

## A consolidation of the

### **Australian Security Intelligence Organisation Act 1979 (Cth)**

*ASIO Act* incorporates amendments up to Act No. 125 of 2002

**plus**

Schedule 1 of *ASIO Legislation Amendment (Terrorism) Bill 2002 [No.2]* as passed by the Senate on 26/6/03

This consolidation was prepared on 24 July 2003.

Subsequent changes to the Act are not reflected in this document. For the most recent version of the Act, you should visit: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/asioa1979472/](http://www.austlii.edu.au/au/legis/cth/consol_act/asioa1979472/)

This document was produced as an aid to analysis of the new terrorism amendments. Each A4 sheet consists of two pages:

- on the left-hand side are a consolidation of the provisions of the *ASIO LA (Terrorism) Act 2002 [No.2]* and the amendments made by the Senate & the House.. The modified provisions are shown in a two-column table:
  - the left column shows:
    - the item number of the amending *ASIO LA (Terrorism) Bill 2002 [No.2]* in square brackets
    - the Senate amendments in the form [S.*n*] for the *n*-th amendment
    - the House amendments in the form [H.*n*] for the *n*-th amendment
  - the right column shows the text of the modifications to be made to the Act.
  - when there are no modifications to the existing *ASIO Act*, the words “no amendments” appears in italics on this page.
- on the right-hand side are the existing provisions of the *ASIO Act 1979 (Cth)* with the amendments applied
  - the words “not in existing Act” appear in italics on this page when there are no provisions in the *ASIO Act* that correspond to the new terrorism amendments.
  - modifications to the *Act* are shaded. Deleted text is shown with a line through it. Inserted text is shown as normal text (within the shaded area).

**Warning:** all care has been taken in the preparation of this consolidation, but errors might exist in this document. Use this document as a guide only. You should confirm that the consolidation of a provision is correct by examining the *ASIO Act* and amendments yourself.

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This document can be downloaded from the NSW Council for Civil Liberties' website: [www.nswccl.org.au](http://www.nswccl.org.au)

## **Australian Security Intelligence Organisation Act 1979**

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## **A Bill for an Act to amend legislation relating to the Australian Security Intelligence Organisation to enhance the Commonwealth's ability to combat terrorism, and for related purposes**

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2002*.

### **2 Commencement**

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Commencement information</b>		
<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, items 1 to 8	The day after this Act receives the Royal Assent	
3. Schedule 1, items 10 and 11	Immediately after the commencement of item 8 of Schedule 1	
4. Schedule 1, items 15 to 29	The day after this Act receives the Royal Assent	

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

(2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

### **3 Schedule(s)**

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

*not in existing Act*

*no amendments*

## **An Act relating to the Australian Security Intelligence Organisation**

### **Part I—Preliminary**

#### **1 Short title**

This Act may be cited as the *Australian Security Intelligence Organisation Act 1979*.

#### **2 Commencement**

This Act shall come into operation on a date to be fixed by Proclamation.

#### **3 Repeal**

The *Australian Security Intelligence Organisation Act 1956* and the *Australian Security Intelligence Organisation Act 1976* are repealed.

#### **4 Definitions**

In this Act, unless the contrary intention appears:

***activities prejudicial to security*** includes any activities concerning which Australia has responsibilities to a foreign country as referred to in paragraph (b) of the definition of ***security*** in this section.

***acts of foreign interference*** means activities relating to Australia that are carried on by or on behalf of, are directed or subsidised by or are undertaken in active collaboration with, a foreign power, being activities that:

(a) are clandestine or deceptive and:

(i) are carried on for intelligence purposes;

(ii) are carried on for the purpose of affecting political or governmental processes;

or

(iii) are otherwise detrimental to the interests of Australia; or

(b) involve a threat to any person.

***attacks on Australia's defence system*** means activities that are intended to, and are likely to, obstruct, hinder or interfere with the performance by the Defence Force of its functions or with the carrying out of other activities by or for the Commonwealth for the purposes of the defence or safety of the Commonwealth.

***Australia***, when used in a geographical sense, includes the external Territories.

- [1] **frisk search** means:
- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
  - (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**authority of the Commonwealth** includes:

- (a) a Department of State or an Agency within the meaning of the *Public Service Act 1999*;
- (b) the Defence Force;
- (c) a body, whether incorporated or not, established for public purposes by or under a law of the Commonwealth or of a Territory;
- (d) the holder of an office established for public purposes by or under a law of the Commonwealth or of a Territory;
- (e) a prescribed body established in relation to public purposes that are of concern to the Commonwealth and any State or States; and
- (f) a company the whole of the share capital of which is held by the Commonwealth.

**certified copy**, in relation to a warrant or an instrument revoking a warrant, means a copy of the warrant or instrument that has been certified in writing by the Director-General or a Deputy Director-General to be a true copy of the warrant or instrument.

**Committee on ASIO, ASIS and DSD** means the Parliamentary Joint Committee on ASIO, ASIS and DSD established under the *Intelligence Services Act 2001*.

**Deputy Director-General** means an officer of the Organisation who holds office as Deputy Director-General of Security.

**Director-General** means the Director-General of Security holding office under this Act.

**foreign intelligence** means intelligence relating to the capabilities, intentions or activities of a foreign power.

**foreign power** means:

- (a) a foreign government;
- (b) an entity that is directed or controlled by a foreign government or governments; or
- (c) a foreign political organisation.

**frisk search** means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**intelligence** or **security agency** means the Australian Secret Intelligence Service, the Office of National Assessments, that part of the Department of Defence known as the Defence Signals Directorate or that part of the Department of Defence known as the Defence Intelligence Organisation.

**Judge** means a Judge of a court created by the Parliament.

- [2] **ordinary search** means a search of a person or of articles on his or her person that may include:
- (1) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
  - (2) an examination of those items.

**ordinary search** means a search of a person or of articles on his or her person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items.

**Organisation** means the Australian Security Intelligence Organisation.

**permanent resident** means a person:

- (a) in the case of a natural person:
  - (i) who is not an Australian citizen;
  - (ii) whose normal place of residence is situated in Australia;
  - (iii) whose presence in Australia is not subject to any limitation as to time imposed by law; and
  - (iv) who is not an unlawful non-citizen within the meaning of the *Migration Act 1958*, or
- (b) in the case of a body corporate:
  - (i) which is incorporated under a law in force in a State or Territory; and
  - (ii) the activities of which are not controlled (whether directly or indirectly) by a foreign power.

[3] **Section 4 (at the end of paragraphs (a) and (b) of the definition of *politically motivated violence*)**

Add “or”.

[4] **Section 4 (after paragraph (b) of the definition of *politically motivated violence*)**

Insert:

(ba) acts that are terrorism offences; or

[5] **Application**

The amendments of the definition of *politically motivated violence* in section 4 of the *Australian Security Intelligence Organisation Act 1979* made by this Schedule apply in relation to an act, matter or thing done, existing or happening after the commencement of the amendments (including an act under a warrant or other instrument issued under that Act before that commencement).

***politically motivated violence*** means:

- (a) acts or threats of violence or unlawful harm that are intended or likely to achieve a political objective, whether in Australia or elsewhere, including acts or threats carried on for the purpose of influencing the policy or acts of a government, whether in Australia or elsewhere; **or**
- (b) acts that:
  - (i) involve violence or are intended or are likely to involve or lead to violence (whether by the persons who carry on those acts or by other persons); and
  - (ii) are directed to overthrowing or destroying, or assisting in the overthrow or destruction of, the government or the constitutional system of government of the Commonwealth or of a State or Territory; **or**

**(ba) acts that are terrorism offences; or**

- (c) acts that are offences punishable under the *Crimes (Foreign Incursions and Recruitment) Act 1978*, the *Crimes (Hostages) Act 1989* or Division 1 of Part 2, or Part 3, of the *Crimes (Ships and Fixed Platforms) Act 1992* or under Division 1 or 4 of Part 2 of the *Crimes (Aviation) Act 1991*; or
- (d) acts that:
  - (i) are offences punishable under the *Crimes (Internationally Protected Persons) Act 1976*; or
  - (ii) threaten or endanger any person or class of persons specified by the Minister for the purposes of this subparagraph by notice in writing given to the Director-General.

***promotion of communal violence*** means activities that are directed to promoting violence between different groups of persons in the Australian community so as to endanger the peace, order or good government of the Commonwealth.

***security*** means:

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
  - (i) espionage;
  - (ii) sabotage;
  - (iii) politically motivated violence;
  - (iv) promotion of communal violence;
  - (v) attacks on Australia's defence system; or
  - (vi) acts of foreign interference;whether directed from, or committed within, Australia or not; and
- (b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a).

- [6] Insert:  
**seizable item** means anything that could present a danger to a person or that could be used to assist a person to escape from lawful custody.
- [7] Insert:  
**strip search** means a search of a person or of articles on his or her person that may include:  
(a) requiring the person to remove all of his or her garments; and  
(b) an examination of the person's body (but not of the person's body cavities) and of those garments.
- [8] Insert:  
**terrorism offence** means an offence against Part 5.3 of the Criminal Code.  
Note: A person can commit a terrorism offence against Part 5.3 of the *Criminal Code* even if no terrorist act (as defined in that Part) occurs.
- [9] *there is no item [9]*
- [10] **Section 4 (definition of terrorism offence)**  
After "against", insert "Division 72 or".
- [11] **Application**  
The amendment of the definition of **terrorism offence** in section 4 of the *Australian Security Intelligence Organisation Act 1979* made by this Schedule applies in relation to an act, matter or thing done, existing or happening after the commencement of the amendment (including an act under a warrant or other instrument issued under that Act before that commencement).
- [12] *there are no items [12], [13] or [14]*

**seizable item** means anything that could present a danger to a person or that could be used to assist a person to escape from lawful custody.

**State** includes the Australian Capital Territory and the Northern Territory.

**strip search** means a search of a person or of articles on his or her person that may include:

- (a) requiring the person to remove all of his or her garments; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

**Territory** does not include the Australian Capital Territory or the Northern Territory.

**terrorism offence** means an offence against Division 72 or Part 5.3 of the Criminal Code.

Note: A person can commit a terrorism offence against Part 5.3 of the *Criminal Code* even if no terrorist act (as defined in that Part) occurs.

**violence** includes the kidnapping or detention of a person.

#### 4A Application of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

#### 5 Extension of Act to external Territories

This Act extends to every external Territory.

#### 5A Copies of certain notices to be given to Inspector-General

Where the Minister gives a notice in writing to the Director-General for the purposes of subparagraph (d)(ii) of the definition of **politically motivated violence** in section 4, the Minister shall give a copy of the notice to the Inspector-General of Intelligence and Security.

*no amendments*

## **Part II—The Organisation and the Director-General**

### **6 Continuance of Organisation**

The Australian Security Intelligence Organisation, being the Organisation that was continued in existence by the Acts repealed by this Act, is continued in existence.

### **7 Director-General**

- (1) There shall be a Director-General of Security, who shall be appointed by the Governor-General and shall hold office, subject to this Act, on such terms and conditions as the Governor-General determines.
- (2) Before a recommendation is made to the Governor-General for the appointment of a person as Director-General, the Prime Minister shall consult with the Leader of the Opposition in the House of Representatives.

### **8 Control of Organisation**

- (1) The Organisation shall be under the control of the Director-General.
- (2) Subject to subsections (4) and (5), in the performance of the Director-General's functions under this Act, the Director-General is subject to the directions of the Minister.
- (3) If the Director-General requests that a direction of the Minister be put in writing, the Minister shall comply with the request.
- (4) The Minister is not empowered to override the opinion of the Director-General concerning the nature of the advice that should be given by the Organisation.
- (5) The Minister is not empowered to override the opinion of the Director-General:
  - (a) on the question whether the collection of intelligence by the Organisation concerning a particular individual would, or would not, be justified by reason of its relevance to security; or
  - (b) on the question whether a communication of intelligence concerning a particular individual would be for a purpose relevant to security;except by a direction contained in an instrument in writing that sets out the Minister's reasons for overriding the opinion of the Director-General.
- (6) The Minister shall, as soon as practicable after giving a direction in writing to the Director-General, cause a copy of the direction to be given to the Inspector-General of Intelligence and Security and, if the direction relates to a question referred to in subsection (5), to the Prime Minister.
- (7) Where intelligence is collected or communicated pursuant to a direction referred to in subsection (5), the Director-General shall cause a record in writing to be kept of the intelligence so collected or communicated.

*no amendments*

## **8A Guidelines**

- (1) The Minister may, from time to time, by written notice given to the Director-General, give to the Director-General guidelines to be observed:
  - (a) in the performance by the Organisation of its functions or the exercise of its powers; or
  - (b) in the exercise by the Director-General of his or her powers under sections 85 and 86.
- (2) The Minister shall, as soon as practicable after the commencement of this section, by notice in writing given to the Director-General, give to the Director-General guidelines to be observed in relation to the performance of that part of the Organisation's functions that relates to politically motivated violence, and may, from time to time, vary or replace guidelines so given.
- (3) Subject to subsection (4), the Minister shall cause a copy of any guidelines given under subsection (1) or (2) to be laid before each House of the Parliament within 15 sitting days of that House after the guidelines were given.
- (4) Where the laying of a copy of guidelines before the Parliament in accordance with subsection (3) would result in the disclosure of information that would, in the opinion of the Minister, be contrary to the public interest by reason that it would prejudice security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals, the Minister may cause a copy of the guidelines to be laid before each House of the Parliament with such deletions as the Minister thinks necessary to avoid that result or decline to cause a copy to be laid before each House of the Parliament.
- (5) The Minister shall, in accordance with arrangements made between the Minister and the Leader of the Opposition in the House of Representatives, make available to the Leader of the Opposition a copy of any guidelines given under subsection (1) or (2), but it is the duty of the Leader of the Opposition to treat as secret any part of those guidelines that has not been laid before a House of the Parliament.
- (6) The Minister shall, as soon as practicable after guidelines under subsection (1) or (2) are given to the Director-General, give a copy of the guidelines to the Inspector-General of Intelligence and Security and, unless the Minister considers it inappropriate to do so, to the Committee on ASIO, ASIS and DSD.

## **9 Term of office of Director-General**

- (1) Subject to sections 12 and 13, the Director-General holds office for such period, not exceeding 7 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.

## **10 Remuneration and allowances of Director-General**

- (1) The Director-General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) The Director-General shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973* and to section 15.

*no amendments*

## **11 Leave of absence**

- (1) The Director-General has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director-General leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

## **12 Resignation**

The Director-General may resign from office by writing signed by the Director-General and delivered to the Governor-General.

## **13 Termination of appointment**

- (1) The Governor-General may terminate the appointment of the Director-General by reason of physical or mental incapacity, misbehaviour or failure to comply with a provision of this Act.
- (2) If the Director-General:
  - (a) is absent from duty, except with leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
  - (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;the Governor-General shall terminate his or her appointment.

*no amendments*

#### **14 Acting Director-General**

- (1) The Minister may appoint a person to act as Director-General:
  - (a) during a vacancy in the office of Director-General; or
  - (b) during any period, or during all periods, when the Director-General is absent from duty or from Australia or is, for any reason, unable to perform the functions of his or her office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) Before a recommendation is made to the Minister for the appointment of a person, under subsection (1), to act as Director-General, the Prime Minister shall consult with the Leader of the Opposition in the House of Representatives, unless it is impracticable to do so.
- (3) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (4) The Minister may:
  - (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Director-General; and
  - (b) at any time terminate such an appointment.
- (5) Where a person is acting as Director-General in accordance with paragraph (1)(b) and the office of Director-General becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (6) The appointment of a person to act as Director-General ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.
- (7) While a person is acting as Director-General, he or she has, and may exercise, all the powers and shall perform all the functions of the Director-General.

#### **15 Appointment of a Judge as Director-General**

- (1) The appointment of a Judge as Director-General, or service of a Judge as Director-General, does not affect the tenure of his or her office as a Judge or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge and, for all purposes, his or her service as Director-General shall be taken to be service as the holder of his or her office as a Judge.
- (2) Subject to subsection (3), if the Director-General is a Judge, he or she shall be paid salary at such rate (if any), and an annual allowance at such rate (if any), as are fixed from time to time by the Parliament.
- (3) If the Director-General is a Judge, he or she is not, while he or she receives salary or annual allowance as a Judge, entitled to salary or annual allowance, as the case may be, under this Act, except to the extent (if any) that the salary or annual allowance that would be payable to him or her under this Act apart from this subsection exceeds the salary or annual allowance payable to him or her as a Judge.

*no amendments*

## **16 Delegation**

- (1) The Director-General may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Director-General, delegate to an officer of the Organisation all or any of the powers of the Director-General that relate to the management of the staff of the Organisation or the financial management of the Organisation.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act and the regulations, be deemed to have been exercised by the Director-General.
- (3) A delegation under this section does not prevent the exercise of a power by the Director-General.

*no amendments*

## **Part III—Functions and powers of Organisation**

### **Division 1—General**

#### **17 Functions of Organisation**

- (1) The functions of the Organisation are:
  - (a) to obtain, correlate and evaluate intelligence relevant to security;
  - (b) for purposes relevant to security and not otherwise, to communicate any such intelligence to such persons, and in such manner, as are appropriate to those purposes;
  - (c) to advise Ministers and authorities of the Commonwealth in respect of matters relating to security, in so far as those matters are relevant to their functions and responsibilities.
  - (ca) to furnish security assessments to a State or an authority of a State in accordance with paragraph 40(1)(b);
  - (d) to advise Ministers, authorities of the Commonwealth and such other persons as the Minister, by notice in writing given to the Director-General, determines on matters relating to protective security; and
  - (e) to obtain within Australia foreign intelligence pursuant to section 27A or 27B of this Act or section 11A, 11B or 11C of the *Telecommunications (Interception) Act 1979*, and to communicate any such intelligence in accordance with this Act or the *Telecommunications (Interception) Act 1979*.
- (2) It is not a function of the Organisation to carry out or enforce measures for security within an authority of the Commonwealth.

#### **17AA Fees for advice and other services**

- (1) The Director-General may determine in writing that fees are payable by persons for the giving of advice or the provision of services by the Organisation to the persons at their request.
- (2) Unless the Director-General determines otherwise, the Organisation may refuse to give the advice, or provide the service, to a person until the fee is paid in whole or part. If the whole or part of the fee is not paid before the advice is given or the service is provided, the amount concerned is a debt due to the Commonwealth and may be recovered by the Commonwealth in a court of competent jurisdiction.
- (3) The amount of the fee must not exceed the reasonable costs to the Organisation of giving the advice or providing the service.
- (4) The Director-General may, on application in writing by a person who is or will be required to pay a fee, if the Director-General considers it appropriate in the circumstances:
  - (a) not require the person to pay any of the fee; or
  - (b) require the person to pay only a specified part of the fee.

#### **17A Act not concerned with lawful dissent etc.**

This Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as prejudicial to security, and the functions of the Organisation shall be construed accordingly.

- [15] **Subsection 18(1)**  
Omit “an officer of the Organisation”, substitute “a person”.
- [16] **16 Subsection 18(1)**  
Omit “officer” (second occurring), substitute “person”.
- [17] **17 Paragraph 18(2)(b)**  
Repeal the paragraph, substitute:  
(b) by a person acting within the limits of authority conferred on the person by the Director-General; or
- [18] **18 Subsection 18(3)**  
Omit “an officer” (first occurring), substitute “a person”.
- [19] **19 Paragraph 18(3)(b)**  
Omit “the officer”, substitute “the person”.
- [20] **Saving of authority and authorisations**  
(1) For the purposes of subsections 18(1) and (2) of the *Australian Security Intelligence Organisation Act 1979* as amended by this Schedule, the authority conferred on an officer of the Organisation by the Director-General is not affected by the amendment of those subsections by this Schedule.  
(2) An officer of the Organisation who was authorised for the purpose of subsection 18(3) of the *Australian Security Intelligence Organisation Act 1979* immediately before the commencement of this item is taken to be, immediately after the commencement of this item, a person authorised for that purpose.

## 18 Communication of intelligence etc.

- (1) The communication of intelligence on behalf of the Organisation shall be made only by the Director-General or by ~~an officer of the Organisation~~ **a person** acting within the limits of authority conferred on the ~~officer~~ **person** by the Director-General.
- (2) If a person makes a communication of any information or matter that has come to the knowledge or into the possession of the person by reason of his or her being, or having been, an officer or employee of the Organisation or his or her having entered into any contract, agreement or arrangement with the Organisation, being information or matter that was acquired or prepared by or on behalf of the Organisation in connection with its functions or relates to the performance by the Organisation of its functions, other than a communication made:
- (a) to the Director-General or an officer or employee of the Organisation:  
(i) by an officer or employee of the Organisation—in the course of the duties of the officer or employee; or  
(ii) by a person who has entered into any such contract, agreement or arrangement—in accordance with the contract, agreement or arrangement;
- ~~(b) by an officer of the Organisation, within the limits of authority conferred on the officer by the Director-General; or~~  
**(b) by a person acting within the limits of authority conferred on the person by the Director-General; or**
- (c) with the approval of the Director-General or of an officer of the Organisation having the authority of the Director-General to give such an approval;
- the first-mentioned person is guilty of an offence.
- Penalty: Imprisonment for 2 years.
- (3) Notwithstanding paragraph 17(1)(b), the Director-General or ~~an officer~~ **a person** authorised for the purpose by the Director-General may, in accordance with the following paragraphs, communicate information that has come into the possession of the Organisation in the course of performing its functions under section 17:
- (a) where the information relates, or appears to relate, to the commission, or intended commission, of an indictable offence against the law of the Commonwealth or of a State or Territory—the information may be communicated to an officer of the Police Force of a State or Territory, to a member or special member of the Australian Federal Police or to the Chief Executive Officer of the Australian Crime Commission or a member of the staff of the ACC; or
- (b) where the information has come into the possession of the Organisation outside Australia or concerns matters outside Australia and the Director-General or ~~the officer~~ **the person** so authorised is satisfied that the national interest requires the communication—the information may be communicated to:
- (i) a Minister; or  
(ii) a Department; or  
(iii) an intelligence or security agency; or  
(iv) an officer of a Police Force of a State or Territory; or  
(v) a member or special member of the Australian Federal Police; or  
(vi) the Chief Executive Officer of the Australian Crime Commission or a member of the staff of the ACC.
- (5) A prosecution for an offence against subsection (2) shall be instituted only by or with the consent of the Attorney-General.

*no amendments*

(6) In this section: member of the staff of the ACC has the same meaning as in the Australian Crime Commission Act 2002.

### **19 Co-operation with other authorities**

- (1) So far as necessary for, or conducive to, the performance of its functions, the Organisation may, subject to any arrangements made or directions given by the Minister, co-operate with:
  - (a) authorities of the Commonwealth;
  - (b) Departments, Police Forces and authorities of the States; and
  - (c) authorities of other countries approved by the Minister as being capable of assisting the Organisation in the performance of its functions.
- (2) Notwithstanding paragraph 17(1)(b), the Director-General or an officer authorised by the Director-General may, where the Organisation is co-operating with an authority of another country in accordance with paragraph (1)(c), communicate to an officer of that authority information that has come into the possession of the Organisation in the course of performing its functions under section 17, being information that is relevant to the security of that other country and that could not, apart from this subsection, be communicated to that officer.

### **20 Special responsibility of Director-General in relation to functions of Organisation**

The Director-General shall take all reasonable steps to ensure that:

- (a) the work of the Organisation is limited to what is necessary for the purposes of the discharge of its functions; and
- (b) the Organisation is kept free from any influences or considerations not relevant to its functions and nothing is done that might lend colour to any suggestion that it is concerned to further or protect the interests of any particular section of the community, or with any matters other than the discharge of its functions.

### **21 Leader of Opposition to be kept informed on security matters**

The Director-General shall consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on matters relating to security.

## Division 2—Special powers

### 22 Interpretation

In this Division, unless the contrary intention appears:

**carrier** means:

- (a) a carrier within the meaning of the *Telecommunications Act 1997*; or
- (b) a carriage service provider within the meaning of that Act.

**communicate** includes cause to be communicated.

**computer** means a computer, a computer system or part of a computer system.

**data** includes information, a computer program or part of a computer program.

**examination** includes any act or process for the purpose of producing sounds, images or information from a record, and **examine** has a corresponding meaning.

**listening device** means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to words, images, sounds or signals.

**premises** includes any land, place, vehicle, vessel or aircraft.

**record** when used as a noun, means:

- (a) a document (including any written or printed material); or
- (b) an object (including a sound recording, magnetic tape or disc, microform, photograph or film) by which words, images, sounds or signals are recorded or stored or from which information can be obtained.

**signals** includes light emissions and electromagnetic emissions.

**telecommunications facility** means a facility within the meaning of section 7 of the *Telecommunications Act 1997*.

[21] **Section 23**  
Repeal the section.

### ~~23 References to Minister~~

~~A reference in this Division to the Minister shall, at a time when the Minister is absent from Australia or when, by reason of illness of the Minister or for any other reason, the Director General cannot readily communicate with the Minister, be read as including a reference to another Minister who has been authorized in writing by the Minister to perform the functions of the Minister under this Division at such a time.~~

[22] **Subsection 24(3) (definition of *relevant warrant*)**  
Omit “or 29”, substitute “, 29 or 34D”.

## 24 Exercise of authority under warrants etc.

- (1) The Director-General, or a senior officer of the Organisation appointed by the Director-General in writing to be an authorising officer for the purposes of this subsection, may, by signed writing, approve officers and employees of the Organisation, and other people, as people authorised to exercise, on behalf of the Organisation, the authority conferred by relevant warrants or relevant device recovery provisions.
- (2) The authority conferred by a relevant warrant or relevant device recovery provision may be exercised on behalf of the Organisation only by the Director-General or an officer, employee or other person approved under subsection (1).
- (3) In this section:  
***relevant device recovery provision*** means subsection 26(6A), 26B(7), 26C(7), 27A(3A) or (3B).  
***relevant warrant*** means a warrant issued under section 25, 25A, 26, 26B, 26C, 27, 27A, 27AA, **29 or 34D**.  
***senior officer of the Organisation*** means an officer of the Organisation who holds or performs the duties of an office that is:
  - (a) equivalent to a position occupied by an SES employee; or
  - (b) designated as an office of Coordinator by the Director-General under section 85.

## 25 Search warrants

### *Issue of search warrant*

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

### *Test for issue of warrant*

- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to records or other things on particular premises (the ***subject premises***) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the ***security matter***) that is important in relation to security.

### *Authorisation in warrant*

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the subject premises, which must also be specified in the warrant.

### *Things that may be specified in warrant*

- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
  - (a) entering the subject premises;
  - (b) searching the subject premises for the purpose of finding records or other things relevant to the security matter and, for that purpose, opening any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that any such records or other things may be found;

[23] **After subsection 25(4)**

Insert:

*Personal searches may be specified*

(4A) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:

- (a) conducting an ordinary search or a frisk search of a person if:
  - (i) the person is at or near the subject premises when the warrant is executed; and
  - (ii) there is reasonable cause to believe that the person has on his or her person records or other things relevant to the security matter;
- (b) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
- (c) removing and retaining for such time as is reasonable any record or other thing so found, for the purposes of:
  - (i) inspecting or examining it; and
  - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant.

*Certain personal searches not authorised*

(4B) Subsection (4A) does not authorise a strip search or a search of a person's body cavities.

- (c) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
- (d) removing and retaining for such time as is reasonable any record or other thing so found, for the purposes of:
  - (i) inspecting or examining it; and
  - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant;
- (e) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (f) any other thing reasonably incidental to any of the above.

*Personal searches may be specified*

(4A) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:

- (a) conducting an ordinary search or a frisk search of a person if:
  - (i) the person is at or near the subject premises when the warrant is executed; and
  - (ii) there is reasonable cause to believe that the person has on his or her person records or other things relevant to the security matter;
- (b) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
- (c) removing and retaining for such time as is reasonable any record or other thing so found, for the purposes of:
  - (i) inspecting or examining it; and
  - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant.

*Certain personal searches not authorised*

(4B) Subsection (4A) does not authorise a strip search or a search of a person's body cavities.

*Other things that may be specified*

- (5) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
- (a) where there is reasonable cause to believe that data relevant to the security matter may be accessible by using a computer or other electronic equipment found on the subject premises—using the computer or other electronic equipment for the purpose of obtaining access to any such data and, if necessary to achieve that purpose, adding, deleting or altering other data in the computer or other electronic equipment;
  - (b) using the computer or other electronic equipment to do any of the following:
    - (i) inspecting and examining any data to which access has been obtained;
    - (ii) converting any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, into documentary form and removing any such document;

- (iii) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, to a storage device and removing the storage device;
- (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (d) any other thing reasonably incidental to any of the above.

*Certain acts not authorised*

- (6) Subsection (5) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use of the computer or other electronic equipment by other persons, or that causes any loss or damage to other persons lawfully using the computer or other electronic equipment.

*Authorisation of entry measures*

- (7) The warrant must:
  - (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

*Statement about warrant coming into force*

- (8) The warrant may state that it comes into force on a specified day (after the day of issue) or when a specified event happens. The day must not begin nor the event happen more than 28 days after the end of the day on which the warrant is issued.

*When warrant comes into force*

- (9) If the warrant includes such a statement, it comes into force at the beginning of the specified day or when the specified event happens. Otherwise, it comes into force when it is issued.

*Duration of warrant*

- (10) The warrant must specify the period during which it is to be in force. The period must not be more than 28 days, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (11) Subsection (10) does not prevent the issue of any further warrant.

[23A] **After section 25**

Insert:

**25AA Conduct of ordinary or frisk search under search warrant**

An ordinary search or frisk search of a person that is authorised under paragraph 25(4A)(a) must, if practicable, be conducted by a person of the same sex as the person being searched.

**25AA Conduct of ordinary or frisk search under search warrant**

An ordinary search or frisk search of a person that is authorised under paragraph 25(4A)(a) must, if practicable, be conducted by a person of the same sex as the person being searched.

*no amendments*

## 25A Computer access warrant

### *Issue of computer access warrant*

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

### *Test for issue of warrant*

- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to data held in a particular computer (the **target computer**) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the **security matter**) that is important in relation to security.

### *Authorisation in warrant*

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the target computer, which must also be specified in the warrant.

### *Things that may be authorised in warrant*

- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) using:
    - (i) a computer; or
    - (ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or
    - (iii) any other electronic equipment;  
for the purpose of obtaining access to data that is relevant to the security matter and is stored in the target computer and, if necessary to achieve that purpose, adding, deleting or altering other data in the target computer;
  - (b) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
  - (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
  - (d) any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, an ASIO officer who, by means of a telecommunications facility, obtains access to data stored in the target computer etc. will not commit an offence under Part 10-7 of the *Criminal Code* or equivalent State or Territory laws (provided that the ASIO officer acts within the authority of the warrant).

### *Certain acts not authorised*

- (5) Subsection (4) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use of the target computer by other persons, or that causes any loss or damage to other persons lawfully using the target computer.

*no amendments*

*Duration of warrant*

- (6) The warrant must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (7) Subsection (6) does not prevent the issue of any further warrant.

**26 Use of listening devices**

- (1) It is unlawful for an officer, employee or agent of the Organisation, for the purposes of the Organisation, to use a listening device for the purpose of listening to or recording words, images, sounds or signals being communicated by another person (in this subsection referred to as the **communicator**) unless:

- (a) the communicator intends, or should reasonably expect, those words, images, sounds or signals to be communicated to the first-mentioned person or to a class or group of persons in which the first-mentioned person is included;
- (b) the first-mentioned person does so with the consent of the communicator; or
- (c) the first-mentioned person does so in accordance with a warrant issued under this Division;

and it is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

- (2) Notwithstanding any law of a State or Territory, an officer, employee or agent of the Organisation, acting on behalf of the Organisation, does not act unlawfully by reason only of using a listening device as referred to in subsection (1) in circumstances in which paragraph (a), (b) or (c) of that subsection is applicable.

- (3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section authorizing the use of a listening device in relation to a particular person, the Minister is satisfied that:

- (a) that person is engaged in, or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) the use by the Organisation of a listening device to listen to or record words, images, sounds or signals communicated by or to that person will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;

the Minister may, by warrant signed by the Minister, authorize the Organisation, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purpose of listening to or recording words, images, sounds or signals communicated by or to that person and such a warrant may authorize the Organisation to enter any premises in which that person is, or is likely to be, or any other premises specified in the warrant from which words, images, sounds or signals communicated by or to that person while that person is in those first-mentioned premises can be listened to or recorded with the use of a listening device, for the purpose of installing, maintaining or using a listening device.

*no amendments*

- (4) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section authorizing the use of a listening device to listen to or record words, images, sounds or signals communicated from or to particular premises, the Minister is satisfied that:
- (a) those premises are used, likely to be used or frequented by a person engaged in, or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
  - (b) the use on behalf of the Organisation of a listening device to listen to or record words, images, sounds or signals communicated by or to persons in those premises will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;
- the Minister may, by warrant signed by the Minister, authorize the Organisation, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purpose of listening to or recording words, images, sounds or signals communicated by or to any person while the person is in those premises and such a warrant may authorize the Organisation to enter those premises, or any other premises specified in the warrant from which words, images, sounds or signals communicated by or to any person while the person is in those first-mentioned premises can be listened to or recorded with the use of a listening device, for the purpose of installing, maintaining or using a listening device.
- (5) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsections (3) and (4); and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.
- (6) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months, but may be revoked by the Minister at any time before the expiration of the period so specified.
- (6A) If a listening device is installed in accordance with the warrant, the Organisation is authorised to do any of the following:
- (a) enter any premises for the purpose of recovering the listening device;
  - (b) recover the listening device;
  - (c) use any force that is necessary and reasonable to do either of the above;
- at the following time:
- (d) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (e) if the listening device is not recovered at a time mentioned in paragraph (d)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.
- (7) Subsection (6) shall not be construed as preventing the issue of any further warrant.
- (8) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception of a communication passing over a telecommunications system controlled by Telstra Corporation Limited.

*no amendments*

## 26A Unlawful and lawful uses of tracking devices

### *Unlawful use of tracking devices*

- (1) Subject to subsection (2), it is unlawful for an officer, employee or agent of the Organisation to use a tracking device for the purpose of tracking a person or an object. It is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

Note: **Tracking device**, **track** and **object** are defined in subsection (3).

### *Lawful use of tracking device*

- (2) Despite any law of a State or Territory, an officer, employee or agent of the Organisation does not act unlawfully, by using, for the purposes of the Organisation, a tracking device for the purpose of tracking a person or an object if:
- the person, or the person using the object, consents to it being done; or
  - the officer, employee or agent of the Organisation does so in accordance with a warrant issued under section 26B or 26C.

### *Definitions*

- (3) In this section:

**apply** includes attach to or place on or in.

**object** means:

- a vehicle, aircraft, vessel or other means of transportation; or
- clothing or any other thing worn; or
- any other thing.

**track** an object or person means be aware of the movement of the object or person from place to place.

**tracking device** means a device or substance that, when applied to an object, enables a person to track the object or a person using or wearing the object.

## 26B Tracking device warrants relating to persons

### *Issue of warrant*

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

### *Test for issue of warrant*

- (2) The Minister is only to issue the warrant if he or she is satisfied that:
- a person (the **subject**) is engaged in, or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
  - the use by the Organisation of a tracking device applied to any object (a **target object**) used or worn, or likely to be used or worn, by the subject to enable the Organisation to track the subject will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Note: **Tracking device**, **track**, **object** and **apply** are defined in subsection 26A(3).

*no amendments*

*Authorisation in warrant*

- (3) The warrant:
- (a) must be signed by the Minister; and
  - (b) must authorise the Organisation, subject to any restrictions or conditions specified in the warrant, to use a tracking device applied to a target object for the purpose of tracking the subject, who must be specified in the warrant; and
  - (c) may authorise the Organisation to:
    - (i) enter any premises in which a target object is or is likely to be found, for the purpose of applying a tracking device to the target object, or using or maintaining a tracking device so applied; and
    - (ii) enter or alter a target object, for the purpose of applying, using or maintaining a tracking device; and
    - (iii) apply a tracking device to a target object; and
    - (iv) maintain a tracking device applied to a target object; and
    - (v) any other thing reasonably incidental to any of the above.

*Authorisation of entry measures*

- (4) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

*Duration of warrant*

- (5) The warrant must specify the period during which it is to remain in force. The period not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (6) Subsection (5) does not prevent the issue of any further warrant.

*Tracking device may be recovered*

- (7) If a tracking device is applied to a target object in accordance with the warrant, the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
  - (b) enter or alter the target object for the purpose of recovering the tracking device;
  - (c) recover the tracking device;
  - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.

*no amendments*

*Interpretation*

- (8) Expressions used in this section that are also used in section 26A have the same meanings as in that section.

**26C Tracking device warrants relating to objects**

*Issue of warrant*

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

*Test for issue of warrant*

- (2) The Minister is only to issue the warrant if he or she is satisfied that:
- (a) an object (the **target object**) is used or worn, or likely to be used or worn by a person (whether or not his or her identity is known) engaged in or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
  - (b) the use by the Organisation of a tracking device applied to the target object to enable the Organisation to track the target object will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Note: **Tracking device, track, object** and **apply** are defined in subsection 26A(3).

*Authorisation in warrant*

- (3) The warrant:
- (a) must be signed by the Minister; and
  - (b) must authorise the Organisation, subject to any restrictions or conditions specified in the warrant, to use a tracking device applied to the target object for the purpose of tracking the target object which must be specified in the warrant; and
  - (c) may authorise the Organisation to:
    - (i) enter any premises specified in the warrant in which the target object is, or is likely to be, found, for the purpose of applying a tracking device to the target object, or maintaining or using a tracking device so applied; and
    - (ii) enter or alter the target object, for the purpose of applying, maintaining or using a tracking device; and
    - (iii) apply a tracking device to the target object; and
    - (iv) maintain a tracking device applied to the target object; and
    - (v) any other thing reasonably incidental to any of the above.

*Authorisation of entry measures*

- (4) The warrant must:
- (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
  - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

*no amendments*

*Duration of warrant*

- (5) The warrant must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (6) Subsection (5) does not prevent the issue of any further warrant.

*Tracking device may be recovered*

- (7) If a tracking device is applied to a target object in accordance with the warrant, the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
  - (b) enter or alter the target object for the purpose of recovering the tracking device;
  - (c) recover the tracking device;
  - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.

*Interpretation*

- (8) Expressions used in this section that are also used in section 26A have the same meanings as in that section.

*no amendments*

## **27 Inspection of postal articles**

- (1) It is unlawful:
  - (a) for a person, being an officer, employee or agent of the Organisation acting in his or her capacity as such, to seek from the Australian Postal Corporation or from an employee or agent of that Corporation; or
  - (b) for that Corporation or an employee or agent of that Corporation to provide to such a person;  
access to a postal article that is in the course of the post or information concerning the contents or cover of any postal article except in pursuance of, or for the purposes of, a warrant under this section or section 27A, and it is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.
- (2) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to a person, the Minister is satisfied that:
  - (a) that person is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to postal articles posted by or on behalf of, addressed to or intended to be received by, that person, while the articles are in the course of the post, will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;  
the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that were posted by or on behalf of, or are addressed to, that person or are reasonably suspected by a person authorized to exercise the authority of the Organisation under the warrant to be intended to be received by that person, to inspect, and make copies of, or of the covers of, the articles, and to open the articles and inspect and make copies of the contents of any such article.
- (3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to an address, the Minister is satisfied that:
  - (a) some or all of the postal articles that are being, or are likely to be, sent by post to that address are or will be intended to be received by a person (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to postal articles posted to that address and intended to be received by the person referred to in paragraph (a) will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;  
the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that are addressed to that address and appear on their face to be, or are reasonably suspected by a person authorized to exercise the authority of the Organisation under the warrant to be, intended to be received by the person referred to in paragraph (a), to inspect, and make copies of, or of the covers of, the articles and to open the articles and inspect and make copies of the contents of any such article.
- (4) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 90 days, but may be revoked by the Minister at any time before the expiration of the period so specified.
- (5) Subsection (4) shall not be construed as preventing the issue of any further warrant.

*no amendments*

- (6) Where the Director-General is informed under section 32 of the issue of a warrant under this section, the Director-General must:
- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
  - (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.
- (6A) Where:
- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section; and
  - (b) the Director-General is informed under that section that the warrant has been revoked;
- the Director-General must:
- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
  - (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.
- (7) The Australian Postal Corporation shall give to a person acting in pursuance of a warrant under this section all reasonable assistance.
- (8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything in pursuance of, or for the purposes of, a warrant under this section.
- (9) Nothing in subsection (1) applies in relation to a postal article addressed to, or appearing to be intended to be received by or on behalf of, the Organisation.
- (10) In this section:
- address** means any premises or place (including a post office box or bag service) to which postal articles may be addressed.
- agent**, in relation to the Australian Postal Corporation, includes any person performing services for that Corporation otherwise than under a contract of service and an employee of such a person.

*no amendments*

## 27AA Inspection of delivery service articles

### *Unlawful access to delivery service articles*

- (1) It is unlawful for:
- (a) an officer, employee or agent of the Organisation, for the purposes of the Organisation, to seek from a delivery service provider or from an employee or agent of a delivery service provider; or
  - (b) a delivery service provider or an employee or agent of a delivery service provider to give an officer, employee or agent of the Organisation, for the purposes of the Organisation;
- access to:
- (c) an article that is being delivered by the delivery service provider; or
  - (d) information concerning the contents or cover of any such article;
- except in accordance with, or for the purposes of, a warrant under this Division. It is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

Note: **Delivery service provider, agent** and **article** are defined in subsection (12).

### *Issue of delivery services warrant*

- (2) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (3) or (6), the Minister may issue a warrant in accordance with this section.

### *Test 1 for issue of warrant*

- (3) The Minister may issue a warrant if he or she is satisfied that:
- (a) a person (the **subject**) is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to articles sent by or on behalf of, addressed to or intended to be received by, the subject while the articles are being delivered by a delivery service provider, will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

### *Authorisation in warrant*

- (4) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
  - (b) in respect of which any of the following are satisfied:
    - (i) the articles have been sent by or on behalf of the subject, who must be specified in the warrant, or addressed to the subject; or
    - (ii) the articles are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of having been so sent or addressed; or
    - (iii) the articles are intended to be received by the subject, who must be specified in the warrant, or are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of being intended to be received by the subject.

*no amendments*

*Things that may be specified for a warrant issued under subsection (3)*

- (5) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of the articles or the covers of the articles;
  - (b) opening the articles;
  - (c) inspecting and making copies of the contents of the articles;
  - (d) any other thing reasonably incidental to any of the above.

*Test 2 for issue of warrant*

- (6) The Minister may issue a warrant if he or she is satisfied that:
- (a) some or all of the articles that are being, or are likely to be, sent by a delivery service provider to an address (the **subject address**) are, or will be intended to be, received by a person (the **subject**) (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
  - (b) access by the Organisation to articles sent to, or intended to be received by, the subject while the articles are being delivered by a delivery service provider will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

*Authorisation in warrant*

- (7) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
  - (b) are addressed to the subject address, which must be specified in the warrant; and
  - (c) appear on their face to be, or are reasonably suspected by a person authorised to exercise the authority of the Organisation under the warrant to be, intended to be received by the subject.

*Things that may be specified for warrant issued under subsection (6)*

- (8) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of any of the articles or the covers of the articles;
  - (b) opening any of the articles;
  - (c) inspecting and making copies of the contents of any of the articles;
  - (d) any other thing reasonably incidental to any of the above.

*Duration of warrant*

- (9) A warrant issued under this section must specify the period during which it is to remain in force. The period must not be more than 90 days, although the Minister may revoke the warrant before the period has expired.

*Issue of further warrants not prevented*

- (10) Subsection (9) does not prevent the issue of any further warrant.

*no amendments*

*Definitions*

(11) To avoid doubt, the expression **deliver** an article includes any thing done by the deliverer, for the purpose of delivering the article, from the time when the article is given to the deliverer by the sender until it is given by the deliverer to the recipient.

(12) In this section:

**agent**, in relation to a delivery service provider, includes:

- (a) any person performing services for the delivery service provider otherwise than under a contract of service; and
- (b) an employee of the person mentioned in paragraph (a).

**article** means any object reasonably capable of being sent through the post.

**delivery service provider** means a person whose business is or includes delivering articles.

**27A Warrants for the performance of functions under paragraph 17(1)(e)**

(1) Where:

- (a) the Director-General gives a notice in writing to the Minister requesting the Minister to issue a warrant under this section in relation to premises, a person, a computer or a thing identified in the notice authorising the Organisation to do acts or things referred to in whichever of subsections 25(4) or (5), 25A(4), 26(3) or (4), 26B(3), 26C(3), 27(2) or (3) or 27AA(5) or (8) is or are specified in the notice for the purpose of obtaining foreign intelligence relating to a matter specified in the notice; and
- (b) the Minister is satisfied, on the basis of advice received from the relevant Minister, that the collection of foreign intelligence relating to that matter is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth's international affairs;

the Minister may, by warrant under his or her hand, authorise the Organisation, subject to any conditions or restrictions that are specified in the warrant, to do such of those acts or things in relation to those premises, that person, that computer or those things as the Minister considers appropriate in the circumstances and are specified in the warrant for the purpose of obtaining that intelligence.

(2) The warrant must:

- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsection (1); and
- (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

(3) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding:

- (a) in a case where the warrant authorises the doing of acts or things referred to in subsection 25(4) or (5)—28 days;
- (b) in a case where the warrant authorises the doing of acts or things referred to in subsection 25A(4), 26(3) or (4), 26B(3) or 26C(3)—6 months; or
- (c) in a case where the warrant authorises the doing of acts or things referred to in subsection 27(2) or (3) or 27AA(5) or (8)—90 days;

but may be revoked by the Minister at any time before the end of the period so specified.

*no amendments*

- (3A) If a listening device is installed in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26(3) or (4), the Organisation is authorised to do any of the following:
- (a) enter any premises for the purpose of recovering the listening device;
  - (b) recover the listening device;
  - (c) use any force that is necessary and reasonable to do either of the above;
- at the following time:
- (d) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (e) if the listening device is not recovered at a time mentioned in paragraph (d)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.
- (3B) If a tracking device is applied to a target object in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26B(3) or 26C(3), the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
  - (b) enter or alter the target object for the purpose of recovering the tracking device;
  - (c) recover the tracking device;
  - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
  - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.
- (4) Subsection (3) shall not be construed as preventing the issue of any further warrant.
- (5) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception) Act 1979*, constitute the interception of a communication passing over a telecommunications system controlled by Telstra Corporation Limited.
- (6) Where the Director-General is informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3), the Director-General must:
- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
  - (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

*no amendments*

- (6A) Where:
- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3); and
  - (b) the Director-General is informed under section 32 that the warrant has been revoked; the Director-General must:
  - (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
  - (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.
- (7) The Australian Postal Corporation shall give to a person acting pursuant to a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3) all reasonable assistance.
- (8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything pursuant to, or for the purposes of, a warrant under this section.
- (9) The Director-General shall not request the issue of a warrant under this section for the purpose of collecting information concerning an Australian citizen or a permanent resident.
- (10) The reference in subsection (1) to conditions or restrictions includes a reference to conditions or restrictions designed to minimise the obtaining by the Organisation, pursuant to a warrant issued under that subsection, of information that is not publicly available concerning Australian citizens or permanent residents, or to minimise the retention of information of that kind.

#### **27B Performance of other functions under paragraph 17(1)(e)**

If:

- (a) the Director-General gives a notice in writing to the Minister requesting the Minister to authorise the Organisation to obtain foreign intelligence in relation to a matter specified in the notice; and
- (b) the Minister is satisfied, on the basis of advice received from the relevant Minister, that the collection of foreign intelligence relating to that matter is important in relation to the defence of the Commonwealth or to the conduct of the Commonwealth's international affairs;

the Minister may, by writing signed by the Minister, authorise the Organisation to obtain the intelligence in relation to the matter.

#### **28 Request for warrant to specify grounds**

A request by the Director-General for the issue of a warrant under this Division shall specify the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued and (where appropriate) the grounds on which the Director-General suspects a person of being engaged in, or of being likely to engage in, activities prejudicial to security.

*no amendments*

## **29 Issue of certain warrants by Director-General in emergency**

- (1) Where:
- (a) the Director-General has forwarded or made a request to the Minister for the issue of a warrant under section 25, 25A, 26, 26B, 26C, 27 or 27AA;
  - (b) the Minister has not, to the knowledge of the Director-General, issued, or refused to issue, a warrant as a result of the request and has not, within the preceding period of 3 months, refused to issue a substantially similar warrant;
  - (c) the Director-General has not, within the preceding period of 3 months, issued a substantially similar warrant; and
  - (d) the Director-General is satisfied:
    - (i) that the facts of the case would justify the issue of a warrant by the Minister; and
    - (ii) that, if the action to be authorized by the warrant does not commence before a warrant can be issued and made available by the Minister, security will be, or is likely to be, seriously prejudiced;the Director-General may issue a warrant signed by the Director-General of the kind that could be issued by the Minister in pursuance of the request.
- (2) A warrant under this section shall specify the period for which it is to remain in force, being a period that does not exceed 48 hours, but may be revoked by the Minister at any time before the expiration of the period so specified.
- (3) Where the Director-General issues a warrant under this section, the Director-General shall forthwith furnish to the Minister:
- (a) a copy of the warrant; and
  - (b) a statement of the grounds on which the Director-General is satisfied as to the matter referred to in subparagraph (1)(d)(ii).

## **30 Discontinuance of action before expiration of warrant**

Where, before a warrant under this Division ceases to be in force, the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist, the Director-General shall forthwith inform the Minister accordingly and take such steps as are necessary to ensure that action in pursuance of the warrant (other than the recovery of a listening device or tracking device) is discontinued.

## **31 Certain records obtained under a warrant to be destroyed**

Where:

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

the Director-General shall cause the record or copy to be destroyed.

*no amendments*

### **32 Certain action in relation to requests and warrants**

- (1) Where the Director-General makes a request, otherwise than in writing, for the issue of a warrant under this Division, the Director-General shall forthwith forward to the Minister a request in writing for the issue of a warrant.
- (2) Where the Minister issues or revokes a warrant under this Division, the Minister shall:
  - (a) cause the Director-General to be informed forthwith of the issue of the warrant or of the revocation, as the case may be; and
  - (b) cause the warrant or the instrument of revocation, as the case may be, to be forwarded as soon as practicable to the Director-General.
- (3) The Minister shall record on each request in writing for the issue of a warrant under this Division received by the Minister from the Director-General the Minister's decision with respect to the request and shall cause the request to be returned to the Director-General.
- (4) The Director-General shall cause to be retained in the records of the Organisation all warrants issued by the Director-General under this Division and all warrants and instruments of revocation received by the Director-General from, and all requests and other documents returned to the Director-General by, the Minister under this Division.

### **34 Director-General to report to Minister**

The Director-General shall furnish to the Minister in respect of each warrant issued under this Division a report in writing on the extent to which the action taken under the warrant has assisted the Organisation in carrying out its functions.

[24] At the end of Part III  
[S.3] Add:

### Division 3—Special powers relating to terrorism offences Subdivision A—Preliminary

#### 34A Definitions

In this Division:

**Federal Magistrate** has the same meaning as in the *Federal Magistrates Act 1999*.

**issuing authority** means:

- (a) a person appointed under section 34AB; or
- (b) a member of a class of persons declared by regulations made for the purposes of that section to be issuing authorities.

[S.4] **lawyer** means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

**police officer** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

**prescribed authority** means a person appointed under section 34B.

**record** has the same meaning as in Division 2.

[S.5] **superior court** means:  
(a) the High Court; or  
(b) the Federal Court of Australia; or  
(c) the Family Court of Australia; or  
(d) the Supreme Court of a State or Territory; or  
(e) a District Court (or equivalent) of a State or Territory.

[S.6] *no amendment*

### Division 3—Special Powers relating to terrorism offences

#### Subdivision A—Preliminary

#### 34A Definitions

In this Division:

**Federal Magistrate** has the same meaning as in the *Federal Magistrates Act 1999*.

**issuing authority** means:

- (a) a person appointed under section 34AB; or
- (b) a member of a class of persons declared by regulations made for the purposes of that section to be issuing authorities.

**lawyer** means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

**police officer** means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

**prescribed authority** means a person appointed under section 34B.

**record** has the same meaning as in Division 2.

**superior court** means:

- (a) the High Court; or
- (b) the Federal Court of Australia; or
- (c) the Family Court of Australia; or
- (d) the Supreme Court of a State or Territory; or
- (e) a District Court (or equivalent) of a State or Territory.

[24] **34AB Issuing authorities**

- (1) The Minister may, by writing, appoint as an issuing authority a person who is:
- (a) a Federal Magistrate; or
  - (b) a Judge.
- (2) The Minister must not appoint a person unless:
- (a) the person has, by writing, consented to being appointed; and
  - (b) the consent is in force.
- (3) The regulations may declare that persons in a specified class are issuing authorities.
- (4) The regulations may specify a class of persons partly by reference to the facts that the persons have consented to being issuing authorities and their consents are in force.

[24] **34B Prescribed authorities**

- [S.7] (1) The Minister may, by writing, appoint as a prescribed authority a person who has served as a judge in one or more superior courts for a period of 5 years and no longer holds a commission as a judge of a superior court.
- (2) If the Minister is of the view that there is an insufficient number of people to act as a prescribed authority under subsection (1), the Minister may, by writing, appoint as a prescribed authority a person who is currently serving as a judge in a State or Territory Supreme Court or District Court (or an equivalent) and has done so for a period of at least 5 years.
- (3) If the Minister is of the view that there are insufficient persons available under subsections (1) and (2), the Minister may, by writing, appoint as a prescribed authority a person who holds an appointment to the Administrative Appeals Tribunal as President or Deputy President and who is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.
- [S.8] (4) The Minister must not appoint a person under subsection (1), (2) or (3) unless:
- [S.9] (a) the person has by writing consented to being appointed; and
- (b) the consent is in force.

[S.10]

[S.11] *no amendments*

[S.12]

**34AB Issuing Authorities**

- (1) The Minister may, by writing, appoint as an issuing authority a person who is:
- (a) a Federal Magistrate; or
  - (b) a Judge.
- (2) The Minister must not appoint a person unless:
- (a) the person has, by writing, consented to being appointed; and
  - (b) the consent is in force.
- (3) The regulations may declare that persons in a specified class are issuing authorities.
- (4) The regulations may specify a class of persons partly by reference to the facts that the persons have consented to being issuing authorities and their consents are in force.

**34B Prescribed authorities**

- (1) The Minister may, by writing, appoint as a prescribed authority a person who has served as a judge in one or more superior courts for a period of 5 years and no longer holds a commission as a judge of a superior court.
- (2) If the Minister is of the view that there is an insufficient number of people to act as a prescribed authority under subsection (1), the Minister may, by writing, appoint as a prescribed authority a person who is currently serving as a judge in a State or Territory Supreme Court or District Court (or an equivalent) and has done so for a period of at least 5 years.
- (3) If the Minister is of the view that there are insufficient persons available under subsections (1) and (2), the Minister may, by writing, appoint as a prescribed authority a person who holds an appointment to the Administrative Appeals Tribunal as President or Deputy President and who is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.
- (4) The Minister must not appoint a person under subsection (1), (2) or (3) unless:
- (a) the person has by writing consented to being appointed; and
  - (b) the consent is in force.

[24] **Subdivision B—Questioning, detention etc.**

**34C Requesting warrants**

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

(1A) To avoid doubt, this section operates in relation to a request for the issue of a warrant under section 34D in relation to a person, even if such a request has previously been made in relation to the person.

[S.14] (2) In seeking the Minister's consent, the Director-General must give the Minister a draft request  
[S.15] that includes:

- (a) a draft of the warrant to be requested; and
- (b) a statement of the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued; and
- (c) a statement of the particulars and outcomes of all previous requests for the issue of a warrant under section 34D relating to the person; and
- (d) if one or more warrants were issued under section 34D as a result of the previous requests – a statement of:
  - (i) the period for which the person has been questioned under each of those warrants before the draft request is given to the Minister; and
  - (ii) if any of those warrants authorised the detention of the person – the period for which the person has been detained in connection with each such warrant before the draft request is given to the Minister.

**Subdivision B—Questioning, detention etc.**

**34C Requesting warrants**

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

(1A) To avoid doubt, this section operates in relation to a request for the issue of a warrant under section 34D in relation to a person, even if such a request has previously been made in relation to the person.

(2) In seeking the Minister's consent, the Director-General must give the Minister a draft request that includes:

- (a) a draft of the warrant to be requested; and
- (b) a statement of the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued; and
- (c) a statement of the particulars and outcomes of all previous requests for the issue of a warrant under section 34D relating to the person; and
- (d) if one or more warrants were issued under section 34D as a result of the previous requests – a statement of:
  - (i) the period for which the person has been questioned under each of those warrants before the draft request is given to the Minister; and
  - (ii) if any of those warrants authorised the detention of the person – the period for which the person has been detained in connection with each such warrant before the draft request is given to the Minister.

- [S.13] (3) The Minister may, by writing, consent to the making of the request, but only if the Minister is  
[H.1] satisfied:
- (a) that there are reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and
  - (b) that relying on other methods of collecting that intelligence would be ineffective; and
  - (ba) that all of the acts (the **adopting acts**) described in subsection (3A) in relation to a written statement of procedures to be followed in the exercise of authority under warrants issued under section 34D have been done; and
  - (c) if the warrant to be requested is to authorise the person to be taken into custody immediately, brought before a prescribed authority immediately for questioning and detained—that there are reasonable grounds for believing that, if the person is not immediately taken into custody and detained, the person:
    - (i) may alert a person involved in a terrorism offence that the offence is being investigated; or
    - (ii) may not appear before the prescribed authority; or
    - (iii) may destroy, damage or alter a record or thing the person may be requested in accordance with the warrant to produce.

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

- (3A) The adopting acts in relation to a written statement of procedures to be followed in the exercise of authority under warrants issued under section 34D are as follows:
- (a) consultation of the following persons by the Director-General about making such a statement:
    - (i) the Inspector-General of Intelligence and Security;
    - (ii) the Commissioner of Police appointed under the *Australian Federal Police Act 1979*;
  - (b) making of the statement by the Director-General after that consultation;
  - (c) approval of the statement by the Minister;
  - (d) presentation of the statement to each House of the Parliament;
  - (e) briefing (in writing or orally) the Parliamentary Joint Committee on ASIO, ASIS and DSD (whether before or after presentation of the statement to each House of the Parliament).

- (3) The Minister may, by writing, consent to the making of the request, but only if the Minister is satisfied:
- (a) that there are reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and
  - (b) that relying on other methods of collecting that intelligence would be ineffective; and
  - (ba) that all of the acts (the **adopting acts**) described in subsection (3A) in relation to a written statement of procedures to be followed in the exercise of authority under warrants issued under section 34D have been done; and
  - (c) if the warrant to be requested is to authorise the person to be taken into custody immediately, brought before a prescribed authority immediately for questioning and detained—that there are reasonable grounds for believing that, if the person is not immediately taken into custody and detained, the person:
    - (i) may alert a person involved in a terrorism offence that the offence is being investigated; or
    - (ii) may not appear before the prescribed authority; or
    - (iii) may destroy, damage or alter a record or thing the person may be requested in accordance with the warrant to produce.

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

- (3A) The adopting acts in relation to a written statement of procedures to be followed in the exercise of authority under warrants issued under section 34D are as follows:
- (a) consultation of the following persons by the Director-General about making such a statement:
    - (i) the Inspector-General of Intelligence and Security;
    - (ii) the Commissioner of Police appointed under the *Australian Federal Police Act 1979*;
  - (b) making of the statement by the Director-General after that consultation;
  - (c) approval of the statement by the Minister;
  - (d) presentation of the statement to each House of the Parliament;
  - (e) briefing (in writing or orally) the Parliamentary Joint Committee on ASIO, ASIS and DSD (whether before or after presentation of the statement to each House of the Parliament).

- [S.17] (3B) In consenting to the making of a request to issue a warrant authorising the person to be taken into custody immediately, brought before a prescribed authority immediately for questioning and detained, the Minister must ensure that the warrant to be requested is to permit the person to contact a single lawyer of the person's choice (subject to section 34TA) at any time that:
- (a) is a time while the person is in detention with the warrant; and
  - (b) is after:
    - (i) the person has been brought before a prescribed authority for questioning; and
    - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
    - (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34TA that the person be prevented from contracting the lawyer.
- [S.18] *no sub-s (3C)*
- [S.19] (3D) If, before the Director-General seeks the Minister's consent to the request (the **proposed request**), the person has been detained under this Division in connection with one or more warrants (the **earlier warrants**) issued under section 34D, and the proposed request is for a warrant meeting the requirement in paragraph 34D(2)(b):
- (a) the Minister must take account of those facts in deciding whether to consent; and
  - (b) the Minister may consent only if the Minister is satisfied that the issue of the warrant to be requested is justified by information that is additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the proposed request.
- This subsection has effect in addition to subsection (3).
- (4) If the Minister has consented under subsection (3), the Director-General may request the warrant by giving an issuing authority:
- (a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
  - (b) a copy of the Minister's consent.
- [S.20] *no amendments*

- (3B) In consenting to the making of a request to issue a warrant authorising the person to be taken into custody immediately, brought before a prescribed authority immediately for questioning and detained, the Minister must ensure that the warrant to be requested is to permit the person to contact a single lawyer of the person's choice (subject to section 34TA) at any time that:
- (a) is a time while the person is in detention with the warrant; and
  - (b) is after:
    - (i) the person has been brought before a prescribed authority for questioning; and
    - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
    - (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34TA that the person be prevented from contracting the lawyer.
- (3D) If, before the Director-General seeks the Minister's consent to the request (the **proposed request**), the person has been detained under this Division in connection with one or more warrants (the **earlier warrants**) issued under section 34D, and the proposed request is for a warrant meeting the requirement in paragraph 34D(2)(b):
- (a) the Minister must take account of those facts in deciding whether to consent; and
  - (b) the Minister may consent only if the Minister is satisfied that the issue of the warrant to be requested is justified by information that is additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the proposed request.
- This subsection has effect in addition to subsection (3).
- (4) If the Minister has consented under subsection (3), the Director-General may request the warrant by giving an issuing authority:
- (a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
  - (b) a copy of the Minister's consent.

[24] **34D Warrants for questioning etc.**

- [S.21] (1) An issuing authority may issue a warrant under this section relating to a person, but only if:
- [S.22] (a) the Director-General has requested it in accordance with subsection 34C(4); and
- [H.2] (b) the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

- [S.24] (1A) If the person has already been detained under this Division in connection with one or more warrants (the **earlier warrants**) issued under this section, and the warrant requested is to meet the requirement in paragraph (2)(b):
- (a) the issuing authority must take account of those facts in deciding whether to issue the warrant requested; and
- (b) the issuing authority may issue the warrant requested only if the authority is satisfied that:
- (i) the issue of that warrant is justified by information additional to or materially different from that known to the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the request for the issue of the warrant requested; and
- (ii) the person is not being detained under this Division in connection with one of the earlier warrants.

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

- [24] (2) The warrant must, in the same terms as the draft warrant given to the issuing authority as part
- [S.25] of the request, either:
- (a) require a specified person to appear before a prescribed authority for questioning under the warrant immediately after the person is notified of the issue of the warrant, or at a time specified in the warrant; or
- (b) do both of the following:
- (i) authorise a specified person to be taken into custody immediately by a police officer, brought before a prescribed authority immediately for questioning under the warrant and detained under arrangements made by a police officer for the period (the **questioning period**) described in subsection(3);
- (ii) permit the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant.

- [S.26] (3) The questioning period start 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 (5)(a) to make of the person;
- (b) section 34HB 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.

**34D Warrants for questioning etc.**

- (1) An issuing authority may issue a warrant under this section relating to a person, but only if:
- (a) the Director-General has requested it in accordance with subsection 34C(4); and
- (b) the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

- (1A) If the person has already been detained under this Division in connection with one or more warrants (the **earlier warrants**) issued under this section, and the warrant requested is to meet the requirement in paragraph (2)(b):
- (a) the issuing authority must take account of those facts in deciding whether to issue the warrant requested; and
- (b) the issuing authority may issue the warrant requested only if the authority is satisfied that:
- (i) the issue of that warrant is justified by information additional to or materially different from that known to the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the request for the issue of the warrant requested; and
- (ii) the person is not being detained under this Division in connection with one of the earlier warrants.

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

- (2) The warrant must, in the same terms as the draft warrant given to the issuing authority as part of the request, either:
- (a) require a specified person to appear before a prescribed authority for questioning under the warrant immediately after the person is notified of the issue of the warrant, or at a time specified in the warrant; or
- (b) do both of the following:
- (i) authorise a specified person to be taken into custody immediately by a police officer, brought before a prescribed authority immediately for questioning under the warrant and detained under arrangements made by a police officer for the period (the **questioning period**) described in subsection(3);
- (ii) permit the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant.

- (3) The questioning period start 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 (5)(a) to make of the person;
- (b) section 34HB 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.

- [24] (4) 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(2) of the *Acts Interpretation Act 1901*.

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

Note 3: A warrant authorising the person to be taken into custody and detained must permit the person to contact a single lawyer of the person's choice, so the warrant must identify such a lawyer.

- [S.29] (4A) The warrant may specify times when the person is permitted to contact someone identified as a lawyer of the person's choice by reference to the fact that the times are:

- (a) while the person is in detention in connection with the warrant; and
- (b) after:
  - (i) the person has been brought before a prescribed authority for questioning; and
  - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
  - (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34TA that the person be prevented from contacting the lawyer.

- [24] (5) 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.

- (6) Also, the warrant must:

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

- (4) 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(2) of the *Acts Interpretation Act 1901*.

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

Note 3: A warrant authorising the person to be taken into custody and detained must permit the person to contact a single lawyer of the person's choice, so the warrant must identify such a lawyer.

- (4A) The warrant may specify times when the person is permitted to contact someone identified as a lawyer of the person's choice by reference to the fact that the times are:

- (a) while the person is in detention in connection with the warrant; and
- (b) after:
  - (i) the person has been brought before a prescribed authority for questioning; and
  - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
  - (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34TA that the person be prevented from contacting the lawyer.

- (5) 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.

- (6) Also, the warrant must:

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

[24] **34DA Person taken into custody under warrant to be immediately brought before prescribed authority**

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

**34E Prescribed authority must explain warrant**

(1) When the person first appears before a prescribed authority for questioning under the warrant, the prescribed authority must inform the person of the following:

- (a) whether the warrant authorises detention of the person by a police officer and, if it does, the period for which the warrant authorises detention of the person;
- (b) what the warrant authorises the Organisation to do;
- (c) the effect of section 34G (including the fact that the section creates offences);
- (d) the period for which the warrant is in force;
- (e) the person's right to make a complaint orally or in writing:
  - (i) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986* in relation to the Organisation; or
  - (ii) to the Ombudsman under the *Complaints (Australian Federal Police) Act 1981* in relation to the Australian Federal Police;
- (f) the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant;
- (g) whether there is any limit on the person contacting others and, if the warrant permits the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant, who the identified persons are and what the specified times are.

(2) To avoid doubt, subsection (1) does not apply to a prescribed authority if the person has previously appeared before another prescribed authority for questioning under the warrant.

(2A) The prescribed authority before whom the person appears for questioning must inform the person of the role of the prescribed authority, and the reason for the presence of each other person who is present at any time during the questioning. However:

- (a) the prescribed authority must not name any person except with the consent of the person to be named; and
- (b) the obligation to inform the person being questioned about a particular person's reason for presence need only be complied with once (even if that particular person subsequently returns to the questioning).

(3) At least once in every 24-hour period during which questioning of the person under the warrant occurs, the prescribed authority before whom the person appears for questioning must inform the person of the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant.

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

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

**34E Prescribed authority must explain warrant**

(1) When the person first appears before a prescribed authority for questioning under the warrant, the prescribed authority must inform the person of the following:

- (a) whether the warrant authorises detention of the person by a police officer and, if it does, the period for which the warrant authorises detention of the person;
- (b) what the warrant authorises the Organisation to do;
- (c) the effect of section 34G (including the fact that the section creates offences);
- (d) the period for which the warrant is in force;
- (e) the person's right to make a complaint orally or in writing:
  - (i) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986* in relation to the Organisation; or
  - (ii) to the Ombudsman under the *Complaints (Australian Federal Police) Act 1981* in relation to the Australian Federal Police;
- (f) the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant;
- (g) whether there is any limit on the person contacting others and, if the warrant permits the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant, who the identified persons are and what the specified times are.

(2) To avoid doubt, subsection (1) does not apply to a prescribed authority if the person has previously appeared before another prescribed authority for questioning under the warrant.

(2A) The prescribed authority before whom the person appears for questioning must inform the person of the role of the prescribed authority, and the reason for the presence of each other person who is present at any time during the questioning. However:

- (a) the prescribed authority must not name any person except with the consent of the person to be named; and
- (b) the obligation to inform the person being questioned about a particular person's reason for presence need only be complied with once (even if that particular person subsequently returns to the questioning).

(3) At least once in every 24-hour period during which questioning of the person under the warrant occurs, the prescribed authority before whom the person appears for questioning must inform the person of the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant.

[24] **34F Detention of persons**

[S.31] *Directions relating to detention or further appearance*

(1) At any time when a person is before a prescribed authority for questioning under a warrant, the authority may give any of the following directions:

- (a) a direction to detain the person;
- (b) a direction for the further detention of the person;
- (c) a direction about any arrangements for the person's detention;
- (d) a direction permitting the person to contact an identified person (including someone identified by reference to the fact that he or she has a particular legal or familial relationship with the person) or any person;
- (e) a direction for the person's further appearance before the prescribed authority for questioning under the warrant;
- (f) a direction that the person be released from detention.

(2) The prescribed authority is only to give a direction that:

- (a) is consistent with the warrant; or
- (b) has been approved in writing by the Minister.

However, the prescribed authority may give a direction that is not covered by paragraph (a) or (b) if he or she has been informed under section 34HA of a concern of the Inspector-General of Intelligence and Security and is satisfied that giving the direction is necessary to address the concern satisfactorily.

(3) The prescribed authority is only to give a direction described in paragraph (1)(a) or (b) if he or she is satisfied that there are reasonable grounds for believing that, if the person is not detained, the person:

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

[H.3] (4) A direction under subsection (1) must not result in:

- (a) a person being detained after the end of the questioning period described in section 34D for the warrant; or
- (b) a person's detention being arranged by a person who is not a police officer.

[24] *Giving effect to directions*

(5) Directions given by a prescribed authority have effect, and may be implemented or enforced, according to their terms.

(6) A police officer may take a person into custody and bring him or her before a prescribed authority for questioning under a warrant issued under section 34D if the person fails to appear before a prescribed authority as required by the warrant or a direction given by a prescribed authority under this section.

**34F Detention of persons**

*Directions relating to detention or further appearance*

(1) At any time when a person is before a prescribed authority for questioning under a warrant, the authority may give any of the following directions:

- (a) a direction to detain the person;
- (b) a direction for the further detention of the person;
- (c) a direction about any arrangements for the person's detention;
- (d) a direction permitting the person to contact an identified person (including someone identified by reference to the fact that he or she has a particular legal or familial relationship with the person) or any person;
- (e) a direction for the person's further appearance before the prescribed authority for questioning under the warrant;
- (f) a direction that the person be released from detention.

(2) The prescribed authority is only to give a direction that:

- (a) is consistent with the warrant; or
- (b) has been approved in writing by the Minister.

However, the prescribed authority may give a direction that is not covered by paragraph (a) or (b) if he or she has been informed under section 34HA of a concern of the Inspector-General of Intelligence and Security and is satisfied that giving the direction is necessary to address the concern satisfactorily.

(3) The prescribed authority is only to give a direction described in paragraph (1)(a) or (b) if he or she is satisfied that there are reasonable grounds for believing that, if the person is not detained, the person:

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

(4) A direction under subsection (1) must not result in:

- (a) a person being detained after the end of the questioning period described in section 34D for the warrant; or
- (b) a person's detention being arranged by a person who is not a police officer.

*Giving effect to directions*

(5) Directions given by a prescribed authority have effect, and may be implemented or enforced, according to their terms.

(6) A police officer may take a person into custody and bring him or her before a prescribed authority for questioning under a warrant issued under section 34D if the person fails to appear before a prescribed authority as required by the warrant or a direction given by a prescribed authority under this section.

[24] *Direction has no effect on further warrant*

(7) This section does not prevent any of the following occurring in relation to a person who has been released after having been detained under this Division in connection with a warrant issued under section 34D:

- (a) an issuing authority issuing a further warrant under that section;
- (b) the person being detained under this Division in connection with the further warrant.

*Communications while in custody or detention*

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

(9) However:

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

Note: The sections mentioned in paragraph (9)(b) give the person an entitlement to facilities for making a written complaint.

*Direction has no effect on further warrant*

(7) This section does not prevent any of the following occurring in relation to a person who has been released after having been detained under this Division in connection with a warrant issued under section 34D:

- (a) an issuing authority issuing a further warrant under that section;
- (b) the person being detained under this Division in connection with the further warrant.

*Communications while in custody or detention*

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

(9) However:

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

Note: The sections mentioned in paragraph (9)(b) give the person an entitlement to facilities for making a written complaint.

[24] **34G Giving information and producing things etc.**

(1) A person must appear before a prescribed authority for questioning, as required by a warrant issued under section 34D or a direction given under section 34F.

Penalty: Imprisonment for 5 years.

(2) Strict liability applies to the circumstance of an offence against subsection (1) that:

- (a) the warrant was issued under section 34D; or
- (b) the direction was given under section 34F.

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

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

Penalty: Imprisonment for 5 years.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) If:

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

the person is guilty of an offence.

Penalty: Imprisonment for 5 years.

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

Penalty: Imprisonment for 5 years.

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

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

(8) For the purposes of subsections (3) and (6), the person may not fail:

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

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

**34G Giving information and producing things etc.**

(1) A person must appear before a prescribed authority for questioning, as required by a warrant issued under section 34D or a direction given under section 34F.

Penalty: Imprisonment for 5 years.

(2) Strict liability applies to the circumstance of an offence against subsection (1) that:

- (a) the warrant was issued under section 34D; or
- (b) the direction was given under section 34F.

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

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

Penalty: Imprisonment for 5 years.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

(5) If:

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

the person is guilty of an offence.

Penalty: Imprisonment for 5 years.

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

Penalty: Imprisonment for 5 years.

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

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

(8) For the purposes of subsections (3) and (6), the person may not fail:

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

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

- [24] (9) However, the following are not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against this section:
- (a) anything said by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information;
  - (b) the production of a record or thing by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to produce a record or thing.

**34H Interpreter provided at request of prescribed authority**

(1) This section applies if the prescribed authority before whom a person first appears for questioning under a warrant believes on reasonable grounds that the person is unable, because of inadequate knowledge of the English language or a physical disability, to communicate with reasonable fluency in that language.

(2) A person exercising authority under the warrant must arrange for the presence of an interpreter.

(3) The prescribed authority must defer informing under section 34E the person to be questioned under the warrant until the interpreter is present.

(4) A person exercising authority under the warrant must defer the questioning under the warrant until the interpreter is present.

**34HAA Interpreter provided at request of person being questioned**

(1) This section applies if a person appearing before a prescribed authority under a warrant requests the presence of an interpreter.

(2) A person exercising authority under the warrant must arrange for the presence of an interpreter, unless the prescribed authority believes on reasonable grounds that the person who made the request has an adequate knowledge of the English language, or is physically able, to communicate with reasonable fluency in that language.

(3) If questioning under the warrant has not commenced and the prescribed authority determines that an interpreter is to be present:

- (a) the prescribed authority must defer informing under section 34E the person to be questioned under the warrant until the interpreter is present; and
- (b) a person exercising authority under the warrant must defer the questioning until the interpreter is present.

(4) If questioning under the warrant commences before the person being questioned requests the presence of an interpreter and the prescribed authority determines that an interpreter is to be present:

- (a) a person exercising authority under the warrant must defer any further questioning until the interpreter is present; and
- (b) when the interpreter is present, the prescribed authority must again inform the person of anything of which he or she was previously informed under section 34E.

- (9) However, the following are not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against this section:
- (a) anything said by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information;
  - (b) the production of a record or thing by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to produce a record or thing.

**34H Interpreter provided at request of prescribed authority**

(1) This section applies if the prescribed authority before whom a person first appears for questioning under a warrant believes on reasonable grounds that the person is unable, because of inadequate knowledge of the English language or a physical disability, to communicate with reasonable fluency in that language.

(2) A person exercising authority under the warrant must arrange for the presence of an interpreter.

(3) The prescribed authority must defer informing under section 34E the person to be questioned under the warrant until the interpreter is present.

(4) A person exercising authority under the warrant must defer the questioning under the warrant until the interpreter is present.

**34HAA Interpreter provided at request of person being questioned**

(1) This section applies if a person appearing before a prescribed authority under a warrant requests the presence of an interpreter.

(2) A person exercising authority under the warrant must arrange for the presence of an interpreter, unless the prescribed authority believes on reasonable grounds that the person who made the request has an adequate knowledge of the English language, or is physically able, to communicate with reasonable fluency in that language.

(3) If questioning under the warrant has not commenced and the prescribed authority determines that an interpreter is to be present:

- (a) the prescribed authority must defer informing under section 34E the person to be questioned under the warrant until the interpreter is present; and
- (b) a person exercising authority under the warrant must defer the questioning until the interpreter is present.

(4) If questioning under the warrant commences before the person being questioned requests the presence of an interpreter and the prescribed authority determines that an interpreter is to be present:

- (a) a person exercising authority under the warrant must defer any further questioning until the interpreter is present; and
- (b) when the interpreter is present, the prescribed authority must again inform the person of anything of which he or she was previously informed under section 34E.

[24] **34HAB Inspector-General of Intelligence and Security may be present at questioning or taking into custody**

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

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

(1) This section applies if the Inspector-General of Intelligence and Security is concerned about impropriety or illegality in connection with the exercise or purported exercise of powers under this Division in relation to a person specified in a warrant issued under section 34D.

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

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

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

(4) The prescribed authority may give a direction deferring:

- (a) questioning of the person under the warrant; or
- (b) the exercise of another power under this Division that is specified in the direction;

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

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

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

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

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[S.35] **34HB End of questioning under warrant**

(1) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 8 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 8 hours permits the questioning to continue for the purposes of this subsection.

(2) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 16 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 16 hours permits the questioning to continue for the purposes of this subsection.

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

- (a) the person begin questioned; and
- (b) a legal adviser to that person; and
- (c) a parent of that person; and
- (d) a guardian of that person; and
- (e) another person who meets the requirements of subsection 34NA(7) in relation to that person; and
- (f) anyone the person being questioned is permitted by a direction under section 34F to contact.

(4) The prescribed authority may permit the questioning to continue for the purposes of subsection (1) or (2), but only if he or she is satisfied that:

- (a) there are reasonable grounds for believing that permitting the continuation will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and
- (b) persons exercising authority under the warrant conducted the questioning of the person properly and without delay in the period mentioned in that subsection.

(5) The prescribed authority may revoke the permission. Revocation of the permission does not affect the legality of anything done in relation to the person under the warrant before the revocation.

(6) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 24 hours.

**34HB End of questioning under warrant**

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(2) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 16 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 16 hours permits the questioning to continue for the purposes of this subsection.

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

- (a) the person begin questioned; and
- (b) a legal adviser to that person; and
- (c) a parent of that person; and
- (d) a guardian of that person; and
- (e) another person who meets the requirements of subsection 34NA(7) in relation to that person; and
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(6) Anyone exercising authority under a warrant issued under section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 24 hours.

[S.35] *Release from detention when further questioning is prohibited*

(7) If the warrant meets the requirement in paragraph 34D(2)(b), the prescribed authority must, at whichever one of the following times is relevant, direct under paragraph 34F(1)(f) that the person be released immediately from detention:

- (a) at the end of the period mentioned in subsection (1) or (2), if the prescribed authority does not permit, for the purposes of that subsection, the continuation of questioning;
- (b) immediately after revoking the permission, if the permission was given but later revoked;
- (c) at the end of the period described in subsection (6).

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

[S.36] **34HC Person may not be detained for more than 168 hours continuously**

A person may not be detained under this Division for a continuous period of more than 168 hours.

*Release from detention when further questioning is prohibited*

(7) If the warrant meets the requirement in paragraph 34D(2)(b), the prescribed authority must, at whichever one of the following times is relevant, direct under paragraph 34F(1)(f) that the person be released immediately from detention:

- (a) at the end of the period mentioned in subsection (1) or (2), if the prescribed authority does not permit, for the purposes of that subsection, the continuation of questioning;
- (b) immediately after revoking the permission, if the permission was given but later revoked;
- (c) at the end of the period described in subsection (6).

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

**34HC Person may not be detained for more than 168 hours continuously**

A person may not be detained under this Division for a continuous period of more than 168 hours.

[24] **Subdivision C—Miscellaneous**

**34J Humane treatment of person specified in warrant**

(1) This section applies to a person specified in a warrant issued under section 34D while anything is being done in relation to the person under the warrant or a direction given under section 34F.

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

[S.38] **34JA Entering premises to take person into custody**

(1) If:

(a) either a warrant issued under section 34D or subsection 34F(6) authorises a person to be taken into custody; and

(b) a police officer believes on reasonable grounds that the person is on any premises; the officer may enter the premises, using such force as is necessary and reasonable in the circumstances, at any time of the day or night for the purpose of searching the premises for the person or taking the person into custody.

(2) However, if subsection 34F(6) authorises a person to be taken into custody, a police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:

(a) commencing at 9pm on a day; and

(b) ending at 6am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody under subsection 34F(6), either at the dwelling house or elsewhere, at another time.

(3) In this section:

**dwelling house** includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

**premises** includes any land, place, vehicle, vessel or aircraft.

**Subdivision C—Miscellaneous**

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**dwelling house** includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

**premises** includes any land, place, vehicle, vessel or aircraft.

[S.38] **34JB Use of force in taking person into custody and detaining person**

(1) A police officer may use such force as is necessary and reasonable in:

- (a) taking a person into custody under:
  - (i) a warrant issued under section 34D; or
  - (ii) subsection 34F(6); or
- (b) preventing the escape of a person from such custody; or
- (c) bringing a person before a prescribed authority for questioning under such a warrant;  
or
- (d) detaining a person in connection with such a warrant.

(2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.

(3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:

- (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or
- (b) if the person is attempting to escape being taken into custody by fleeing – do such a thing unless:
  - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and
  - (ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

[24] **34K Video recording of procedures**

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

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

(2) The Director-General must ensure that, if practicable, video recordings are made of any complaint by a person specified in a warrant issued under section 34D when he or she is not appearing before a prescribed authority for questioning under the warrant.

**34JB Use of force in taking person into custody and detaining person**

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- (c) bringing a person before a prescribed authority for questioning under such a warrant;  
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[24] **34L Power to conduct an ordinary search or a strip search**

- (1) If a person has been detained under this Division, a police officer may:
- (a) conduct an ordinary search of the person; or
  - (b) subject to this section, conduct a strip search of the person.

(1A) An ordinary search of the person under this section must, if practicable, be conducted by a police officer of the same sex as the person being searched.

(2) A strip search may be conducted if:

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

(3) The prescribed authority's approval may be obtained by telephone, fax or other electronic means.

(4) A strip search may also be conducted if the person consents in writing.

(5) A medical practitioner may be present when a strip search is conducted, and he or she may assist in the search.

(6) If a prescribed authority gives or refuses to give an approval for the purposes of paragraph (2)(c), the prescribed authority must make a record of the decision and of the reasons for the decision.

(7) Such force as is necessary and reasonable in the circumstances may be used to conduct a strip search under subsection (1).

(8) Any item:

- (a) of a kind mentioned in paragraph (2)(a); or
- (b) that is relevant to collection of intelligence that is important in relation to a terrorism offence;

that is found during a search under this section may be seized.

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that is found during a search under this section may be seized.

[24] **34M Rules for conduct of strip search**

[S.39] (1) A strip search under section 34L:

- [S.40] (a) must be conducted in a private area; and  
(b) must be conducted by a police officer who is of the same sex as the person being searched; and  
(c) subject to subsections (3) and (3A), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and  
(d) must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and  
(e) must not be conducted on a person who is under 16; and  
(f) if, in a prescribed authority's opinion, the person being searched is at least 16 but under 18, or is incapable of managing his or her affairs:  
(i) may only be conducted if a prescribed authority orders that it be conducted; and  
(ii) must be conducted in the presence of a parent or guardian of the person or, if that is not acceptable to the person, in the presence of someone else who can represent the person's interests and who, as far as is practicable in the circumstances, is acceptable to the person; and  
(g) must not involve a search of a person's body cavities; and  
(h) must not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has a seizable item on his or her person; and  
(i) must not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to determine whether the person has a seizable item on his or her person.

(2) For the purposes of subparagraph (1)(f)(ii), none of the following can represent the person's interests:

- (a) a police officer;
- (b) the Director-General;
- (c) an officer or employee of the Organisation;
- (d) a person approved under subsection 24(1).

(3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.

(3A) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.

(4) If any of a person's garments are seized as a result of a strip search, the person must be provided with adequate clothing.

**34M Rules for conduct of strip search**

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- (a) must be conducted in a private area; and
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  - (c) subject to subsections (3) and (3A), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and
  - (d) must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
  - (e) must not be conducted on a person who is under 16; and
  - (f) if, in a prescribed authority's opinion, the person being searched is at least 16 but under 18, or is incapable of managing his or her affairs:
    - (i) may only be conducted if a prescribed authority orders that it be conducted; and
    - (ii) must be conducted in the presence of a parent or guardian of the person or, if that is not acceptable to the person, in the presence of someone else who can represent the person's interests and who, as far as is practicable in the circumstances, is acceptable to the person; and
  - (g) must not involve a search of a person's body cavities; and
  - (h) must not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has a seizable item on his or her person; and
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- (2) For the purposes of subparagraph (1)(f)(ii), none of the following can represent the person's interests:
- (a) a police officer;
  - (b) the Director-General;
  - (c) an officer or employee of the Organisation;
  - (d) a person approved under subsection 24(1).
- (3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.
- (3A) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.
- (4) If any of a person's garments are seized as a result of a strip search, the person must be provided with adequate clothing.

[24] **34N Power to remove, retain and copy materials etc.**

- (1) In addition to the things that the Organisation is authorised to do that are specified in the warrant, the Organisation is also authorised:
- (a) to remove and retain for such time as is reasonable any record or other thing produced before a prescribed authority in response to a request in accordance with the warrant, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant; and
  - (b) subject to section 34M, to examine any items or things removed from a person during a search of the person under this Division; and
  - (c) to retain for such time as is reasonable, and make copies of, any item seized under paragraph 34L(8)(b); and
  - (d) to do any other thing reasonably incidental to:
    - (i) paragraph (a), (b) or (c); or
    - (ii) any of the things that the Organisation is authorised to do that are specified in the warrant.
- (2) A police officer may retain for such time as is reasonable any seizable item seized by the officer under paragraph 34L(8)(a).

[24] **34NA Special rules for young people**

[S.41] *Rules for persons under 16*

- [S.42] (1) A warrant issued under section 34D has no effect if the person specified in it is under 16.
- [S.43] (2) If a person appears before a prescribed authority for questioning as a result of the issue of a warrant under section 34D and the prescribed authority is satisfied on reasonable grounds that the person is under 16, the prescribed authority must, as soon as practicable:
- (a) give a direction that the person is not to be questioned; and
  - (b) if the person is in detention—give a direction under paragraph 34F(1)(f) that the person be released from detention.
- [S.44] (3) Subsection 34F(2) does not prevent the prescribed authority from giving a direction in accordance with paragraph (2)(b) of this section.

*Rules for persons who are at least 16 but under 18*

- (4) If the Director-General seeks the Minister's consent to request the issue of a warrant under section 34D 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).

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

- (1) In addition to the things that the Organisation is authorised to do that are specified in the warrant, the Organisation is also authorised:
- (a) to remove and retain for such time as is reasonable any record or other thing produced before a prescribed authority in response to a request in accordance with the warrant, for the purposes of:
    - (i) inspecting or examining it; and
    - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant; and
  - (b) subject to section 34M, to examine any items or things removed from a person during a search of the person under this Division; and
  - (c) to retain for such time as is reasonable, and make copies of, any item seized under paragraph 34L(8)(b); and
  - (d) to do any other thing reasonably incidental to:
    - (i) paragraph (a), (b) or (c); or
    - (ii) any of the things that the Organisation is authorised to do that are specified in the warrant.
- (2) A police officer may retain for such time as is reasonable any seizable item seized by the officer under paragraph 34L(8)(a).

**34NA Special rules for young people**

*Rules for persons under 16*

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

*Rules for persons who are at least 16 but under 18*

- (4) If the Director-General seeks the Minister's consent to request the issue of a warrant under section 34D 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).

- [24] (5) An issuing authority may issue a warrant under section 34D relating to a person whom the  
[S.46] 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 34D requires that a warrant issued under that section be in the same form as the draft warrant included in the request.

- [24] (6) If subsection (4) or (5) applies, the draft warrant must:  
[S.47] (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 34F(1)(e) for the person's further appearance before the prescribed authority for questioning.

- (7) The other person must:  
(a) be able to represent the person's interests; and  
(b) as far as practicable in the circumstances, be acceptable to the person and to the prescribed authority; and  
(c) not be one of the following:  
(i) a police officer;  
(ii) the Director-General;  
(iii) an officer or employee of the Organisation;  
(iv) a person approved under subsection 24(1).

- (5) An issuing authority may issue a warrant under section 34D 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 34D 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 34F(1)(e) for the person's further appearance before the prescribed authority for questioning.

- (7) The other person must:  
(a) be able to represent the person's interests; and  
(b) as far as practicable in the circumstances, be acceptable to the person and to the prescribed authority; and  
(c) not be one of the following:  
(i) a police officer;  
(ii) the Director-General;  
(iii) an officer or employee of the Organisation;  
(iv) a person approved under subsection 24(1).

- [24] (8) If a person appears before a prescribed authority for questioning under a warrant issued  
[S.48] under section 34D and the prescribed authority is satisfied on reasonable grounds that the  
[S.49] person is at least 16 but under 18, the prescribed authority must, as soon as practicable:  
[S.50] (a) inform the person that the person:
- (i) may request that one of the person's parents or guardians or one other person who meets the requirements in subsection (7) be present during the questioning; and
  - (ii) may contact the person's parents or guardians and another person who meets the requirements in subsection (7), at any time when the person is in custody or detention authorised by the warrant; and
  - (iii) may contact a single lawyer of the person's choice when the person is in detention authorised by the warrant; and
- (b) if the person requests that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of the parent or guardian; and
- (c) if the person does not request that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection (7); and
- (d) direct under paragraph 34F(1)(d) that the person may contact someone described in subparagraph (a)(ii) of this subsection at any time described in that subparagraph; and
- (e) direct everyone proposing to question the person under the warrant that questioning is to occur only for continuous periods of 2 hours or less, separated by breaks directed by the prescribed authority.

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

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

[S.51] (10) To avoid doubt, paragraphs (6)(b) and (8)(e) do not affect the operation of section 34HB.

- (8) If a person appears before a prescribed authority for questioning under a warrant issued under section 34D and the prescribed authority is satisfied on reasonable grounds that the person is at least 16 but under 18, the prescribed authority must, as soon as practicable:
- (a) inform the person that the person:
- (i) may request that one of the person's parents or guardians or one other person who meets the requirements in subsection (7) be present during the questioning; and
  - (ii) may contact the person's parents or guardians and another person who meets the requirements in subsection (7), at any time when the person is in custody or detention authorised by the warrant; and
  - (iii) may contact a single lawyer of the person's choice when the person is in detention authorised by the warrant; and
- (b) if the person requests that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of the parent or guardian; and
- (c) if the person does not request that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection (7); and
- (d) direct under paragraph 34F(1)(d) that the person may contact someone described in subparagraph (a)(ii) of this subsection at any time described in that subparagraph; and
- (e) direct everyone proposing to question the person under the warrant that questioning is to occur only for continuous periods of 2 hours or less, separated by breaks directed by the prescribed authority.

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

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

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

[24] **34NB Offences of contravening safeguards**

(1) A person commits an offence if:

- (a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under section 34D; and
- (b) the person exercises, or purports to exercise, the authority; and
- (c) the exercise or purported exercise contravenes a condition or restriction in the warrant on the authority; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

- (a) the person is a police officer; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes section 34DA; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:

- (a) the person is identified (whether by name, reference to a class that includes the person or some other means) in a direction given by a prescribed authority under paragraph 34F(1)(c), (d), (e) or (f) or subsection 34HA(4), 34NA(2) or (8) or 34V(3) as a person who is to implement the direction; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the direction; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct contravenes paragraph 34F(9)(c), subsection 34H(4), paragraph 34HAA(3)(b) or (4)(a) or subsection 34J(2); and
- (c) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

[S.52] (4A) A person commits an offence if:

- (a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under section 34D; and
- (b) the person exercises, or purports to exercise, the authority by questioning another person; and
- (c) the questioning contravenes section 34HB; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

**34NB Offences of contravening safeguards**

(1) A person commits an offence if:

- (a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under section 34D; and
- (b) the person exercises, or purports to exercise, the authority; and
- (c) the exercise or purported exercise contravenes a condition or restriction in the warrant on the authority; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(2) A person commits an offence if:

- (a) the person is a police officer; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes section 34DA; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:

- (a) the person is identified (whether by name, reference to a class that includes the person or some other means) in a direction given by a prescribed authority under paragraph 34F(1)(c), (d), (e) or (f) or subsection 34HA(4), 34NA(2) or (8) or 34V(3) as a person who is to implement the direction; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the direction; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct contravenes paragraph 34F(9)(c), subsection 34H(4), paragraph 34HAA(3)(b) or (4)(a) or subsection 34J(2); and
- (c) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(4A) A person commits an offence if:

- (a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under section 34D; and
- (b) the person exercises, or purports to exercise, the authority by questioning another person; and
- (c) the questioning contravenes section 34HB; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

- [24] (5) A person (the **searcher**) commits an offence if:
- (a) the searcher is a police officer; and
  - (b) the searcher conducts a strip search of a person detained under this Division; and
  - (c) the search is conducted:
    - (i) without either the approval of a prescribed authority or the consent of the detained person; or
    - (ii) in a way that contravenes subsection 34M(1); and
  - (d) the searcher knows of the lack of approval and consent or of the contravention.
- Penalty: Imprisonment for 2 years.
- (6) A person (the **searcher**) commits an offence if:
- (a) the searcher is a police officer who is conducting or has conducted a strip search of a person detained under this Division; and
  - (b) the searcher engages in conduct; and
  - (c) the conduct contravenes subsection 34M(4); and
  - (d) the searcher knows of the contravention.
- Penalty: Imprisonment for 2 years.

(7) In this section:  
**engage in conduct** means:

- (a) do an act; or
  - (b) omit to perform an act.
- [24] **34NC Complaints about contravention of procedural statement**
- [S.53] (1) Contravention of the written statement of procedures mentioned in section 34C of this Act may be the subject of a complaint:
- (a) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or
  - (b) to the Ombudsman under Part III of the *Complaints (Australian Federal Police) Act 1981*.
- (2) This section does not limit the subjects of complaint under the *Inspector-General of Intelligence and Security Act 1986* or Part III of the *Complaints (Australian Federal Police) Act 1981*.
- [24] **34P Providing reports to the Minister**
- The Director-General must give the Minister, for each warrant issued under section 34D, a written report on the extent to which the action taken under the warrant has assisted the Organisation in carrying out its functions.

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

Penalty: Imprisonment for 2 years.

- (6) A person (the **searcher**) commits an offence if:
- (a) the searcher is a police officer who is conducting or has conducted a strip search of a person detained under this Division; and
  - (b) the searcher engages in conduct; and
  - (c) the conduct contravenes subsection 34M(4); and
  - (d) the searcher knows of the contravention.

Penalty: Imprisonment for 2 years.

(7) In this section:

**engage in conduct** means:

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

#### **34NC Complaints about contravention of procedural statement**

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

#### **34P Providing reports to the Minister**

The Director-General must give the Minister, for each warrant issued under section 34D, a written report on the extent to which the action taken under the warrant has assisted the Organisation in carrying out its functions.

[24] **34Q Providing information to the Inspector-General**

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

- (aa) a copy of any draft request given to the Minister under subsection 34C(2) in seeking the Minister's consent to request the issue of a warrant under section 34D;
- (a) a copy of any warrant issued under section 34D;
- (b) a copy of any video recording made under section 34K;
- (c) a statement containing details of any seizure, taking into custody, or detention under this Division;
- (d) a statement describing any action the Director-General has taken as a result of being informed of the Inspector-General's concern under section 34HA.

[S.54] **34QA Reporting by Inspector-General on multiple warrants**

(1) This section imposes requirements on the Inspector-general of Intelligence and Security if:

- (a) a person is detained under this Division in connection with a warrant issued under section 34D; and
  - (b) one or more other warrants (the *later warrants*) meeting the requirement in paragraph 34D(2)(b) are issued later under that section in relation to the person.
- (2) The Inspector-General must inspect a copy of the draft request given to the Minister under subsection 34C(2) for each of the warrants, to determine whether the draft request for each of the later warrants included information described in paragraph 34C(3D)(b).

Note: Paragraph 34C(3D)(b) describes information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last warrant that:

- (a) was issued under section 34D before the seeking of the minister's consent to the request proposed in the draft request; and
- (b) was a warrant in connection with which the person was detained under this Division.

(3) The Inspector-General must report on the outcome of the inspection in his or her annual report for the year in which he or she carries out the examination. For this purpose, *annual report* means a report under section 35 of the *Inspector-General of Intelligence and Security Act 1986*.

[24] **34R Discontinuing action before warrants expire**

If, before a warrant issued under section 34D ceases to be in force, the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist, the Director-General must:

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

**34Q Providing information to the Inspector-General**

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

- (aa) a copy of any draft request given to the Minister under subsection 34C(2) in seeking the Minister's consent to request the issue of a warrant under section 34D;
- (a) a copy of any warrant issued under section 34D;
- (b) a copy of any video recording made under section 34K;
- (c) a statement containing details of any seizure, taking into custody, or detention under this Division;
- (d) a statement describing any action the Director-General has taken as a result of being informed of the Inspector-General's concern under section 34HA.

**34QA Reporting by Inspector-General on multiple warrants**

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- (b) one or more other warrants (the *later warrants*) meeting the requirement in paragraph 34D(2)(b) are issued later under that section in relation to the person.

(2) The Inspector-General must inspect a copy of the draft request given to the Minister under subsection 34C(2) for each of the warrants, to determine whether the draft request for each of the later warrants included information described in paragraph 34C(3D)(b).

Note: Paragraph 34C(3D)(b) describes information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last warrant that:

- (a) was issued under section 34D before the seeking of the minister's consent to the request proposed in the draft request; and
- (b) was a warrant in connection with which the person was detained under this Division.

(3) The Inspector-General must report on the outcome of the inspection in his or her annual report for the year in which he or she carries out the examination. For this purpose, *annual report* means a report under section 35 of the *Inspector-General of Intelligence and Security Act 1986*.

**34R Discontinuing action before warrants expire**

If, before a warrant issued under section 34D ceases to be in force, the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist, the Director-General must:

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

[24] **34S Certain records obtained under warrant to be destroyed**

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

- (a) the record or copy was made because of a warrant issued under section 34D; and
- (b) the record or copy is in the possession or custody, or under the control, of the Organisation; and
- (c) the Director-General is satisfied that the record or copy is not required for the purposes of the performance of functions or exercise of powers under this Act.

**34SA Status of issuing authorities and prescribed authorities**

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

**34T Certain functions and powers not affected**

- (1) This Division does not affect a function or power of the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*.
- (2) This Division does not affect a function or power of the Ombudsman under the *Complaints (Australian Federal Police) Act 1981*.

**34S Certain records obtained under warrant to be destroyed**

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

- (a) the record or copy was made because of a warrant issued under section 34D; and
- (b) the record or copy is in the possession or custody, or under the control, of the Organisation; and
- (c) the Director-General is satisfied that the record or copy is not required for the purposes of the performance of functions or exercise of powers under this Act.

**34SA Status of issuing authorities and prescribed authorities**

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

**34T Certain functions and powers not affected**

- (1) This Division does not affect a function or power of the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*.
- (2) This Division does not affect a function or power of the Ombudsman under the *Complaints (Australian Federal Police) Act 1981*.

[S.55] **34TA Limit on contact of lawyer of choice**

- [S.56] (1) The person (the *subject*) specified in a warrant issued under section 34D that meets the requirement in paragraph 34D(2)(b) may be prevented from contacting a particular lawyer of the subject's choice if the prescribed authority before whom the subject appears for questioning under the warrant so directs.
- (2) The prescribed authority may so direct only if the authority is satisfied, on the basis of circumstances relating to that lawyer, that, if the subject is permitted to contact the lawyer:
- (a) a person involved in a terrorism offence may be alerted that the offence is being investigated; or
  - (b) a record or thing that the person may be requested in accordance with the warrant to produce may be destroyed, damaged or altered.
- (3) This section has effect despite paragraph 34F(9)(a).
- (4) To avoid doubt, subsection (1) does not prevent the subject from choosing another lawyer to contact, but the subject may be prevented from contacting that other lawyer under another application of that subsection.

**34TB Questioning person in absence of lawyer of person's choice**

- (1) To avoid doubt, a person before a prescribed authority for questioning under a warrant issued under section 34D may be questioned under the warrant in the absence of a lawyers of the person's choice.

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

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

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

**34TA Limit on contact of lawyer of choice**

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

**34TB Questioning person in absence of lawyer of person's choice**

- (1) To avoid doubt, a person before a prescribed authority for questioning under a warrant issued under section 34D may be questioned under the warrant in the absence of a lawyers of the person's choice.

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

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

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

[24] **34U Involvement of lawyers**

[S.59] (1) This section applies if the person (the *subject*) specified in a warrant issued under section 34D contacts another person as a legal adviser as permitted by the warrant or a direction under paragraph 34F(1)(d).

*Contact to be able to be monitored*

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

[S.60] *Legal adviser to be given copy of the warrant*

(2A) A person exercising authority under the warrant must give the legal adviser a copy of the warrant. This subsection does not:

- (a) require more than one person to give the legal adviser a copy of the warrant; or
- (b) entitle the legal adviser to be given a copy of, or see, a document other than the warrant.

[24] *Breaks in questioning to give legal advice*

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

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

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

*Removal of legal adviser for disrupting questioning*

(5) If the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning, the authority may direct a person exercising authority under the warrant to remove the legal adviser from the place where the questioning is occurring.

[S.61] (6) If the prescribed authority directs the removal of the legal adviser, the prescribed authority must also direct under paragraph 34F(1)(d) that the subject may contact someone else as a legal adviser. Subsection 34F(2) does not prevent the prescribed authority from giving the direction under paragraph 34F(1)(d) in accordance with this subsection.

**34U Involvement of lawyers**

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

*Contact to be able to be monitored*

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

*Legal adviser to be given copy of the warrant*

(2A) A person exercising authority under the warrant must give the legal adviser a copy of the warrant. This subsection does not:

- (a) require more than one person to give the legal adviser a copy of the warrant; or
- (b) entitle the legal adviser to be given a copy of, or see, a document other than the warrant.

*Breaks in questioning to give legal advice*

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

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

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

*Removal of legal adviser for disrupting questioning*

(5) If the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning, the authority may direct a person exercising authority under the warrant to remove the legal adviser from the place where the questioning is occurring.

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

[S.62] *Communications by legal adviser*

[S.63] (7) The legal adviser commits an offence if:

- [S.64] (a) while the subject is being detained under this Division in connection with the warrant,  
[S.65] the adviser communicates to a third person information relating to the questioning or detention of the subject under this Division in connection with the warrant; and
- (b) the communication is not authorised:
- (i) by a prescribed authority under subsection (8); or
  - (ii) by a provision of the regulations (if any) made for the purposes of subsection (10); and
- (c) the third person is not:
- (i) a prescribed authority; or
  - (ii) a person exercising authority under the warrant; or
  - (iii) the Inspector-General of Intelligence and Security; or
  - (iv) the Ombudsman.

Penalty: Imprisonment for 5 years.

[24] (8) The prescribed authority may authorise the legal adviser to communicate to another person specified by the authority specified information relating to the questioning or detention of the subject in connection with the warrant. An authorisation must not be inconsistent with the regulations (if any) made for the purposes of subsection (10).

(9) The prescribed authority must not refuse to authorise the legal adviser to communicate to a member or Registrar (however described) of a federal court, for the purposes of seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant, information relating to the questioning or detention of the subject in connection with the warrant.

(10) The regulations may make provision in relation to communications by legal advisers of persons specified in warrants issued under section 34D of information relating to their questioning or detention under this Division in connection with the warrants.

[S.66] (11) The regulations must not prevent a legal adviser from communicating to a member or Registrar (however described) of a federal court, for the purposes of seeking a remedy relating to the warrant or the treatment of a person in connection with the warrant, information relating to the questioning or detention of the person in connection with the warrant.

*If legal adviser also represents young person*

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

*Communications by legal adviser*

(7) The legal adviser commits an offence if:

- (a) while the subject is being detained under this Division in connection with the warrant, the adviser communicates to a third person information relating to the questioning or detention of the subject under this Division in connection with the warrant; and
- (b) the communication is not authorised:
- (i) by a prescribed authority under subsection (8); or
  - (ii) by a provision of the regulations (if any) made for the purposes of subsection (10); and
- (c) the third person is not:
- (i) a prescribed authority; or
  - (ii) a person exercising authority under the warrant; or
  - (iii) the Inspector-General of Intelligence and Security; or
  - (iv) the Ombudsman.

Penalty: Imprisonment for 5 years.

(8) The prescribed authority may authorise the legal adviser to communicate to another person specified by the authority specified information relating to the questioning or detention of the subject in connection with the warrant. An authorisation must not be inconsistent with the regulations (if any) made for the purposes of subsection (10).

(9) The prescribed authority must not refuse to authorise the legal adviser to communicate to a member or Registrar (however described) of a federal court, for the purposes of seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant, information relating to the questioning or detention of the subject in connection with the warrant.

(10) The regulations may make provision in relation to communications by legal advisers of persons specified in warrants issued under section 34D of information relating to their questioning or detention under this Division in connection with the warrants.

(11) The regulations must not prevent a legal adviser from communicating to a member or Registrar (however described) of a federal court, for the purposes of seeking a remedy relating to the warrant or the treatment of a person in connection with the warrant, information relating to the questioning or detention of the person in connection with the warrant.

*If legal adviser also represents young person*

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

[24] **34V Conduct of parents etc.**

(1) This section applies in relation to a person (the *representative*) who:

(a) is either:

- (i) the parent or guardian of a person (the *subject*) specified in a warrant issued under section 34D; or
- (ii) another person who meets the requirements in subsection 34NA(7) in relation to the subject; and

(b) either:

- (i) is or has been contacted by the subject as permitted by the warrant or a direction under paragraph 34F(1)(d); or
- (ii) is or has been present when the subject was before a prescribed authority for questioning under the warrant.

(2) If a prescribed authority considers the representative's conduct is unduly disrupting questioning of the subject, the authority may direct a person exercising authority under the warrant to remove the representative from the place where the questioning is occurring.

(3) If the prescribed authority directs the removal of the representative, the prescribed authority must also:

(a) inform the subject that the subject:

- (i) may request that one of the subject's parents or guardians or one other person who meets the requirements in subsection 34NA(7), other than the representative, be present during the questioning; and
- (ii) may contact a person covered by subparagraph (i) to request the person to be present during the questioning; and

(b) if the subject requests that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of the parent or guardian; and

(c) if the subject does not request that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection 34NA(7); and

(d) direct under paragraph 34F(1)(d) that the subject may contact a person covered by subparagraph (a)(i) of this subsection to request the person to be present during the questioning.

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

(4) The prescribed authority may permit the representative to communicate to another person specified by the authority specified information relating to the questioning or detention of the subject in connection with the warrant.

**34V Conduct of parents etc.**

(1) This section applies in relation to a person (the *representative*) who:

(a) is either:

- (i) the parent or guardian of a person (the *subject*) specified in a warrant issued under section 34D; or
- (ii) another person who meets the requirements in subsection 34NA(7) in relation to the subject; and

(b) either:

- (i) is or has been contacted by the subject as permitted by the warrant or a direction under paragraph 34F(1)(d); or
- (ii) is or has been present when the subject was before a prescribed authority for questioning under the warrant.

(2) If a prescribed authority considers the representative's conduct is unduly disrupting questioning of the subject, the authority may direct a person exercising authority under the warrant to remove the representative from the place where the questioning is occurring.

(3) If the prescribed authority directs the removal of the representative, the prescribed authority must also:

(a) inform the subject that the subject:

- (i) may request that one of the subject's parents or guardians or one other person who meets the requirements in subsection 34NA(7), other than the representative, be present during the questioning; and
- (ii) may contact a person covered by subparagraph (i) to request the person to be present during the questioning; and

(b) if the subject requests that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of the parent or guardian; and

(c) if the subject does not request that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection 34NA(7); and

(d) direct under paragraph 34F(1)(d) that the subject may contact a person covered by subparagraph (a)(i) of this subsection to request the person to be present during the questioning.

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

(4) The prescribed authority may permit the representative to communicate to another person specified by the authority specified information relating to the questioning or detention of the subject in connection with the warrant.

- [24] (5) The representative commits an offence if:  
[S.67] (a) while the subject is being detained under this Division in connection with the warrant,  
[S.68] the representative communicates to a third person information relating to the  
[S.69] questioning or detention of the subject under this Division in connection with the  
[S.70] warrant; and  
(b) a prescribed authority has not given permission for the communication; and  
(c) the third person is not:  
(i) a parent, guardian or sibling of the subject; or  
(ii) a prescribed authority; or  
(iii) a person exercising authority under the warrant; or  
(iv) the Inspector-General of Intelligence and Security; or  
(v) the Ombudsman.

Penalty: Imprisonment for 5 years.

- [24] (6) A person commits an offence if:  
[S.71] (a) the representative, or a parent, guardian or sibling of the subject, communicated to the  
[S.72] person information relating to the questioning or detention of the subject under this  
[S.73] Division in connection with the warrant; and  
[S.74] (b) the person is a parent, guardian or sibling of the subject; and  
(c) while the subject is being detained under this Division in connection with the warrant,  
the person communicates the information to another person; and  
(d) the other person is not:  
(i) a parent, guardian or sibling of the subject; or  
(ii) the representative; or  
(iii) a prescribed authority; or  
(iv) a person exercising authority under the warrant; or  
(v) the Inspector-General of Intelligence and Security; or  
(vi) the Ombudsman.

Penalty: Imprisonment for 5 years.

[S.75] **34VA Lawyer's access to information for proceedings relating to warrant**

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

- (a) a warrant issued under section 34D in relation to the person; or  
(b) the treatment of the person in connection with such a warrant.

- (5) The representative commits an offence if:  
(a) while the subject is being detained under this Division in connection with the warrant, the representative communicates to a third person information relating to the questioning or detention of the subject under this Division in connection with the warrant; and  
(b) a prescribed authority has not given permission for the communication; and  
(c) the third person is not:  
(i) a parent, guardian or sibling of the subject; or  
(ii) a prescribed authority; or  
(iii) a person exercising authority under the warrant; or  
(iv) the Inspector-General of Intelligence and Security; or  
(v) the Ombudsman.

Penalty: Imprisonment for 5 years.

- (6) A person commits an offence if:  
(a) the representative, or a parent, guardian or sibling of the subject, communicated to the person information relating to the questioning or detention of the subject under this Division in connection with the warrant; and  
(b) the person is a parent, guardian or sibling of the subject; and  
(c) while the subject is being detained under this Division in connection with the warrant, the person communicates the information to another person; and  
(d) the other person is not:  
(i) a parent, guardian or sibling of the subject; or  
(ii) the representative; or  
(iii) a prescribed authority; or  
(iv) a person exercising authority under the warrant; or  
(v) the Inspector-General of Intelligence and Security; or  
(vi) the Ombudsman.

Penalty: Imprisonment for 5 years.

**34VA Lawyer's access to information for proceedings relating to warrant**

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

- (a) a warrant issued under section 34D in relation to the person; or  
(b) the treatment of the person in connection with such a warrant.

[24] **34W Rules of Court about proceedings connected with warrants**

Rules of Court of the High Court or the Federal Court of Australia may make special provision in relation to proceedings for a remedy relating to a warrant issued under section 34D or the treatment of a person in connection with such a warrant.

**34WA Law relating to legal professional privilege not affected**

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

**34X Jurisdiction of State and Territory courts excluded**

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

- (a) the remedy relates to a warrant issued under section 34D or the treatment of a person in connection with such a warrant; and
- (b) the proceedings are commenced while the warrant is in force.

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

[S.76] **34Y Cessation of effect of Division**

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

**34W Rules of Court about proceedings connected with warrants**

Rules of Court of the High Court or the Federal Court of Australia may make special provision in relation to proceedings for a remedy relating to a warrant issued under section 34D or the treatment of a person in connection with such a warrant.

**34WA Law relating to legal professional privilege not affected**

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

**34X Jurisdiction of State and Territory courts excluded**

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

- (a) the remedy relates to a warrant issued under section 34D or the treatment of a person in connection with such a warrant; and
- (b) the proceedings are commenced while the warrant is in force.

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

**34Y Cessation of effect of Division**

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

*no amendments*

## Part IV—Security assessments

### Division 1—Preliminary

#### 35 Interpretation

In this Part, unless the contrary intention appears:

**adverse security assessment** means a security assessment in respect of a person that contains:

- (a) any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person; and
- (b) a recommendation that prescribed administrative action be taken or not be taken in respect of the person, being a recommendation the implementation of which would be prejudicial to the interests of the person.

**applicant** means a person who has applied to the Tribunal for a review of a security assessment.

**authority of a State** includes a State Minister, Department or Police Force.

**Commonwealth agency** means a Minister or an authority of the Commonwealth.

**Commonwealth contractor** means a person performing work or rendering services, otherwise than as an employee, for the purposes of the Commonwealth or an authority of the Commonwealth, including a person performing such work or rendering such services as a sub-contractor or as an adviser or consultant.

**prescribed administrative action** means:

- (a) action that relates to or affects access by a person to any information or place access to which is controlled or limited on security grounds, including action affecting the occupancy of any office or position under the Commonwealth or an authority of the Commonwealth or under a State or an authority of a State, or in the service of a Commonwealth contractor, the occupant of which has or may have any such access;
- (b) the exercise of any power, or the performance of any function, in relation to a person under the *Migration Act 1958* or the regulations under that Act; or
- (c) the exercise of any power, or the performance of any function, in relation to a person under the *Australian Citizenship Act 1948*, the *Passports Act 1938* or the regulations under either of those Acts.

**qualified security assessment** means a security assessment in respect of a person that:

- (a) contains any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person; and
- (b) does not contain a recommendation of the kind referred to in paragraph (b) of the definition of **adverse security assessment**,

whether or not the matters contained in the assessment would, by themselves, justify prescribed administrative action being taken or not being taken in respect of the person to the prejudice of the interests of the person.

- [25] **Section 35 (definition of year 2000 Games matters)**  
Repeal the definition.

**security assessment** or **assessment** means a statement in writing furnished by the Organisation to a Commonwealth agency expressing any recommendation, opinion or advice on, or otherwise referring to, the question whether it would be consistent with the requirements of security for prescribed administrative action to be taken in respect of a person or the question whether the requirements of security make it necessary or desirable for prescribed administrative action to be taken in respect of a person, and includes any qualification or comment expressed in connection with any such recommendation, opinion or advice, being a qualification or comment that relates or that could relate to that question.

**Tribunal** means the Administrative Appeals Tribunal.

~~**year 2000 Games matters** means any matters relating to the organisation or conduct of any sporting or other event, any ceremony, any meeting or any other activity, held or proposed to be held (whether or not in Sydney), as part of or in connection with the Games of the XXVII Olympiad in Sydney in the year 2000 or the Games of the XIth Paralympiad in Sydney in the year 2000.~~

### 36 Part not to apply to certain assessments

- (1) This Part (other than subsections 37(1), (3) and (4)) does not apply to or in relation to:
- (a) a security assessment in relation to the employment, by engagement outside Australia for duties outside Australia, of a person who is not an Australian citizen or is not normally resident in Australia; or
  - (b) a security assessment in relation to action of a kind referred to in paragraph (b) of the definition of **prescribed administrative action** in section 35 (other than an assessment made for the purposes of subsection 202(1) of the *Migration Act 1958*) in respect of a person who is not:
    - (i) an Australian citizen;
    - (ii) a person who is, within the meaning of the *Migration Act 1958*, the holder of a valid permanent visa; or
    - (iii) a person who holds a special category visa or is taken by subsection 33(2) of the *Migration Act 1958* to have been granted a special purpose visa.

*no amendments*

## **Division 2—Furnishing of security assessments**

### **37 Security assessments**

- (1) The functions of the Organisation referred to in paragraph 17(1)(c) include the furnishing to Commonwealth agencies of security assessments relevant to their functions and responsibilities.
- (2) An adverse or qualified security assessment shall be accompanied by a statement of the grounds for the assessment, and that statement:
  - (a) shall contain all information that has been relied on by the Organisation in making the assessment, other than information the inclusion of which would, in the opinion of the Director-General, be contrary to the requirements of security; and
  - (b) shall, for the purposes of this Part, be deemed to be part of the assessment.
- (3) The regulations may prescribe matters that are to be taken into account, the manner in which those matters are to be taken into account, and matters that are not to be taken into account, in the making of assessments, or of assessments of a particular class, and any such regulations are binding on the Organisation and on the Tribunal.
- (4) Subject to any regulations made in accordance with subsection (3), the Director-General shall, in consultation with the Minister, determine matters of a kind referred to in subsection (3), but nothing in this subsection affects the powers of the Tribunal.
- (5) No proceedings, other than an application to the Tribunal under section 54, shall be brought in any court or tribunal in respect of the making of an assessment or anything done in respect of an assessment in accordance with this Act.

*no amendments*

### **38 Person to be notified of assessment**

- (1) Subject to this section, where, after the commencement of this Act, an adverse or qualified security assessment in respect of a person is furnished by the Organisation to a Commonwealth agency or a State or an authority of a State, the Commonwealth agency, the State or the authority of the State shall, within 14 days after the day on which the assessment is so furnished, give to that person a notice in writing, to which a copy of the assessment is attached, informing him or her of the making of the assessment and containing information, in the prescribed form, concerning his or her right to apply to the Tribunal under this Part.
- (2) The Attorney-General may, by writing signed by the Attorney-General delivered to the Director-General, certify that the Attorney-General is satisfied that:
  - (a) the withholding of notice to a person of the making of a security assessment in respect of the person is essential to the security of the nation; or
  - (b) the disclosure to a person of the statement of grounds contained in a security assessment in respect of the person, or of a particular part of that statement, would be prejudicial to the interests of security.
- (3) Where the Attorney-General issues a certificate under subsection (2), he or she shall cause a copy of the certificate to be delivered to the Commonwealth agency to which the assessment was furnished.
- (4) Subsection (1) does not require a notice to be given in relation to a security assessment to which a certificate in accordance with paragraph (2)(a) applies.
- (5) In the case of a security assessment in relation to which a certificate certifying in accordance with paragraph (2)(b) has been given, the copy of the assessment to be attached to a notice under subsection (1) shall not contain any matter to which the certificate applies.
- (6) A notice under subsection (1) may be given to a person by delivering it to him or her personally or by sending it to the person by registered post at his or her address last known to the Commonwealth agency.

### **39 Effect of preliminary advice by Organisation**

- (1) Subject to subsection (2), a Commonwealth agency shall not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person made by the Organisation not amounting to a security assessment or on the basis of an adverse or qualified security assessment made by the Organisation before the commencement of this Act.
- (2) Subsection (1) does not prevent a Commonwealth agency from taking action of a temporary nature to prevent access by a person to any information or place access to which is controlled or limited on security grounds where, on the basis of a preliminary communication by the Organisation, the Commonwealth agency is satisfied that the requirements of security make it necessary to take that action as a matter of urgency pending the furnishing of an assessment by the Organisation.

[26] **Paragraph 40(1)(b)**

Repeal the paragraph, substitute:

- (b) if the prescribed administrative action would affect security in connection with an event designated in writing by the Minister as a special event—to furnish a security assessment in respect of that person to the State or the authority of a State for use in considering that prescribed administrative action.

[27] **At the end of section 40**

Add:

- (3) For the purposes of paragraph 40(1)(b), the Minister must notify the Director-General in writing of an event designated as a special event.

**40 Assessments for State purposes**

- (1) If any prescribed administrative action in respect of a person by a State or an authority of a State would affect security in connection with matters within the functions and responsibilities of a Commonwealth agency, it is within the functions of the Organisation:
- (a) in any case—to furnish a security assessment in respect of that person to the Commonwealth agency, for the purpose of its transmission to the State or the authority of the State for use in considering that prescribed administrative action; or
  - ~~(b) if the prescribed administrative action would affect security in connection with year 2000 Games matters (see section 35) —to furnish, before the end of 31 December 2000, a security assessment in respect of that person to the State or the authority of a State for use in considering that prescribed administrative action.~~
  - (b) if the prescribed administrative action would affect security in connection with an event designated in writing by the Minister as a special event—to furnish a security assessment in respect of that person to the State or the authority of a State for use in considering that prescribed administrative action.
- (2) The Organisation shall not:
- (a) subject to paragraph (1)(b), communicate directly to a State or an authority of a State, whether in the form of an assessment or otherwise, any information, recommendation, opinion or advice concerning a person which the Organisation knows is intended or likely to be used by the State or an authority of the State in considering prescribed administrative action in relation to that person; or
  - (b) furnish to a Commonwealth agency otherwise than in the form of an assessment any information, recommendation, opinion or advice concerning a person if the Organisation knows that the Commonwealth agency intends to communicate it to a State or an authority of a State for use in considering prescribed administrative action in relation to that person.
- (3) For the purposes of paragraph 40(1)(b), the Minister must notify the Director-General in writing of an event designated as a special event.

*no amendments*

## **Division 4—Review of security assessments**

### **54 Applications to Tribunal**

- (1) An application may be made to the Tribunal for a review of an adverse or qualified security assessment.
- (2) At any time after the completion of a review by the Tribunal of a security assessment (other than a review of a security assessment made for the purposes of subsection 202(1) of the *Migration Act 1958*), an application may be made for a review of the findings of the Tribunal on the ground that the applicant has fresh evidence of material significance that was not available at the time of the previous review.

### **61 Effect of findings**

- (1) Where an assessment has been reviewed by the Tribunal, every Commonwealth agency concerned with prescribed administrative action to which the assessment is relevant, and any tribunal, person or authority having power to hear appeals from, or to review, a decision with respect to any prescribed administrative action to which the assessment is relevant, shall treat the findings of the Tribunal, to the extent that they do not confirm the assessment, as superseding that assessment.

### **64 Restriction on further assessments after review**

Where the Tribunal has made findings upon a review of an assessment, the Organisation shall not make a further assessment in respect of the person concerned that is not in accordance with those findings except on the basis of matters occurring after the review or of which evidence was not available at the time of the review.

*no amendments*

## **65 Reference of certain matters to Tribunal by Minister**

(1) Where:

- (a) before the commencement of this Act, the Organisation furnished, or is alleged to have furnished, to a Commonwealth agency a security assessment, or a communication of a similar nature, concerning a person; or
- (b) after the commencement of this Act, the Organisation has furnished, or is alleged to have furnished, to a Commonwealth agency a security assessment, or a communication of a similar nature, concerning a person, other than a security assessment of which a copy has been delivered to that person in accordance with this Part;

the Minister may, if satisfied that it is desirable to do so by reason of special circumstances, require the Tribunal to inquire and report to the Minister upon any question concerning that action or alleged action of the Organisation, and may require the Tribunal to review any such assessment or communication and any information or matter on which any such assessment or communication was based, and the Tribunal shall comply with the requirement and report its findings to the Minister.

- (1A) For the purposes of determining whether it is desirable to make a requirement of the Tribunal under subsection (1) in relation to a matter, the Minister may request the Inspector-General of Intelligence and Security to inquire into the matter or into a specified aspect of the matter and to report to the Minister the results of the inquiry, and the Inspector-General shall comply with any such request.
- (2) The constitution and procedure of the Tribunal under this section shall be as determined by the President.
- (3) Sections 43 and 43AAA of the *Administrative Appeals Tribunal Act 1975* and section 61 of this Act do not apply in relation to a review under this section but, when the Tribunal has made findings under this section, the Minister shall, subject to the requirements of security, take or cause to be taken such action in relation to those findings, by way of communication or publication of the findings or alteration of records, as the Minister considers appropriate in the interests of justice.

*no amendments*

## **81 Secrecy**

- (1) A person who is or has been a member or an officer of the Tribunal shall not, either directly or indirectly, except for the purposes of this Act:
  - (a) make a record of, or divulge or communicate to any person, any information acquired by him or her by reason of his or her office or employment under or for the purposes of this Act; or
  - (b) produce to any person a document furnished for the purposes of this Act.

Penalty: Imprisonment for 2 years.

- (2) A person who is or has been a member or an officer of the Tribunal shall not be required to produce in a court any document of which the person has custody, or to which the person has access, by virtue of his or her office or employment under or for the purposes of this Act, or to divulge or to communicate to a court any information obtained by him or her by reason of such an office or employment, except when it is necessary to do so for the purposes of this Act.

- (3) In this section:

***court*** includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

***produce*** includes permit access to, and ***production*** has a corresponding meaning; and a reference in this section to information or a document shall be read as a reference to information or a document supplied to the Tribunal for the purposes of this Part or otherwise related to proceedings under this Part.

*no amendments*

## **Part V—Staff of Organisation**

### **84 Employment of officers and employees**

- (1) Subject to this Act, the Director-General may, on behalf of the Commonwealth:
  - (a) employ, under agreements in writing, such officers of the Organisation as the Director-General thinks necessary for the purposes of this Act; and
  - (b) employ such temporary employees and casual employees of the Organisation as the Director-General thinks necessary for those purposes.
- (2) The Director-General shall not employ a person as an officer except:
  - (a) in an office the designation and salary or salary range of which have been determined, or are deemed to have been determined, under subsection 85(1); and
  - (b) upon the terms and conditions of employment that are in force under section 86 in relation to the employment of persons as officers at the date on which that person is so employed.
- (3) An agreement under this section may be varied from time to time by further agreement.

### **85 Designation of offices etc.**

- (1) The designations of offices in the Organisation, other than the office of Director-General, and the salaries or salary ranges applicable to those offices, shall be such as are determined from time to time by the Director-General.
- (2) The designations of offices in the Organisation immediately before the date of commencement of this Act, and the salaries or salary ranges applicable to those offices immediately before that date, shall be deemed to have been determined under subsection (1).

### **86 Conditions of employment**

Officers and employees of the Organisation are not subject to the *Public Service Act 1999* but, subject to this Act, the terms and conditions upon which the Director-General shall employ persons as officers, and the terms and conditions of employment applicable to temporary and casual employees, shall be such as are determined from time to time by the Director-General.

### **87 Special provisions relating to existing employees**

- (1) A person who, immediately before the date of commencement of this Act, was employed in the Organisation under an agreement in writing with the Commonwealth shall, unless and until he or she agrees to accept other terms and conditions, continue to be employed upon the terms and conditions specified in that agreement.
- (2) A person, not being a person to whom subsection (1) applies, who was, immediately before the date of commencement of this Act, employed in the Organisation shall, until other terms and conditions applicable to him or her are determined under section 86, continue to be employed upon the terms and conditions applicable to him or her immediately before that date.

*no amendments*

## **89 Termination of employment of officers**

The employment of an officer of the Organisation shall not be terminated except in accordance with a term or condition of his or her employment.

## **90 Regulations relating to staff**

- (1) The regulations may make provision for the employment of officers otherwise than under agreements in writing and may, in respect of officers so employed, make provision from time to time for their terms and conditions of employment (including salaries).
- (2) The regulations may make provision for the terms and conditions of employment applicable to temporary and casual employees.
- (2A) The regulations may make provision for the establishment of a body, or for a person, to review actions of the Organisation affecting persons who are or have been officers or temporary or casual employees, and for the immunity from civil proceedings of any such body or person in relation to their review of such actions.
- (3) Regulations made in accordance with this section have effect notwithstanding sections 84, 85 and 86.
- (4) Regulations made in accordance with this section shall not apply to the employment of an officer employed under an agreement made before the commencement of the first regulations so made in relation to officers except to the extent agreed in writing between the officer and the Director-General.

## **91 Application of Crimes Act**

The Director-General and officers and employees of the Organisation shall be deemed to be Commonwealth officers for the purposes of the *Crimes Act 1914*.

*no amendments*

## **92 Publication of identity of officer of Organisation**

- (1) A person (other than a member of the Committee on ASIO, ASIS and DSD) shall not, except with the consent in writing of the Minister or of the Director-General, publish or cause to be published in a newspaper or other publication, or by radio broadcast or television, or otherwise make public, any matter stating, or from which it could reasonably be inferred, that a person having a particular name or otherwise identified, or a person residing at a particular address, is an officer (not including the Director-General), employee or agent of the Organisation or is in any way connected with such an officer, employee or agent or, subject to subsection (1B), is a former officer (not including a former Director-General), employee or agent of the Organisation or is in any way connected with such a former officer, employee or agent.

Penalty: Imprisonment for one year.

- (1A) A member of the Committee referred to in subsection (1) shall not, except with the consent in writing of the Minister or of the Director-General, make public or authorise the publication of, any information acquired by the person by reason of being such a member, being information from which it could reasonably be inferred that a person having a particular name or otherwise identified, or a person residing at a particular address, is an officer (not including the Director-General), employee or agent or is in any way connected with such an officer, employee or agent or, subject to subsection (1B), is a former officer (not including a former Director-General), employee or agent of the Organisation or is in any way connected with such a former officer, employee or agent.

Penalty: Imprisonment for one year.

- (1B) Subsections (1) and (1A) do not apply in relation to action taken in respect of a former officer, employee or agent of the Organisation:

- (a) who has consented in writing to the taking of that action; or
- (b) who has caused or permitted the fact that the person is a former officer, employee or agent of the Organisation to be made public.

- (2) Nothing in this section applies to the broadcasting, datacasting or reporting of proceedings in the Parliament (other than proceedings of the Committee referred to in subsection (1)).

- (3) A prosecution for an offence against this section shall be instituted only by or with the consent of the Attorney-General.

*no amendments*

## **Part VI—Miscellaneous**

### **93 Offences**

- (5) Where, in proceedings for an offence against this Act in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (6) Any conduct engaged in on behalf of a body corporate:
  - (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
  - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.
- (7) A reference in subsection (5) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

[27A] **After subsection 94(1) Insert:**

(1A) The report must include a statement of:

- (a) the total number of requests made under section 34C to issuing authorities during the year for the issue of warrants under section 34D; and
- (b) the total number of warrants issued during the year under section 34D; and
- (c) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(a) (about requiring a person to appear before a prescribed authority); and
- (d) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(a) and the total of all those hours for all those persons; and
- (e) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(b) (about authorising a person to be taken into custody, brought before a prescribed authority and detained); and
- (f) the following numbers:
  - (i) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(b);
  - (ii) the number of hours each person spent in detention under such a warrant;
  - (iii) the total of all those hours for all those persons; and
- (g) the number of times each prescribed authority had persons appear for questioning before him or her under warrants issued during the year.

(1B) A statement included under subsection (1A) in a report must not name, or otherwise specifically identify, any person to whom information provided in the report relates.

Note: Subsection (4) lets the Minister delete information described in subsection (1A) from the copy of the report laid before each House of the Parliament under subsection (3), if the Minister considers it necessary to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

[27B] **At the end of section 94 Add:**

(5) The Minister may not delete from a report a statement described in subsection (1A).

[27C] **27C Application of amendments of section 94**

The amendments of section 94 of the *Australian Security Intelligence Organisation Act 1979* made by this Schedule apply to each report for a year ending after the commencement of this item.

## 94 Annual report

(1) The Director-General shall, as soon as practicable after each year ending on 30 June, furnish to the Minister a report on the activities of the Organisation during that year.

(1A) The report must include a statement of:

- (a) the total number of requests made under section 34C to issuing authorities during the year for the issue of warrants under section 34D; and
- (b) the total number of warrants issued during the year under section 34D; and
- (c) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(a) (about requiring a person to appear before a prescribed authority); and
- (d) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(a) and the total of all those hours for all those persons; and
- (e) the total number of warrants issued during the year that meet the requirement in paragraph 34D(2)(b) (about authorising a person to be taken into custody, brought before a prescribed authority and detained); and
- (f) the following numbers:
  - (i) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year that meets the requirement in paragraph 34D(2)(b);
  - (ii) the number of hours each person spent in detention under such a warrant;
  - (iii) the total of all those hours for all those persons; and
- (g) the number of times each prescribed authority had persons appear for questioning before him or her under warrants issued during the year.

(1B) A statement included under subsection (1A) in a report must not name, or otherwise specifically identify, any person to whom information provided in the report relates.

Note: Subsection (4) lets the Minister delete information described in subsection (1A) from the copy of the report laid before each House of the Parliament under subsection (3), if the Minister considers it necessary to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

(2) A copy of a report furnished under subsection (1) shall be given to the Leader of the Opposition in the House of Representatives, but it is the duty of the Leader of the Opposition to treat as secret any part of the report that is not tabled in a House of the Parliament.

(3) Subject to subsection (4), the Minister shall cause a copy of a report furnished under subsection (1) to be laid before each House of the Parliament within 20 sitting days of that House after the report is received by the Minister.

(4) For the purposes of subsection (3), the Minister may make such deletions from a report furnished under subsection (1) as the Minister, after obtaining advice from the Director-General, considers necessary in order to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

(5) The Minister may not delete from a report a statement described in subsection (1A).

*no amendments*

## **95 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.