



Appendix D – Division 3 Part III of the *ASIO Act 1979*

Australian Security Intelligence Organisation Act 1979

Act No. 113 of 1979 as amended

This compilation was prepared on 13 September 2004
taking into account amendments up to Act No. 125 of 2004

[Note: Division 3 of Part III ceases to be in force on 23 July 2006, *see*
section 34Y]

The text of any of those amendments not in force
on that date is appended in the Notes section The operation of amendments
that have been incorporated may be affected by application provisions that
are set out in the Notes section

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N.B. This extract includes:

- Table of Contents
- ss 1-4 (definitions)
- ss 34A-34Y (terrorism offences) Page numbers for Part 3 Div 3
reflect the amended document

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An Act relating to the Australian Security Intelligence Organisation

Part I—Preliminary

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

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Security Intelligence Organisation Act 1956* and the *Australian Security Intelligence Organisation Act 1976* are repealed.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

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.

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.

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).

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.

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.

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

violence includes the kidnapping or detention of a person.

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 of a State; or
- (d) the Supreme Court of a State or Territory; or
- (e) the District Court (or equivalent) of a State or Territory.

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.

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.
- (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).
- (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 in connection with the warrant; and
 - (b) is after:
 - (i) the person has been brought before a prescribed authority for questioning; and
 - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and

- (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34TA that the person be prevented from contacting 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.

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 at the time the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the request for the issue of the warrant requested; and
 - (ii) the person is not being detained under this Division in connection with one of the earlier warrants.

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

- (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 starts when the person is first brought before a prescribed authority under the warrant and ends at the first time one of the following events happens:
- (a) someone exercising authority under the warrant informs the prescribed authority before whom the person is appearing for questioning that the Organisation does not have any further request described in paragraph (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.
- (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.

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.

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 and to disclose information other than specified information while in contact;
 - (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.
- (2A) To avoid doubt, the mere fact that the warrant is one meeting the requirement in paragraph 34D(2)(a) does not prevent a direction under subsection (1) of this

section from being consistent with the warrant for the purposes of subsection (2) of this section.

Note: A warrant meeting the requirement in paragraph 34D(2)(a) requires a person to appear before a prescribed authority for questioning under the warrant (rather than authorising the person to be taken into custody, brought before a prescribed authority and detained).

- (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.

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.

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.
- (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.

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.

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 being questioned; and
 - (b) a legal adviser to that person; and
 - (c) a parent of that person; and
 - (d) a guardian of that person; and
 - (e) another person who meets the requirements of subsection 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.

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.

Extra time for questioning with interpreter present

- (8) Subsections (9), (10), (11) and (12) apply if, because of section 34H or 34HAA, an interpreter is present at any time while a person is questioned under a warrant issued under section 34D.
- (9) Anyone exercising authority under the warrant must not question the person under the warrant if the person has been questioned under the warrant for a total of 24, 32 or 40 hours, unless the prescribed authority before whom the person was being questioned just before the duration of that questioning reached that total permits the questioning to continue beyond that total for the purposes of this subsection.
- (10) Subsections (3), (4) and (5) and paragraph (7)(b) apply in relation to permitting, for the purposes of subsection (9), the questioning to continue beyond a total mentioned in subsection (9) in the same way as they apply in relation to permitting the questioning to continue for the purposes of subsection (1) or (2).
- (11) Subsection (6) and paragraph (7)(c) apply as if that subsection referred to a total of 48 hours (instead of 24 hours).
- (12) Paragraph (7)(a) applies as if it referred to the time at which the duration of questioning reached the total mentioned in subsection (1), (2) or (9) beyond which the questioning is not permitted to continue.

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.

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.

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 9 pm on a day; and
 - (b) ending at 6 am on the following day;
- unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody under subsection 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.

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.

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

- (1) If the Director-General has sought the Minister's consent to request the issue of a warrant under section 34D in relation to a person, then, as soon as practicable after that person is notified of that action and of the effect of this subsection, the person must deliver to an enforcement officer every passport that:
- (a) is an Australian passport (as defined in the *Passports Act 1938*), or a foreign passport, that has been issued to the person; and
 - (b) the person has in his or her possession or control.

Penalty: Imprisonment for 5 years.

- (2) The Director-General must cause a passport delivered under subsection (1) to be returned to the person to whom it was issued, as soon as practicable after the first of the following events:
- (a) the Minister refuses to consent to request the issue of a warrant under section 34D in relation to the person;
 - (b) an issuing authority refuses to issue a warrant under section 34D in relation to the person;
 - (c) if a warrant under section 34D is issued in relation to the person—the period specified in the warrant under paragraph 34D(6)(b) ends;
- but the Director-General may cause the passport to be returned to that person earlier.
- (3) Subsection (2) does not require:
- (a) the return of a passport during a period specified under paragraph 34D(6)(b) in another warrant that specifies the person to whom the passport was issued; or
 - (b) the return of a passport that has been cancelled.
- (4) If a warrant under section 34D is issued in relation to the person, a person approved under subsection 24(1) in relation to the warrant may, after a passport of the first-mentioned person is delivered under subsection (1) and before it is returned under subsection (2):
- (a) inspect or examine the passport; and
 - (b) make copies or transcripts of it.
- (5) In this section:

enforcement officer means any of the following:

- (a) a member of the Australian Federal Police;
- (b) an officer of the police force of a State or Territory;
- (c) an officer of Customs (within the meaning of the *Customs Act 1901*).

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

- (1) A person commits an offence if:
- (a) the person has been notified:
 - (i) that the Director-General has sought the Minister's consent to request the issue of a warrant under section 34D in relation to the person; and
 - (ii) of the effect of this subsection in connection with that action; and
 - (b) the person leaves Australia; and

- (c) the leaving occurs after the person has been notified that the Director-General has sought the Minister's consent and of the effect of this subsection in connection with that action, and before the first of the following events:
 - (i) if the Minister refuses to consent to request the issue of a warrant under section 34D in relation to the person—that refusal;
 - (i) if an issuing authority refuses to issue a warrant under section 34D in relation to the person—that refusal;
 - (ii) if a warrant under section 34D is issued in relation to the person—the period specified in the warrant under paragraph 34D(6)(b) ends; and
- (d) the person does not have written permission from the Director-General to leave Australia at the time the person leaves Australia.

Penalty: Imprisonment for 5 years.

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

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

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

34JC Surrender of passport by person specified in warrant

- (1) As soon as practicable after the person specified in a warrant issued under section 34D is notified of the issue of the warrant and of the effect of this subsection, the person must deliver to someone exercising authority under the warrant every passport that:
 - (a) is an Australian passport (as defined in the *Passports Act 1938*), or a foreign passport, that has been issued to the person; and
 - (b) the person has in his or her possession or control.

Penalty: Imprisonment for 5 years.

- (2) The Director-General must cause a passport delivered under subsection (1) to be returned to the person to whom it was issued, as soon as practicable after the end of the period specified in the warrant under paragraph 34D(6)(b) (about how long the warrant is in force), but may cause the passport to be returned to that person earlier.
- (3) However, subsection (2) does not require:
 - (a) the return of a passport during a period specified under paragraph 34D(6)(b) in another warrant that specifies the person to whom the passport was issued; or
 - (b) the return of a passport that has been cancelled.
- (4) After a passport is delivered under subsection (1) and before it is returned under subsection (2), a person approved under subsection 24(1) in relation to the warrant mentioned in subsection (1) of this section may:
 - (a) inspect or examine the passport; and
 - (b) make copies or transcripts of it.

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

- (1) A person commits an offence if:
 - (a) the person has been notified of:
 - (i) the issue of a warrant under section 34D that specifies the person; and
 - (ii) the effect of this subsection in connection with the warrant; and
 - (b) the person leaves Australia; and
 - (c) the leaving occurs:
 - (i) after the person has been notified of the issue of the warrant and of the effect of this subsection in connection with the warrant; and
 - (ii) before the end of the period specified in the warrant as the period during which the warrant is to be in force; and
 - (d) the person does not have written permission from the Director-General to leave Australia at the time the person leaves Australia.

Penalty: Imprisonment for 5 years.

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

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

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

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.

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.

34M Rules for conduct of strip search

- (1) A strip search under section 34L:
- (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.

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).
- (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).
- (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.

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.

- (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.

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

- (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*.

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.

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*.

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 lawyer of the person's choice.

Note: As the warrant authorises questioning of the person only while the person is before a prescribed authority, the prescribed authority can control whether questioning occurs by controlling whether the person is present before the prescribed authority.
- (2) This section does not permit questioning of the person by a person exercising authority under the warrant at a time when a person exercising authority under the warrant is required by another section of this Division not to question the person.

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

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.

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.

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.

34VAA Secrecy relating to warrants and questioning

Before the expiry of the warrant

- (1) A person (the *discloser*) commits an offence if:
 - (a) a warrant has been issued under section 34D; and
 - (b) the discloser discloses information; and

- (c) either or both of the following apply:
 - (i) the information indicates the fact that the warrant has been issued or a fact relating to the content of the warrant or to the questioning or detention of a person in connection with the warrant;
 - (ii) the information is operational information; and
- (d) if subparagraph (c)(ii) applies but subparagraph (c)(i) does not—the discloser has the information as a direct or indirect result of:
 - (i) the issue of the warrant; or
 - (ii) the doing of anything authorised by the warrant, by a direction given under subsection 34F(1) in connection with the warrant or by another provision of this Division in connection with the warrant; and
- (e) the disclosure occurs before the end of the period specified in the warrant as the period for which the warrant is to be in force; and
- (f) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 5 years.

In the 2 years after the expiry of the warrant

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

Penalty: Imprisonment for 5 years.

Strict liability

- (3) Strict liability applies to paragraphs (1)(c) and (2)(c) if the discloser is:
 - (a) the person (the **subject**) specified in the warrant; or
 - (b) a lawyer who has at any time been:
 - (i) present, as the subject's legal adviser, at the questioning of the subject under the warrant; or
 - (ii) contacted for the purpose of the subject obtaining legal advice in connection with the warrant; or
 - (iii) contacted for the purpose of the subject obtaining representation in legal proceedings seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant.

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

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

Extended geographical jurisdiction—category D

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

Definitions

- (5) In this section:

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

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

permitted disclosure means any of the following:

- (a) a disclosure made by a person in the course of any of the following:
 - (i) exercising a power, or performing a function or duty, under this Act;
 - (ii) doing anything the person is authorised to do by a warrant issued under this Act;
 - (iii) doing anything the person is required or permitted to do by a direction under subsection 34F(1);
 - (iv) exercising a power (including a power to make a complaint), or performing a function or duty, under the *Complaints (Australian Federal Police) Act 1981* or the *Inspector-General of Intelligence and Security Act 1986*;
- (b) a disclosure that is:
 - (i) made in the course of the questioning of a person under a warrant issued under section 34D; and
 - (ii) made by a person who is present at the questioning when making the disclosure;
- (c) a disclosure to a lawyer for the purpose of:
 - (i) obtaining legal advice in connection with a warrant issued under section 34D; or
 - (ii) obtaining representation in legal proceedings seeking a remedy relating to such a warrant or the treatment of a person in connection with such a warrant;
- (d) a disclosure for the purpose of the initiation, conduct or conclusion (by judgment or settlement) of legal proceedings relating to such a remedy;
- (e) a disclosure that is permitted by a prescribed authority to be made;
- (f) a disclosure to one or more of the following persons, by the representative mentioned in subsection 34V(1) or by a parent, guardian or sibling of the subject mentioned in that subsection, of information described in paragraph (1)(c) or (2)(c) of this section in relation to the warrant mentioned in that subsection:
 - (i) a parent, guardian or sibling of the subject;
 - (ii) the representative;

- (iii) a prescribed authority;
 - (iv) a person exercising authority under the warrant;
 - (v) the Inspector-General of Intelligence and Security;
 - (vi) the Ombudsman;
 - (g) a disclosure permitted by the Director-General;
 - (h) a disclosure permitted by the Minister;
 - (i) a disclosure prescribed by the regulations.
- (6) For the purposes of paragraph (e) of the definition of **permitted disclosure** in subsection (5), a prescribed authority may give written permission, not inconsistent with the regulations (if any), for:
- (a) a person contacted as described in subsection 34U(1); or
 - (b) the representative mentioned in subsection 34V(1);
- to disclose specified information to a specified person. The permission may be given either unconditionally or subject to specified conditions.
- Note 1: The prescribed authority may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.
- (7) For the purposes of paragraph (g) of the definition of **permitted disclosure** in subsection (5), the Director-General may give written permission for a disclosure. The permission may be given either unconditionally or subject to specified conditions.
- Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.
- (8) For the purposes of paragraph (h) of the definition of **permitted disclosure** in subsection (5), the Minister may, after obtaining advice from the Director-General, give written permission for a disclosure. The permission may be given either unconditionally or subject to specified conditions.
- Note 1: The Minister may, after obtaining advice from the Director-General, revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.
- Note 2: If permission is given subject to a condition and the condition is not met, the permission is not in force.
- (9) Regulations made for the purposes of paragraph (i) of the definition of **permitted disclosure** in subsection (5) may prescribe a disclosure by reference to one or more of the following:
- (a) the person making the disclosure;
 - (b) the person to whom the disclosure is made;
 - (c) the circumstances in which the disclosure is made;
 - (d) the purpose of the disclosure;
 - (e) the nature of information disclosed;
 - (f) an opinion of a specified person about the possible or likely effect of the disclosure.

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

Offences apply to original and previously disclosed information

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

Relationship with other laws prohibiting disclosure

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

Implied freedom of political communication

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

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

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

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

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.