **Schedule 1—Restructuring amendments**

3 **Part 1—Main amendments**

4 *Australian Security Intelligence Organisation Act 1979*

5 **1 At the end of Subdivision A of Division 3 of Part III**

6 Add:

7 **34C Written statement of procedures**

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

11 *Consultation*

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

17 *Approval by Minister*

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

21 *Approved statement is a legislative instrument*

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

1                                    *Briefing of Parliamentary Joint Committee on Intelligence and*  
2                                    *Security*

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

7                                    **2 Subdivisions B and C of Division 3 of Part III**

8                                    Repeal the Subdivisions, substitute:

9                                    **Subdivision B—Questioning warrants**

10                                  **34D Request for questioning warrant**

11                                  *Seeking of Minister's consent to request for warrant*

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

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

3 *Minister's consent to making of request*

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

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

17 *Form of request*

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

24 **34E Issue of questioning warrant**

25 *Issue of warrant*

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

1                    *What the warrant authorises*

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

7                    *Warrant must authorise certain actions by the Organisation*

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

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

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

## 29                    **Subdivision C—Questioning and detention warrants**

### 30                    **34F Request for questioning and detention warrant**

31                    *Seeking of Minister's consent to request for warrant*

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



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

23 *Minister's consent to making of request*

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

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

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

9 (5) In consenting to the making of a request, the Minister must ensure  
10 that the warrant to be requested is to permit the person to contact a  
11 single lawyer of the person's choice (subject to section 34ZO) at  
12 any time that:

13 (a) is a time while the person is in detention in connection with  
14 the warrant; and

15 (b) is after:

16 (i) the person has been brought before a prescribed  
17 authority for questioning; and

18 (ii) the person has informed the prescribed authority, in the  
19 presence of a person exercising authority under the  
20 warrant, of the identity of the lawyer whom the person  
21 proposes to contact; and

22 (iii) a person exercising authority under the warrant has had  
23 an opportunity to request the prescribed authority to  
24 direct under section 34ZO that the person be prevented  
25 from contacting the lawyer.

26 (6) If, before the Director-General seeks the Minister's consent to the  
27 request (the *proposed request*), the person has been detained under  
28 this Division in connection with one or more warrants (the *earlier*  
29 *warrants*) issued under this Division:

30 (a) the Minister must take account of those facts in deciding  
31 whether to consent; and

32 (b) the Minister may consent only if the Minister is satisfied that  
33 the issue of the warrant to be requested is justified by  
34 information that is additional to or materially different from  
35 that known to the Director-General at the time the  
36 Director-General sought the Minister's consent to request the  
37 issue of the last of the earlier warrants issued before the  
38 seeking of the Minister's consent to the proposed request.

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

1                    *Form of request*

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

8                    **34G Issue of questioning and detention warrant**

9                    *Issue of warrant*

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

18                    *Previous detention*

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

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

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*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.

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- 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.
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- (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:
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- (a) while the person is in detention in connection with the warrant; and
- (b) after:
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- (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.

20 *Warrant must authorise certain actions by the Organisation*

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- (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.

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

2                    (8) Also, the warrant must:

3                           (a) be signed by the issuing authority who issues it; and

4                           (b) specify the period during which the warrant is to be in force,  
5                                       which must not be more than 28 days.

6                    **34H Person taken into custody under warrant to be immediately**  
7                    **brought before prescribed authority**

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

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

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

16                    **34J Prescribed authority must explain warrant**

17                           (1) When a person first appears before a prescribed authority for  
18                                       questioning under a warrant issued under this Division, the  
19                                       prescribed authority must inform the person of the following:

20                                       (a) whether the warrant authorises detention of the person by a  
21                                       police officer and, if it does, the period for which the warrant  
22                                       authorises detention of the person;

23                                       (b) what the warrant authorises the Organisation to do;

24                                       (c) the effect of section 34L (including the fact that the section  
25                                       creates offences);

26                                       (d) the period for which the warrant is in force;

27                                       (e) the person's right to make a complaint orally or in writing:

28                                              (i) to the Inspector-General of Intelligence and Security  
29                                                          under the *Inspector-General of Intelligence and Security*  
30                                                          Act 1986 in relation to the Organisation; or

31                                              (ii) to the Commonwealth Ombudsman under the  
32                                                          *Complaints (Australian Federal Police) Act 1981* in  
33                                                          relation to the Australian Federal Police;

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

28 **34K Directions by prescribed authority etc.**

29 *Directions relating to detention or further appearance*

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

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



- 1 (i) someone exercising authority under the warrant informs  
2 the prescribed authority before whom the person is  
3 appearing for questioning that the Organisation does not  
4 have any further request described in paragraph  
5 34E(4)(a) or 34G(7)(a) to make of the person;  
6 (ii) section 34R prohibits anyone exercising authority under  
7 the warrant from questioning the person under the  
8 warrant; or  
9 (b) a person's detention being arranged by a person who is not a  
10 police officer.

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

13 *Giving effect to directions*

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

21 *Direction has no effect on further warrant*

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

30 *Communications while in custody or detention*

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

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

18 Note: The sections mentioned in paragraph (1)(b) give the person an  
19 entitlement to facilities for making a written complaint.

#### 20 **34L Giving information and producing things etc.**

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

24 Penalty: Imprisonment for 5 years.

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

28 Penalty: Imprisonment for 5 years.

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

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

- 33 (4) A person commits an offence if:

34 (a) the person is before a prescribed authority for questioning  
35 under a warrant issued under this Division; and

- 1 (b) the person makes a statement that is, to the person's  
2 knowledge, false or misleading; and  
3 (c) the statement is made in purported compliance with a request  
4 for information made in accordance with the warrant.
- 5 Penalty: Imprisonment for 5 years.
- 6 (5) Subsection (4) does not apply if the statement is not false or  
7 misleading in a material particular.
- 8 Note: A defendant bears an evidential burden in relation to the matter in  
9 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).
- 10 (6) A person who is before a prescribed authority for questioning  
11 under a warrant issued under this Division must not fail to produce  
12 any record or thing that the person is requested in accordance with  
13 the warrant to produce.
- 14 Penalty: Imprisonment for 5 years.
- 15 (7) Subsection (6) does not apply if the person does not have  
16 possession or control of the record or thing.
- 17 Note: A defendant bears an evidential burden in relation to the matter in  
18 subsection (7) (see subsection 13.3(3) of the *Criminal Code*).
- 19 (8) For the purposes of subsections (2) and (6), the person may not  
20 fail:  
21 (a) to give information; or  
22 (b) to produce a record or thing;  
23 in accordance with a request made of the person in accordance  
24 with the warrant, on the ground that the information, or production  
25 of the record or thing, might tend to incriminate the person or make  
26 the person liable to a penalty.
- 27 (9) However, the following are not admissible in evidence against the  
28 person in criminal proceedings other than proceedings for an  
29 offence against this section:  
30 (a) anything said by the person, while before a prescribed  
31 authority for questioning under a warrant, in response to a  
32 request made in accordance with the warrant for the person to  
33 give information;  
34 (b) the production of a record or thing by the person, while  
35 before a prescribed authority for questioning under a warrant,

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

3 **34M Interpreter provided at request of prescribed authority**

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

17 **34N Interpreter provided at request of person being questioned**

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

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

9 **34P Inspector-General of Intelligence and Security may be present**  
10 **at questioning or taking into custody**

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

16 **34Q Suspension of questioning etc. in response to concern of**  
17 **Inspector-General of Intelligence and Security**

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

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

- 25 (2) When the person is appearing before a prescribed authority for  
26 questioning under the warrant, the Inspector-General may inform  
27 the prescribed authority of the Inspector-General's concern. If the  
28 Inspector-General does so, he or she must also inform the  
29 Director-General of the concern as soon as practicable afterwards.

- 30 (3) The prescribed authority must consider the Inspector-General's  
31 concern.

- 32 (4) The prescribed authority may give a direction deferring:  
33 (a) questioning of the person under the warrant; or  
34 (b) the exercise of another power under this Division that is  
35 specified in the direction;

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

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

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

13 **34R End of questioning under warrant**

14 (1) Anyone exercising authority under a warrant issued under this  
15 Division must not question a person under the warrant if the person  
16 has been questioned under the warrant for a total of 8 hours, unless  
17 the prescribed authority before whom the person was being  
18 questioned just before the end of that 8 hours permits the  
19 questioning to continue for the purposes of this subsection.

20 (2) Anyone exercising authority under a warrant issued under this  
21 Division must not question a person under the warrant if the person  
22 has been questioned under the warrant for a total of 16 hours,  
23 unless the prescribed authority before whom the person was being  
24 questioned just before the end of that 16 hours permits the  
25 questioning to continue for the purposes of this subsection.

26 (3) Anyone exercising authority under the warrant may request the  
27 prescribed authority to permit the questioning to continue for the  
28 purposes of subsection (1) or (2). The request may be made in the  
29 absence of:

- 30 (a) the person being questioned; and  
31 (b) a legal adviser to that person; and  
32 (c) a parent of that person; and  
33 (d) a guardian of that person; and  
34 (e) another person who meets the requirements of subsection  
35 34ZE(7) in relation to that person; and  
36 (f) anyone the person being questioned is permitted by a  
37 direction under section 34K to contact.

- 1 (4) The prescribed authority may permit the questioning to continue  
2 for the purposes of subsection (1) or (2), but only if he or she is  
3 satisfied that:  
4 (a) there are reasonable grounds for believing that permitting the  
5 continuation will substantially assist the collection of  
6 intelligence that is important in relation to a terrorism  
7 offence; and  
8 (b) persons exercising authority under the warrant conducted the  
9 questioning of the person properly and without delay in the  
10 period mentioned in that subsection.
- 11 (5) The prescribed authority may revoke the permission. Revocation of  
12 the permission does not affect the legality of anything done in  
13 relation to the person under the warrant before the revocation.
- 14 (6) Anyone exercising authority under a warrant issued under this  
15 Division must not question a person under the warrant if the person  
16 has been questioned under the warrant for a total of 24 hours.
- 17 *Release from detention when further questioning is prohibited*
- 18 (7) If the warrant is issued under section 34G, the prescribed authority  
19 must, at whichever one of the following times is relevant, direct  
20 under paragraph 34K(1)(g) that the person be released immediately  
21 from detention:  
22 (a) at the end of the period mentioned in subsection (1) or (2), if  
23 the prescribed authority does not permit, for the purposes of  
24 that subsection, the continuation of questioning;  
25 (b) immediately after revoking the permission, if the permission  
26 was given but later revoked;  
27 (c) at the end of the period described in subsection (6).  
28 Subsection 34K(2) does not prevent the prescribed authority from  
29 giving a direction in accordance with this subsection.
- 30 *Extra time for questioning with interpreter present*
- 31 (8) Subsections (9), (10), (11) and (12) apply if, because of  
32 section 34M or 34N, an interpreter is present at any time while a  
33 person is questioned under a warrant issued under this Division.
- 34 (9) Anyone exercising authority under the warrant must not question  
35 the person under the warrant if the person has been questioned

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

6 (10) Subsections (3), (4) and (5) and paragraph (7)(b) apply in relation  
7 to permitting, for the purposes of subsection (9), the questioning to  
8 continue beyond a total mentioned in subsection (9) in the same  
9 way as they apply in relation to permitting the questioning to  
10 continue for the purposes of subsection (1) or (2).

11 (11) Subsection (6) and paragraph (7)(c) apply as if that subsection  
12 referred to a total of 48 hours (instead of 24 hours).

13 (12) Paragraph (7)(a) applies as if it referred to the time at which the  
14 duration of questioning reached the total mentioned in  
15 subsection (1), (2) or (9) beyond which the questioning is not  
16 permitted to continue.

### 17 **34S Person not to be detained for more than 168 hours continuously**

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

## 20 **Subdivision E—Other provisions**

### 21 **34T Humane treatment of person specified in warrant**

22 (1) This section applies to a person specified in a warrant issued under  
23 this Division while anything is being done in relation to the person  
24 under the warrant or a direction given under section 34K.

25 (2) The person must be treated with humanity and with respect for  
26 human dignity, and must not be subjected to cruel, inhuman or  
27 degrading treatment, by anyone exercising authority under the  
28 warrant or implementing or enforcing the direction.

### 29 **34U Entering premises to take person into custody**

30 (1) If:

31 (a) either a warrant issued under section 34G, or subsection  
32 34K(7), authorises a person to be taken into custody; and



- 1 (b) a police officer believes on reasonable grounds that the  
2 person is on any premises;  
3 the officer may enter the premises, using such force as is necessary  
4 and reasonable in the circumstances, at any time of the day or night  
5 for the purpose of searching the premises for the person or taking  
6 the person into custody.
- 7 (2) However, if subsection 34K(7) authorises a person to be taken into  
8 custody, a police officer must not enter a dwelling house under  
9 subsection (1) of this section at any time during the period:  
10 (a) commencing at 9 pm on a day; and  
11 (b) ending at 6 am on the following day;  
12 unless the officer believes on reasonable grounds that it would not  
13 be practicable to take the person into custody under subsection  
14 34K(7), either at the dwelling house or elsewhere, at another time.
- 15 (3) In this section:  
16 *dwelling house* includes an aircraft, vehicle or vessel, and a room  
17 in a hotel, motel, boarding house or club, in which people  
18 ordinarily retire for the night.  
19 *premises* includes any land, place, vehicle, vessel or aircraft.

#### 20 **34V Use of force in taking person into custody and detaining person**

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

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

19 **34W Surrender of passport by person in relation to whom warrant**  
20 **is sought**

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

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

24 **34X Person in relation to whom warrant is sought must not leave**  
25 **Australia without permission**

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

- 1 effect of this subsection in connection with that action, and  
2 before the first of the following events:
- 3 (i) if the Minister refuses to consent to request the issue of  
4 a warrant under this Division in relation to the person—  
5 that refusal;
- 6 (ii) if an issuing authority refuses to issue a warrant under  
7 this Division in relation to the person—that refusal;
- 8 (iii) if a warrant under this Division is issued in relation to  
9 the person—the end of the period specified in the  
10 warrant as the period during which the warrant is to be  
11 in force; and
- 12 (d) the person does not have written permission from the  
13 Director-General to leave Australia at the time the person  
14 leaves Australia.
- 15 Penalty: Imprisonment for 5 years.
- 16 (2) The Director-General may give written permission for a person to  
17 leave Australia at a specified time. The permission may be given  
18 either unconditionally or subject to specified conditions.
- 19 Note 1: The Director-General may revoke or amend the permission. See  
20 subsection 33(3) of the *Acts Interpretation Act 1901*.
- 21 Note 2: If permission is given subject to a condition and the condition is not  
22 met, the permission is not in force.

### 23 **34Y Surrender of passport by person specified in warrant**

- 24 (1) As soon as practicable after the person specified in a warrant  
25 issued under this Division is notified of the issue of the warrant and  
26 of the effect of this subsection, the person must deliver to someone  
27 exercising authority under the warrant every passport that:
- 28 (a) is an Australian passport (as defined in the *Australian*  
29 *Passports Act 2005*), or a foreign passport, that has been  
30 issued to the person; and
- 31 (b) the person has in his or her possession or control.
- 32 Penalty: Imprisonment for 5 years.
- 33 (2) The Director-General must cause a passport delivered under  
34 subsection (1) to be returned to the person to whom it was issued,  
35 as soon as practicable after the end of the period specified in the

- 1 warrant as the period during which the warrant is to be in force, but  
2 may cause the passport to be returned to that person earlier.
- 3 (3) Subsection (2) does not require:
- 4 (a) the return of a passport during the period specified in another  
5 warrant, issued in relation to the person under this Division,  
6 as the period during which the other warrant is to be in force;  
7 or  
8 (b) the return of a passport that has been cancelled.
- 9 (4) After a passport is delivered under subsection (1) and before it is  
10 returned under subsection (2), a person approved under subsection  
11 24(1) in relation to the warrant mentioned in subsection (1) of this  
12 section may:
- 13 (a) inspect or examine the passport; and  
14 (b) make copies or transcripts of it.

15 **34Z Person specified in warrant must not leave Australia without**  
16 **permission**

- 17 (1) A person commits an offence if:
- 18 (a) the person has been notified of:
- 19 (i) the issue of a warrant under this Division that specifies  
20 the person; and  
21 (ii) the effect of this subsection in connection with the  
22 warrant; and  
23 (b) the person leaves Australia; and  
24 (c) the leaving occurs:
- 25 (i) after the person has been notified of the issue of the  
26 warrant and of the effect of this subsection in  
27 connection with the warrant; and  
28 (ii) before the end of the period specified in the warrant as  
29 the period during which the warrant is to be in force;  
30 and  
31 (d) the person does not have written permission from the  
32 Director-General to leave Australia at the time the person  
33 leaves Australia.

34 Penalty: Imprisonment for 5 years.

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

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

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

#### 8 **34ZA Video recording of procedures**

9 (1) The Director-General must ensure that video recordings are made  
10 of the following:

- 11 (a) a person's appearance before a prescribed authority for  
12 questioning under a warrant issued under this Division;  
13 (b) any other matter or thing that the prescribed authority directs  
14 is to be video recorded.

15 (2) The Director-General must ensure that, if practicable, video  
16 recordings are made of any complaint by a person specified in a  
17 warrant issued under this Division when he or she is not appearing  
18 before a prescribed authority for questioning under the warrant.

#### 19 **34ZB Power to conduct an ordinary search or a strip search**

20 (1) If a person has been detained under this Division, a police officer  
21 may:

- 22 (a) conduct an ordinary search of the person; or  
23 (b) subject to this section, conduct a strip search of the person.

24 (2) An ordinary search of the person under this section must, if  
25 practicable, be conducted by a police officer of the same sex as the  
26 person being searched.

27 (3) A strip search may be conducted if:

- 28 (a) a police officer suspects on reasonable grounds that the  
29 person has a seizable item on his or her person; and  
30 (b) the police officer suspects on reasonable grounds that it is  
31 necessary to conduct a strip search of the person in order to  
32 recover that item; and  
33 (c) a prescribed authority has approved the conduct of the  
34 search.

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

17 **34ZC Rules for conduct of strip search**

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

- 1 person, in the presence of someone else who can  
2 represent the person's interests and who, as far as is  
3 practicable in the circumstances, is acceptable to the  
4 person; and
- 5 (g) must not involve a search of a person's body cavities; and  
6 (h) must not involve the removal of more garments than the  
7 police officer conducting the search believes on reasonable  
8 grounds to be necessary to determine whether the person has  
9 a seizable item on his or her person; and  
10 (i) must not involve more visual inspection than the police  
11 officer believes on reasonable grounds to be necessary to  
12 determine whether the person has a seizable item on his or  
13 her person.
- 14 (2) For the purposes of subparagraph (1)(f)(ii), none of the following  
15 can represent the person's interests:  
16 (a) a police officer;  
17 (b) the Director-General;  
18 (c) an officer or employee of the Organisation;  
19 (d) a person approved under subsection 24(1).
- 20 (3) A strip search may be conducted in the presence of a medical  
21 practitioner of the opposite sex to the person searched if a medical  
22 practitioner of the same sex as the person being searched is not  
23 available within a reasonable time.
- 24 (4) Paragraph (1)(c) does not apply to a parent, guardian or personal  
25 representative of the person being searched if the person being  
26 searched has no objection to the person being present.
- 27 (5) If any of a person's garments are seized as a result of a strip search,  
28 the person must be provided with adequate clothing.

29 **34ZD Power to remove, retain and copy materials etc.**

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



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

## 20 **34ZE Special rules for young people**

### 21 *Rules for persons under 16*

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

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*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.

- 1 (7) The other person must:  
2 (a) be able to represent the person's interests; and  
3 (b) as far as practicable in the circumstances, be acceptable to the  
4 person and to the prescribed authority; and  
5 (c) not be one of the following:  
6 (i) a police officer;  
7 (ii) the Director-General;  
8 (iii) an officer or employee of the Organisation;  
9 (iv) a person approved under subsection 24(1).
- 10 (8) If a person appears before a prescribed authority for questioning  
11 under a warrant issued under this Division and the prescribed  
12 authority is satisfied on reasonable grounds that the person is at  
13 least 16 but under 18, the prescribed authority must, as soon as  
14 practicable:  
15 (a) inform the person that the person:  
16 (i) may request that one of the person's parents or  
17 guardians or one other person who meets the  
18 requirements in subsection (7) be present during the  
19 questioning; and  
20 (ii) may contact the person's parents or guardians and  
21 another person who meets the requirements in  
22 subsection (7), at any time when the person is in  
23 custody or detention authorised by the warrant; and  
24 (iii) may contact a single lawyer of the person's choice when  
25 the person is in detention authorised by the warrant; and  
26 (b) if the person requests that one of the person's parents or  
27 guardians be present during the questioning—direct everyone  
28 proposing to question the person under the warrant not to do  
29 so in the absence of the parent or guardian; and  
30 (c) if the person does not request that one of the person's parents  
31 or guardians be present during the questioning—direct  
32 everyone proposing to question the person under the warrant  
33 not to do so in the absence of another person (other than the  
34 prescribed authority) who meets the requirements in  
35 subsection (7); and  
36 (d) direct under paragraph 34K(1)(d) that the person may contact  
37 someone described in subparagraph (a)(ii) of this subsection  
38 at any time described in that subparagraph; and

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

5 Note: The prescribed authority may set the breaks between periods of  
6 questioning by giving appropriate directions under paragraph  
7 34K(1)(f) for the person's further appearance before the prescribed  
8 authority for questioning.

9 (9) Subsection 34K(2) does not prevent the prescribed authority from  
10 giving a direction in accordance with paragraph (8)(d) of this  
11 section.

12 (10) To avoid doubt, paragraphs (6)(b) and (8)(e) do not affect the  
13 operation of section 34R.

#### 14 **34ZF Offences of contravening safeguards**

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

24 Penalty: Imprisonment for 2 years.

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

30 Penalty: Imprisonment for 2 years.

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

- 1 (d), (f) or (g) or subsection 34Q(4), 34ZE(2) or (8) or  
2 34ZR(3) as a person who is to implement the direction; and  
3 (b) the person engages in conduct; and  
4 (c) the conduct contravenes the direction; and  
5 (d) the person knows of the contravention.
- 6 Penalty: Imprisonment for 2 years.
- 7 (4) A person commits an offence if:  
8 (a) the person engages in conduct; and  
9 (b) the conduct contravenes paragraph 34K(11)(c), subsection  
10 34M(4), paragraph 34N(3)(b) or (4)(a) or subsection 34T(2);  
11 and  
12 (c) the person knows of the contravention.
- 13 Penalty: Imprisonment for 2 years.
- 14 (5) A person commits an offence if:  
15 (a) the person has been approved under section 24 to exercise  
16 authority conferred by a warrant issued under this Division;  
17 and  
18 (b) the person exercises, or purports to exercise, the authority by  
19 questioning another person; and  
20 (c) the questioning contravenes section 34R; and  
21 (d) the person knows of the contravention.
- 22 Penalty: Imprisonment for 2 years.
- 23 (6) A person (the *searcher*) commits an offence if:  
24 (a) the searcher is a police officer; and  
25 (b) the searcher conducts a strip search of a person detained  
26 under this Division; and  
27 (c) the search is conducted:  
28 (i) without either the approval of a prescribed authority or  
29 the consent of the detained person; or  
30 (ii) in a way that contravenes subsection 34ZC(1); and  
31 (d) the searcher knows of the lack of approval and consent or of  
32 the contravention.
- 33 Penalty: Imprisonment for 2 years.
- 34 (7) A person (the *searcher*) commits an offence if:
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- 1 (a) the searcher is a police officer who is conducting or has  
2 conducted a strip search of a person detained under this  
3 Division; and  
4 (b) the searcher engages in conduct; and  
5 (c) the conduct contravenes subsection 34ZC(5); and  
6 (d) the searcher knows of the contravention.

7 Penalty: Imprisonment for 2 years.

8 (8) In this section:

9 ***engage in conduct*** means:

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

### 12 **34ZG Complaints about contravention of procedural statement**

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

### 23 **34ZH Providing reports to the Minister**

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

### 28 **34ZI Providing information to the Inspector-General**

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

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

11 **34ZJ Reporting by Inspector-General on multiple warrants**

- 12 (1) This section imposes requirements on the Inspector-General of  
13 Intelligence and Security if:  
14 (a) a person is detained under this Division in connection with a  
15 warrant issued under this Division; and  
16 (b) one or more other warrants (the *later warrants*) are issued  
17 later under section 34G in relation to the person.
- 18 (2) The Inspector-General must inspect a copy of the draft request  
19 given to the Minister under subsection 34D(3) or 34F(3) for each  
20 of the warrants, to determine whether the draft request for each of  
21 the later warrants included information described in paragraph  
22 34F(6)(b).
- 23 Note: Paragraph 34F(6)(b) describes information additional to or materially  
24 different from that known to the Director-General at the time the  
25 Director-General sought the Minister's consent to request the issue of  
26 the last warrant that:
- 27 (a) was issued under this Division before the seeking of the  
28 Minister's consent to the request proposed in the draft request;  
29 and  
30 (b) was a warrant in connection with which the person was detained  
31 under this Division.
- 32 (3) The Inspector-General must report on the outcome of the  
33 inspection in his or her annual report for the year in which he or  
34 she carries out the examination. For this purpose, *annual report*  
35 means a report under section 35 of the *Inspector-General of*  
36 *Intelligence and Security Act 1986*.

1       **34ZK Discontinuing action before warrants expire**

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

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

10       **34ZL Certain records obtained under warrant to be destroyed**

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

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

20       **34ZM Status of issuing authorities and prescribed authorities**

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

29       **34ZN Certain functions and powers not affected**

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



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

4 **34ZO Limit on contact of lawyer of choice**

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

22 **34ZP Questioning person in absence of lawyer of person's choice**

- 23 (1) To avoid doubt, a person before a prescribed authority for  
24 questioning under a warrant issued under this Division may be  
25 questioned under the warrant in the absence of a lawyer of the  
26 person's choice.
- 27 Note: As the warrant authorises questioning of the person only while the  
28 person is before a prescribed authority, the prescribed authority can  
29 control whether questioning occurs by controlling whether the person  
30 is present before the prescribed authority.
- 31 (2) This section does not permit questioning of the person by a person  
32 exercising authority under the warrant at a time when a person  
33 exercising authority under the warrant is required by another  
34 section of this Division not to question the person.

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

5                    **34ZQ Involvement of lawyers**

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

10                    *Contact to be able to be monitored*

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

13                    *Legal adviser to be given copy of the warrant*

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

20                    *Breaks in questioning to give legal advice*

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

24                    Note:            The prescribed authority may set the breaks between periods of  
25                    questioning by giving appropriate directions under paragraph  
26                    34K(1)(f) for the person's further appearance before the prescribed  
27                    authority for questioning.

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

32                    *Removal of legal adviser for disrupting questioning*

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

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

3 (10) If the prescribed authority directs the removal of the legal adviser,  
4 the prescribed authority must also direct under paragraph  
5 34K(1)(d) that the subject may contact someone else as a legal  
6 adviser. Subsection 34K(2) does not prevent the prescribed  
7 authority from giving the direction under paragraph 34K(1)(d) in  
8 accordance with this subsection.

9 *If legal adviser also represents young person*

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

### 13 **34ZR Conduct of parents etc.**

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

- 1 requirements in subsection 34ZE(7), other than the  
2 representative, be present during the questioning; and  
3 (ii) may contact a person covered by subparagraph (i) to  
4 request the person to be present during the questioning;  
5 and  
6 (b) if the subject requests that one of the subject's parents or  
7 guardians, other than the representative, be present during the  
8 questioning—direct everyone proposing to question the  
9 subject under the warrant not to do so in the absence of the  
10 parent or guardian; and  
11 (c) if the subject does not request that one of the subject's  
12 parents or guardians, other than the representative, be present  
13 during the questioning—direct everyone proposing to  
14 question the subject under the warrant not to do so in the  
15 absence of another person (other than the prescribed  
16 authority) who meets the requirements in subsection  
17 34ZE(7); and  
18 (d) direct under paragraph 34K(1)(d) that the subject may  
19 contact a person covered by subparagraph (a)(i) of this  
20 subsection to request the person to be present during the  
21 questioning.  
22 Subsection 34K(2) does not prevent the prescribed authority from  
23 giving the direction under paragraph 34K(1)(d) in accordance with  
24 this subsection.

25 **34ZS Secrecy relating to warrants and questioning**

26 *Before the expiry of the warrant*

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

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

13 Penalty: Imprisonment for 5 years.

14 *In the 2 years after the expiry of the warrant*

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

30 Penalty: Imprisonment for 5 years.

31 *Strict liability*

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

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

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

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

13 *Extended geographical jurisdiction—category D*

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

17 *Definitions*

- 18 (5) In this section:

19 ***operational information*** means information indicating one or more  
20 of the following:

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

26 ***permitted disclosure*** means any of the following:

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

- 1 (iv) exercising a power (including a power to make a  
2 complaint), or performing a function or duty, under the  
3 *Complaints (Australian Federal Police) Act 1981* or the  
4 *Inspector-General of Intelligence and Security Act*  
5 *1986*;
- 6 (b) a disclosure that is:
- 7 (i) made in the course of the questioning of a person under  
8 a warrant issued under this Division; and
- 9 (ii) made by a person who is present at the questioning  
10 when making the disclosure;
- 11 (c) a disclosure to a lawyer for the purpose of:
- 12 (i) obtaining legal advice in connection with a warrant  
13 issued under this Division; or
- 14 (ii) obtaining representation in legal proceedings seeking a  
15 remedy relating to such a warrant or the treatment of a  
16 person in connection with such a warrant;
- 17 (d) a disclosure for the purpose of the initiation, conduct or  
18 conclusion (by judgment or settlement) of legal proceedings  
19 relating to such a remedy;
- 20 (e) a disclosure that is permitted by a prescribed authority to be  
21 made;
- 22 (f) a disclosure to one or more of the following persons, by the  
23 representative mentioned in subsection 34ZR(1) or by a  
24 parent, guardian or sibling of the subject mentioned in that  
25 subsection, of information described in paragraph (1)(c) or  
26 (2)(c) of this section in relation to the warrant mentioned in  
27 that subsection:
- 28 (i) a parent, guardian or sibling of the subject;
- 29 (ii) the representative;
- 30 (iv) a prescribed authority;
- 31 (v) a person exercising authority under the warrant;
- 32 (vi) the Inspector-General of Intelligence and Security;
- 33 (vii) the Commonwealth Ombudsman;
- 34 (g) a disclosure permitted by the Director-General;
- 35 (h) a disclosure permitted by the Minister;
- 36 (i) a disclosure prescribed by the regulations.
- 37 (6) For the purposes of paragraph (e) of the definition of *permitted*  
38 *disclosure* in subsection (5), a prescribed authority may give

- 1 written permission, not inconsistent with the regulations (if any),  
2 for:
- 3 (a) a person contacted as described in subsection 34ZQ(1); or  
4 (b) the representative mentioned in subsection 34ZR(1);  
5 to disclose specified information to a specified person. The  
6 permission may be given either unconditionally or subject to  
7 specified conditions.
- 8 Note 1: The prescribed authority may revoke or amend the permission. See  
9 subsection 33(3) of the *Acts Interpretation Act 1901*.
- 10 Note 2: If permission is given subject to a condition and the condition is not  
11 met, the permission is not in force.
- 12 (7) For the purposes of paragraph (g) of the definition of ***permitted***  
13 ***disclosure*** in subsection (5), the Director-General may give written  
14 permission for a disclosure. The permission may be given either  
15 unconditionally or subject to specified conditions.
- 16 Note 1: The Director-General may revoke or amend the permission. See  
17 subsection 33(3) of the *Acts Interpretation Act 1901*.
- 18 Note 2: If permission is given subject to a condition and the condition is not  
19 met, the permission is not in force.
- 20 (8) For the purposes of paragraph (h) of the definition of ***permitted***  
21 ***disclosure*** in subsection (5), the Minister may, after obtaining  
22 advice from the Director-General, give written permission for a  
23 disclosure. The permission may be given either unconditionally or  
24 subject to specified conditions.
- 25 Note 1: The Minister may, after obtaining advice from the Director-General,  
26 revoke or amend the permission. See subsection 33(3) of the *Acts*  
27 *Interpretation Act 1901*.
- 28 Note 2: If permission is given subject to a condition and the condition is not  
29 met, the permission is not in force.
- 30 (10) Regulations made for the purposes of paragraph (i) of the  
31 definition of ***permitted disclosure*** in subsection (5) may prescribe a  
32 disclosure by reference to one or more of the following:
- 33 (a) the person making the disclosure;  
34 (b) the person to whom the disclosure is made;  
35 (c) the circumstances in which the disclosure is made;  
36 (d) the purpose of the disclosure;  
37 (e) the nature of information disclosed;



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

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

5 *Offences apply to original and previously disclosed information*

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

9 *Relationship with other laws prohibiting disclosure*

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

12 *Implied freedom of political communication*

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

16 **34ZT Lawyers' access to information for proceedings relating to**  
17 **warrant**

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

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

26 **34ZU Rules of Court about proceedings connected with warrants**

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

1       **34ZV Law relating to legal professional privilege not affected**

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

4       **34ZW Jurisdiction of State and Territory courts excluded**

5                       (1) A court of a State or Territory does not have jurisdiction in  
6                       proceedings for a remedy if:

7                               (a) the remedy relates to a warrant issued under this Division or  
8                               the treatment of a person in connection with such a warrant;  
9                               and

10                              (b) the proceedings are commenced while the warrant is in force.

11                       (2) This section has effect despite any other law of the Commonwealth  
12                       (whether passed or made before or after the commencement of this  
13                       section).

14       **34ZZ Cessation of effect of Division**

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

1

2 **Part 2—Consequential amendments**

3 *Australian Security Intelligence Organisation Act 1979*

4 **3 Subsection 24(3) (definition of *relevant warrant*)**

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

6 **4 Paragraph 94(1A)(a)**

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

8 **5 Paragraph 94(1A)(a)**

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

10 **6 Paragraph 94(1A)(b)**

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

12 **7 Paragraph 94(1A)(c)**

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

16 **8 Paragraph 94(1A)(d)**

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

19 **9 Paragraph 94(1A)(e)**

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

23 **10 Subparagraph 94(1A)(f)(i)**

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

26 *Crimes Act 1914*

27 **11 Paragraph 15YU(1)(a)**

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

2 ***Criminal Code Act 1995***

3 **12 Paragraph 105.25(1)(b) of the *Criminal Code***

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

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

7 **13 Paragraph 105.26(2)(b) of the *Criminal Code***

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

9 **14 Paragraph 105.26(4)(a) of the *Criminal Code***

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

11 ***Foreign Evidence Act 1994***

12 **15 Subsection 3(1) (paragraph (a) of the definition of**  
13 ***designated offence*)**

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

1

2 **Part 3—Saving and transitional provisions**

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

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

- 11 (a) a consent sought under subsection 34C(1) of that Act before  
12 that commencement;
- 13 (b) a request made under subsection 34C(4) of that Act before  
14 that commencement;
- 15 (c) a warrant issued under section 34D of that Act before that  
16 commencement;
- 17 (d) any other thing done under that Division before that  
18 commencement in connection with:
- 19 (i) a warrant issued under section 34D of that Act before  
20 that commencement; or
- 21 (ii) questioning under such a warrant or detention in  
22 connection with such a warrant.

23 **17 Transitional—regulations**

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

31 **18 Transitional—Rules of Court about proceedings**  
32 **connected with warrants**

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

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

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

## 6            **19 Transitional—exercise of authority under warrants**

7            (1)        This item applies to an approval in force under subsection 24(1) of the  
8            *Australian Security Intelligence Organisation Act 1979* immediately  
9            before the commencement of this item to the extent that it relates to a  
10           warrant issued under section 34D of that Act.

11           (2)        The approval has effect, after that commencement, as an approval in  
12           force under subsection 24(1) of that Act relating to a warrant issued  
13           under Division 3 of Part III of that Act.

## 14           **20 Transitional—existing Protocol**

15           (1)        The Protocol is taken to continue in force after the commencement of  
16           this item under section 34C of the *Australian Security Intelligence*  
17           *Organisation Act 1979* as if it had been made under that section. For  
18           this purpose, the Protocol is taken to apply:

19                  (a) in relation to warrants issued under Division 3 of Part III of  
20                  that Act; and

21                  (b) as if a reference in it to a provision of that Act (as in force  
22                  immediately before the commencement of this item) were a  
23                  reference to the corresponding provision of that Act (as in  
24                  force after that commencement).

25           (2)        The Protocol ceases to be in force once a legislative instrument made by  
26           the Minister under section 34C of the *Australian Security Intelligence*  
27           *Organisation Act 1979* takes effect.

28           (3)        In this item:

29                  **Protocol** means the written statement of procedures:

30                  (a) referred to in paragraph 34C(3)(ba) and subsection 34C(3A)  
31                  of the *Australian Security Intelligence Organisation Act 1979*  
32                  (as in force immediately before the commencement of this  
33                  item); and

34                  (b) that was tabled in the House of Representatives by the  
35                  Minister on 12 August 2003.

1 **21 Transitional—annual report**

2 In relation to the year ending on 30 June 2006:

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

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1  
2 **Schedule 2—Other amendments**  
3

4 *Australian Security Intelligence Organisation Act 1979*

5 **1 Subparagraph 25A(4)(a)(iii)**

6 Repeal the subparagraph, substitute:

7 (iii) any other electronic equipment; or

8 (iv) a data storage device;

9 **2 Paragraph 25A(4)(a)**

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

11 **3 Subparagraph 25A(4)(a)(iv)**

12 Repeal the subparagraph.

13 **4 Section 34A**

14 Insert:

15 *complaints agency* means an Ombudsman, agency or body:

16 (a) that is appointed or established by a law of a State or  
17 Territory; and

18 (b) that is permitted or required to investigate complaints about  
19 the police force or police service of the State or Territory;  
20 other than an agency or body prescribed by the regulations for the  
21 purposes of this definition.

22 **5 After subsection 34D(4)**

23 Insert:

24 (5) In consenting to the making of a request, the Minister must ensure  
25 that the warrant to be requested is to:

26 (a) permit the person to contact a single lawyer of the person’s  
27 choice at any time the person is appearing before a prescribed  
28 authority for questioning under the warrant; and

29 (b) permit the person to contact a single lawyer of the person’s  
30 choice (subject to section 34ZO) at any time that is a time the  
31 person is in detention in connection with the warrant and a  
32 time after:



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- (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”.

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

2 Add:

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

5 **10 Subsection 34J(3)**

6 Repeal the subsection, substitute:

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

24 **11 At the end of section 34J**

25 Add:

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

31 **12 After paragraph 34K(1)(d)**

32 Insert:

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

35 **13 After subsection 34K(8)**

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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.

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**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),”.

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**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).

1 **25 Subsection 34ZS(5) (at the end of paragraph (a) of the**  
2 **definition of *permitted disclosure*)**

3 Add:

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

8 **26 Subsection 34ZS(5) (paragraph (f) of the definition of**  
9 ***permitted disclosure*)**

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

12 **27 Subsection 34ZS(5) (after subparagraph (f)(ii) of the**  
13 **definition of *permitted disclosure*)**

14 Insert:

- 15 (iii) the subject;

16 **28 Subsection 34ZS(5) (at the end of paragraph (f) of the**  
17 **definition of *permitted disclosure*)**

18 Add:

- 19 (viii) a complaints agency;

20 **29 After subsection 34ZS(8)**

21 Insert:

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

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

32 **30 After section 34ZW**

33 Insert:

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**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".

1 ***Intelligence Services Act 2001***

2 **33 Paragraph 29(1)(bb)**

3 Repeal the paragraph, substitute:

4 (bb) to review, by 22 January 2016, the operation, effectiveness  
5 and implications of Division 3 of Part III of the *Australian*  
6 *Security Intelligence Organisation Act 1979*; and  
7