

Warrants

Background

- 2.1 Under the Bill, provision is made for the issuing of two types of warrants, a questioning and/or a detention warrant. These warrants would grant ASIO for the first time the law enforcement power of questioning, but not arrest powers.
- 2.2 Proposed paragraph 34D(2)(a) sets out the criteria for issuing a warrant requiring the appearance of a person before a prescribed authority. Failure to appear would carry a penalty of 5 years imprisonment.
- 2.3 Proposed paragraph 34D(2)(b) provides for a warrant to be issued that requires a person to be taken into custody and detained for 48 hours. Under this warrant a person may be denied contact with anyone not specified in the warrant.
- 2.4 This Chapter examines proposed sections 34C and 34D of the Bill. These sections provide the legislative framework for the issuing of these warrants.
- 2.5 Proposed section 34C describes the process by which the Director-General of ASIO may apply for the warrant by seeking the consent of the Attorney-General and the factors which need to be considered by the Attorney-General in issuing these warrants.
- 2.6 Proposed section 34D provides that a prescribed authority may issue warrants for questioning and/or detention. The process that the prescribed authority must follow is outlined in this section.

Proposed section 34B Prescribed authorities

Background

- 2.7 The prescribed authority (PA), which is described in proposed section 34B, is responsible for issuing warrants for the detention of persons as set out in the Bill. Before examining the role and status of the PA, it is necessary to briefly review the steps before the PA is requested to issue a warrant.
- 2.8 The process for requesting a warrant is set out under proposed section 34C. The steps in requesting a warrant begin with the Director-General of ASIO seeking the Minister's consent to request the issue of a warrant by the PA. The Director-General must give the Minister a draft request that includes a draft of the warrant to be requested, a statement of facts outlining why the warrant should be issued, and a statement of all the particulars and outcomes of previous warrants relating to the person.
- 2.9 The Minister, in consenting to the Director-General's request for a warrant, must be satisfied that there are reasonable grounds for issuing the warrant and that it will substantially assist the collection of intelligence that is important in relation to a terrorism offence. In particular, the Minister, under proposed subsection 34C(3), must be satisfied that there are reasonable grounds for believing that, if the person is not immediately taken into custody and detained, the person:
- may alert a person involved in a terrorism offence that the offence is being investigated;
 - may not appear before the prescribed authority; or
 - may destroy, damage or alter a record or thing the person may be requested in accordance with the warrant to produce.
- 2.10 If the Minister consents to the draft warrant, the Director-General may then request the warrant by giving a PA a copy of the draft warrant, with any amendments made by the Minister, and a copy of the Minister's consent.
- 2.11 The role and status of the PA is a critical feature of the Bill. Proposed section 34B which sets out the method of appointment of the PA is produced, in full, below:

34B Prescribed authorities

- (1) *The Minister may, by writing, appoint as a prescribed authority:*
- (a) *a Federal Magistrate; or*

- (b) *a person who holds one of the following appointments to the Administrative Appeals Tribunal:*

 - (i) *Deputy President;*
 - (ii) *full-time senior member;*
 - (iii) *part-time senior member;*
 - (iv) *member.*
- (2) *The Minister must not appoint a Federal Magistrate under paragraph (1)(a) unless:*
 - (a) *the Magistrate has, by writing, consented to being appointed; and*
 - (b) *the consent is in force.*
- (3) *The Minister must not appoint a person under paragraph (1)(b) unless the person:*
 - (a) *is a Deputy President; or*
 - (b) *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) *A 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.*
- (5) *If a Federal Magistrate has under this Division a function, power or duty that is neither judicial nor incidental to a judicial function or power, the Magistrate has the function, power or duty in a personal capacity and not as a court or a member of a court.*

2.12 The Explanatory Memorandum (EM) indicates that proposed subsection 34B(5) 'provides that if a Federal Magistrate has under Division 3 of the ASIO Act a function, power or duty that is neither judicial nor incidental to a judicial function or power, the Magistrate has the function, power or duty in a personal capacity and not as a court or a member of a court.'

2.13 The EM states that this section has been included in the Bill 'to ensure that it is clear that this new function is being conferred on Federal Magistrates in their personal capacity.' This provision is similar to section 4AAA of the *Crimes Act 1914* which 'regulates the conferral of functions on judicial officers under Commonwealth law in relation to 'criminal matters.'

Analysis

2.14 The use of members of the Administrative Appeals Tribunal (AAT) as PAs was heavily criticised in relation to their suitability to issue warrants. It was argued that the majority of members of the AAT hold fixed term

appointments and would lack the independence to perform the function of a PA. Dr Greg Carne commented that the 'lack of independence and the lack of security of tenure must surely impact upon their independence and their ability to resist pressure in executing the various warrant authorities and supervisory functions under the Bill'.¹

- 2.15 It was pointed out in evidence that the AAT is not a judicial body and therefore should not be able to issue warrants for the detention of persons. The Federation of Community Legal Centres (FCLC) argued that this would violate the principle of the separation of powers. The FCLC concluded that only 'an independent judicial body should be able to issue warrants for imprisonment or detention.'² The Law Council of Australia (LCA) commented that the 'separation of judicial power entrenched by the Constitution protects Australian citizens against the usurpation of judicial power in the form of the imposition of involuntary detention of a penal or punitive character by the legislature or executive.'³ The LCA stated:

...the powers proposed to be granted to ASIO pursuant to warrants issued by prescribed authorities are so far reaching, including the power to request detention of persons for 48 hours and longer, that the issuing of warrants should only be capable of being authorised by a Chapter III judge. The common law has long recognised the role of the judiciary in the authorisation of the issuing of warrants. Such a role fits within the established principle of the performance of such function by judges as *personae designatae*.⁴

- 2.16 The Attorney-General's Department (AG's) agrees that a power of detention which is punitive in character cannot be conferred upon the Executive by a law of the Commonwealth. However, AG's received advice which claims 'that the detention authorised under the ASIO Bill can be reasonably regarded as not punitive in character.'⁵ On the basis of this advice, AG's argues that the provisions of the Bill are constitutionally valid.
- 2.17 Professor George Williams noted that, while there are some exceptions, the Bill is unconstitutional on the ground that 'the High Court has declared that the capacity to detain Australians involuntarily is, in its words an 'exclusively judicial function.' Professor Williams stated:

1 Dr Greg Carne, Faculty of Law, University of Tasmania, *Transcript*, p. 88.

2 Federation of Community Legal Centres, *Submission No. 76*, p. 5.

3 Law Council of Australia, *Submission No. 147*, p. 9.

4 Law Council of Australia, *Submission No. 147*, p. 9.

5 Attorney-General's Department, *Submission No. 167*, p. 1.

...the High Court has said that the executive cannot detain people, except in narrow circumstances; yet, that is exactly what this bill does, and it does so without a proper judicial process. Indeed, I think there is a strong possibility that the High Court would find that any form of detention, other than as part of a trial or as an adjunct to a trial such as pending a bail hearing, is unconstitutional and, therefore, is bad law.⁶

- 2.18 The issue for judges performing their function in the capacity of *personae designatae* is set out in proposed subsection 34B(5). This feature arises from the High Court case of *Grollo v. Palmer*⁷ in which the High Court found in relation to phone interception warrants that the judiciary can under Chapter III of the Constitution issue warrants but they must do so in their personal capacity.⁸
- 2.19 In essence, for judges to be able to issue warrants, in their personal capacity (*personae designatae*), the warrants must be 'received by consent' and not be incompatible with the performance of the 'judicial functions or the proper discharge of the judiciary of its responsibility as an institution.' Also of consideration must be 'whether a particular extrajudicial assignment undermines the integrity of the Judicial Branch'.⁹
- 2.20 Dr Greg Carne, however, commented that the 'obligations of the federal magistrate's PA [a Federal Magistrate acting as a prescribed authority] exceed the principles set down by the High Court in the *Grollo v. Palmer* case and 'are likely to collapse on the basis of a constitutional challenge.'¹⁰ Similarly, Professor Williams stated:

In the earlier case of *Grollo v. Palmer*, the High Court decided that telephone tapping was not incompatible, that could be a source of power given to judges. However, I think in this instance, particularly given the criticism that has been levelled at *Grollo v. Palmer* since it was handed down, there is a strong possibility that this goes much further than that and, indeed, would be seen as distinguishable from that circumstance. A judge in this case would be giving a warrant that would amount to a far higher degree of intrusion into private rights.¹¹

6 Professor George Williams, *Transcript*, p. 134.

7 *Grollo v. Palmer* (1995) 184 CLR 348

8 Dr Greg Carne, Faculty of Law, University of Tasmania, *Transcript*, p. 92.

9 *Bills Digest, No. 128 2001-02* Parliamentary Library, p. 29.

10 Dr Greg Carne, Faculty of Law, University of Tasmania, *Transcript*, p. 88.

11 Professor George Williams, *Transcript*, p. 134.

2.21 A PA under the Bill would not only issue a warrant but they would also have to attend the person's interview and explain to the person certain facts about the warrant. Dr Carne suggests that these additional responsibilities may test the limits of the High Court in relation to a judge's personal capacity. Dr Carne states:

This seems to push far beyond what they [High Court] have actually been prepared to tolerate so far, because the magistrate involved, the judicial officer involved in these activities, is constantly exercising discretions and supervisions in the actual interrogation. It is not simply like going into a magistrate's office and getting a warrant and reporting back two weeks later or something like that.¹²

2.22 AG's acknowledged the problems raised by Dr Carne commenting that 'there is a difference, it could be argued, between simply authorising the issue of the warrant and sitting through the process.'¹³ Dr Carne acknowledged that the status of Federal Magistrates as PAs under the Bill would have a greater chance of being sustained by the High Court if they were just to issue the warrants and not undertake administrative functions relating to the interview of the person.¹⁴ This view was supported by Professor Williams.¹⁵

2.23 In 1999 the previous Parliamentary Committee on ASIO noted, in an advisory report to the Parliament, that 'in 1997 the judges of the Federal Court advised the Government that they would no longer be involved in issuing telecommunications interception warrants.' The judges advanced three reasons for their decisions:

- issuing warrants is an administrative, not a judicial function;
- issuing warrants imposes a significant additional workload; and
- they were increasingly finding themselves as respondents to judicial review applications in their own courts.¹⁶

12 Dr Greg Carne, Faculty of Law, University of Tasmania, *Transcript*, p. 93.

13 Mr Keith Holland, Attorney-General's Department, *Transcript*, p. 100.

14 Dr Greg Carne, Faculty of Law, University of Tasmania, *Transcript*, p. 100.

15 Professor George Williams, *Transcript*, p. 137.

16 Parliamentary Joint Committee on the Australian Security Intelligence Organisation, *An Advisory Report on the Australian Security Intelligence Organisation Legislation Amendment Bill 1999*, May 1999, p. 12.

Conclusions

- 2.24 The status and role of the prescribed authority (PA) is a critical part of the Bill. The PA must be of a certain status which ensures transparency, accountability and provides confidence to the public. This can only be achieved if the authority for issuing a warrant is judicial. The AAT is an instrument of executive government and therefore should not be given the power to issue warrants. The problem arises, however, that if a Federal Magistrate was to perform the role of the PA, as set down in the Bill, then, based on evidence provided to the Committee, the High Court might find the Bill unconstitutional.
- 2.25 The High Court found in *Grollo v Palmer* that in relation to phone interception warrants the judiciary can, under Chapter III of the Constitution, issue warrants but they must do so in their personal capacity. Evidence suggested that the obligations of Federal Magistrate PAs exceed the principles set down by the High Court in the *Grollo* case.
- 2.26 It is essential that the judiciary be responsible for issuing warrants under this Bill, but, in view of the *Grollo v Palmer* case, the issuer of the warrant may not be able to undertake the responsibilities of the PA as set out in the Bill. In view of this, the Committee proposes a regime in which a Federal magistrate would issue all initial warrants. A Federal Court Judge would be requested to issue all warrants where detention exceeds 96 hours. Finally, AAT members, with qualifications currently set out in the Bill, would perform all the functions of the PA as set out in the Bill excluding the responsibility for issuing warrants. The Committee acknowledges that by seeking to have sufficient judicial independence in the process it may also be pushing the constitutional limits of the Bill.
- 2.27 The Committee has tested this regime with expert witnesses and considers it the only possible approach to maintaining judicial control over detention and at the same time seeking to ensure consistency with previous High Court rulings. However, it is acknowledged that there remain some uncertainties in this area.
- 2.28 Therefore, the Committee also proposes that the Bill include a provision so that the Attorney-General may, by way of regulation, appoint another authority which could issue warrants. Such a regulation, as a disallowable instrument, would need to be tabled in both Houses of Parliament and would be subject to review for 15 sitting days. If either of the Houses disagreed with the Attorney-General's choice then they could disallow the regulation.

Recommendation 1

2.29 Proposed section 34B, and consequential parts, of the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended to provide for:

- Federal magistrates to issue all warrants;
- Federal Judges to issue all warrants where detention will exceed 96 hours; and
- members of the AAT, as set out in proposed subsection 34B(1), to undertake all other duties of the prescribed authority excluding the power to issue warrants.

Recommendation 2

2.30 The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended to include a provision giving the Attorney-General the power, by way of regulation, to nominate an authority that can issue a warrant under the Bill.

Proposed section 34C – duration of the detention period

2.31 Section 34C is divided into five subsections. This Section is produced, in full, below:

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.*
- (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.*
- (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*
 - (c) *if the warrant to be requested is to authorise the person to be immediately taken into custody, brought before a prescribed authority 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.

- (4) *If the Minister has consented, the Director-General may request the warrant by giving a prescribed 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.*
- (5) *The Director-General may request the warrant only by giving the material described in subsection (4) to a prescribed authority who is a Deputy President of the Administrative Appeals Tribunal, if:*
 - (a) *the person has been detained under this Division for a continuous period of more than 48 hours; and*
 - (b) *if the requested warrant were issued, the person could be detained under this Division for a continuous period of more than 96 hours that includes the period described in paragraph (a).*

Note: Subsection (5) can apply only if, before the request is made, at least 2 warrants have been issued in relation to the person under this Division.

- 2.32 Proposed section 34C sets out the process for seeking the consent of the Attorney-General for obtaining a warrant from a PA to detain and question a person.
- 2.33 If the person has already been detained under a warrant for more than 48 hours then under proposed subsection 34C(5) a further warrant may be requested by the Director-General of Security but only from a Deputy President of the Administrative Appeals Tribunal (AAT). This subsection appears to create a provision whereby the Director of ASIO may request an extension to a warrant directly from a prescribed authority.

Analysis

- 2.34 There was considerable criticism and some confusion in relation to the length of time a person could be detained under the proposed legislation. At a public hearing the Attorney-General's Department confirmed that a warrant could be extended for an indefinite period of time.¹⁷ This was criticised by the Law Council of Australia who stated in their submission:

Of utmost concern is that the Bill envisages that second and subsequent warrants each up to 48 hours may be obtained. There is no restriction whatsoever on the number of such warrants which may be obtained and hence the overall period of continuous detention, except that where warrants will result in a continuous period of more than 96 hours, warrant authority must be sought from the Deputy President of the AAT.¹⁸

- 2.35 Amnesty International stated that the 'ability to further extend the initial period of 48 hours detention indefinitely by repeatedly reissuing new warrants violates obligations regarding arbitrary detention.'¹⁹ Article 9 of the ICCPR, 'recognises the right not to be arbitrarily detained.'²⁰ Further to this, they suggest, '(a)t the very least, a limit must be placed on the number of warrants obtainable against the one person.'²¹
- 2.36 The Castan Centre for Human Rights Law argue that article 9(1) of the ICCPR 'prohibits arbitrary detention'. Further to this they advised the Committee that articles 9(3) and 9(4) of the ICCPR require oversight 'by a judicial body, rather than a quasi-judicial substitute.'²²

17 Mr Keith Holland, *Transcript*, p. 43.

18 Law Council of Australia, *Submission No. 147* p 20

19 Amnesty International, *Submission No. 140* p.11.

20 Amnesty International, *Submission No. 140* p.9.

21 Amnesty International, *Submission No. 140* p. 9.

22 Castan Centre for Human Rights Law, Monash University, *Submission No. 111*, p.1-2

- 2.37 The Australian Section International Commission of Jurists add support to this stating in regards to the legislation as a whole:

The Bill, if it becomes an Act, will breach our obligations under the International Covenant on Civil and Political Rights. This Bill is an unprecedented affront by Australia, if enacted, to the instruments to which we have adhered over generations and which were promulgated by the United Nations.²³

Conclusions

- 2.38 The provision for indefinite detention proposed in the legislation is an issue of some concern. A person who has not been charged with an offence should not be detained for an indefinite period of time.
- 2.39 The Committee therefore proposes to introduce a maximum limit for detention of 7 days (168 hours). Therefore, a person could not be detained for longer than 7 days under the Committee's amendment.
- 2.40 In relation to ASIO's powers to seek warrants, ASIO indicated that the Director-General may only seek a warrant 'if the Attorney-General consents to this.'²⁴ The EM in relation to proposed subsection 34C(5), states that 'if the Director-General is seeking a further warrant in relation to a person who has already been detained under two consecutive warrants, the Director-General must seek the warrant from a Deputy President of the AAT.' It is not explicit that, in seeking a further warrant, the Director-General has first requested the need for a further warrant from the Attorney-General. This should be made explicit in the Bill.

Recommendation 3

- 2.41 The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended so that the maximum period of detention of a person is no more than 7 days (168 hours), and at the expiry of that period a person must be either charged or released.**

23 Australian Section International Commission of Jurists, *Transcript*, p. 125.

24 Mr Dennis Richardson, Director-General of Security, ASIO, *Transcript*, p. 23 and 48.

Recommendation 4

- 2.42 **The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended to ensure that the Director-General in seeking a further warrant from a person must first seek the Minister's consent prior to requesting a further warrant from a Federal Magistrate or Federal Court Judge.**

Proposed section 34D – Being brought immediately before a prescribed authority

- 2.43 Proposed section 34D provides for the issuing of warrants by a prescribed authority. It sets out the types of warrants that may be issued, under what conditions and what may be included in the warrant. The obligations of the person subject to the warrant are also set out.
- 2.44 A person may be held incommunicado under a detention and questioning warrant. The warrant under proposed subparagraph 34D(2)(b)(ii) will specify all those whom the person is permitted to contact while in custody or detention. Under this provision, a person may be denied legal representation.
- 2.45 Section 34D is divided into 6 subsections. The section is produced, in full, below:

34D Warrants for questioning etc.

- (1) *A prescribed 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 with subsection 34C(5) if relevant; and*
 - (b) *the prescribed 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.*
- (2) *The warrant must, in the same terms as the draft warrant given to the prescribed 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 immediately taken into custody by a police officer, brought before a prescribed authority for questioning under the warrant and detained under arrangements made by a police officer for a specified period of not more than 48 hours starting when the person is brought before the authority;*
 - (ii) *specify all the persons whom the person is permitted to contact while in custody or detention authorised by the warrant.*
- (3) *For the purposes of subparagraph (2)(b)(i), the warrant may specify the end of the period for which the person is to be detained by reference to the opinion of a person exercising authority under the warrant that the Organisation does not have any further request described in paragraph (5)(a) to make of the person. This does not limit the ways in which the warrant may specify the end of the period.*
- (4) *The warrant may specify someone whom the person is permitted to contact by reference to the fact that he or she is the person's legal adviser. This does not limit the ways in which the warrant may specify persons whom the person is permitted to contact.*

Note 1: The warrant may specify 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 specify them.

- (5) *Also, the warrant must, in the same terms as the draft warrant given to the prescribed 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;*
 - (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: be signed by the prescribed 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.*

Analysis

- 2.46 A 28-day period in which a person may be taken into custody is currently provided for under paragraph 34D(6)(b). This 28-day period was criticised as being too long, and misleading in relation to the 48 hours detention proposed under a detention and questioning warrant.
- 2.47 Subparagraph 34D(2)(b)(i) authorises that persons under a 34D(2)(b) warrant are to be taken immediately into custody by a police officer and brought before a prescribed authority. It is not, however, specified that a person should be taken ‘immediately’ before the prescribed authority.
- 2.48 It is conceivable therefore, that a person could be taken into custody but not immediately taken before the prescribed authority. Thus they could spend a number of days in custody before the 48-hour warrant begins.
- 2.49 Dr Greg Carne states:
- The 48 hour time limit for detention is also misleading. The concepts of custody and detention are *differentiated*. Police have the task of bringing the named person into *custody* and ensuring custody in periods outside interrogation. The 48 hours *detention* does not commence until the police first bring the person in custody before the prescribed authority for interrogation. The bill does not specify as to when this interrogation must occur.²⁵
- 2.50 ASIO stated that, ‘certainly it is not the intention that someone be picked up and kept somewhere for 21 days before being taken before a prescribed authority.’²⁶
- 2.51 The purpose of the 28 day custody period was explained by the Attorney-General’s Department as to allow, ‘for the warrant to be issued and then for the person, for example, to be found. The warrant would stay active for that 28-day period. But the warrant would only allow a period of detention for up to 48 hours.’²⁷

25 Dr Greg Carne, Faculty of Law, University of Tasmania, *Submission No. 150*, p. 10.

26 Mr Denis Richardson, Director-General of Security, ASIO, *Transcript* p. 36.

27 Ms Sue McIntosh, Attorney-General’s Department, *Transcript* p.35.

2.52 It was the opinion of ASIO that this was an 'inadvertent omission' which 'could be made clearer in the legislation.'²⁸

Conclusions

2.53 It is the view of the Committee that subclause 34D(2)(b)(i) needs to be amended so that when a person is taken into custody they are then immediately taken before a prescribed authority. The logistical problems of finding someone named in a warrant is recognised by the Committee however a loop-hole in the legislation which would allow for someone to be kept in custody for a length of time before being brought before the prescribed authority in the Committee's view is not justifiable.

Recommendation 5

2.54 **The Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 be amended so that the word immediately is inserted into subsection 34D(2)(b)(i) so that a person is 'immediately' brought before a prescribed authority.**

28 Mr Steven Marshall, ASIO, *Transcript* p. 36.