Of the 15 recommendations made by the parliamentary joint committee, the government has accepted 10 in full. The government has proposed the following amendments to implement those recommendations. Warrants will only be able to be issued by federal magistrates, federal judges or an authority prescribed by regulations—recommendations 1 and 2. Warrants that will result in detention of a person for more than 96 hours can be issued only by a federal judge or an authority prescribed by regulations—recommendation 1. Questioning under a warrant will take place before a legally qualified member of the Administrative Appeals Tribunal—recommendation 1. The maximum period of detention will be seven consecutive days, 168 hours—recommendation 3. The Director-General of Security must seek the Attorney-General's consent before requesting all warrants, including further warrants, in relation to the same individual—recommendation 4. A detained person must be immediately brought before a prescribed authority—recommendation 5. The information disclosed under a warrant must not be used as evidence against the person in criminal proceedings for a terrorism offence—recommendation 8. There will be penalties for officials who fail to comply with the bill's provisions: failure to comply will be an offence punishable by a maximum of two years imprisonment—recommendation 9. Warrant statistics must be included in ASIO's unclassified annual report—recommendation 11. The prescribed authority must advise the detained person of their right to seek a remedy from a federal court when the person first appears before the prescribed authority and at least once in every 24-hour period during which they are questioned—recommendation 15.

Where the government has not been able to accept the committee's recommendations in full because they potentially undermine the effective operation of the legislation, the government has developed a sensible and operationally appropriate alternative to address the concerns raised. The committee recommended in recommendation 6 that persons detained under a warrant should have access to legal representation drawn from a pool of security cleared lawyers. The government has agreed to allow all persons subject to a warrant to have access to a security cleared lawyer approved by the Attorney-General. The lawyers must be security cleared in order to ensure that the sensitive information to which they may be exposed is properly protected. Some in the opposition have suggested that the government would be handpicking lawyers and that it is not appropriate to deny people their own choice of lawyer. This is in contrast to the views expressed by senior members of the opposition such as Senator Robert Ray. During the parliamentary joint committee's inquiry, Senator Robert Ray recognised that it would be dangerous and silly to allow a detained person to contact any lawyer off the street. Why didn't the members of the opposition heed the views of such a senior and experienced Labor figure?

In exceptional circumstances, the Attorney-General will be able to delay access to a lawyer for up to 48 hours. This power may only be exercised in relation to adults. In order to delay access to a lawyer, the Attorney-General must be satisfied that it is likely that a terrorism offence is being or is about to be committed and that the offence may have serious consequences. It is completely untrue to suggest, as some members of the opposition have, that all persons detained will have their access to a lawyer delayed. Clearly this is a power to be exercised as a last resort in order to protect the Australian community from acts of terrorism. After 48 hours or a shorter period determined by the Attorney-General, a person detained under a warrant will have the absolute right to contact an approved lawyer. In order to protect the sensitive information that would be discussed during questioning and to minimise disruption to the interview process, contact with security cleared lawyers will be subject to a number of conditions set out in the amendments.

In recommendation 10, the committee recommended that no person under the age of 18 be questioned or detained under the bill. The government recognises that there are concerns about the application of the bill to children. For these reasons, the government is proposing amendment so that the bill does not apply to persons under the age of 14 and for a special regime for the protection of young people, with additional safeguards to apply to persons between 14 and 18. However, the government considers that it may be necessary, in exceptional circumstances, to obtain information from people between 14 and 18. The age of criminal responsibility is 14 years. There are known instances of persons under the age of 18 being actively involved in terrorist activity, including suicide bombings. Under the government's amendments, the minimum age for the subject of a valid warrant is 14. If a person appears before a prescribed authority and is, in the opinion of the prescribed authority, under the age of 14, they must not be questioned and must be released immediately. A warrant in relation to a person who is at least 14 but under 18 can be issued only if the Attorney-General is satisfied that it is likely that the person will commit, is committing or has committed a terrorism offence. *(Extension of time granted)*

Members opposite have painted a picture of children disappearing off the streets without their parents' knowledge. They are perfectly aware that this is never going to be the case. Young people will have a guaranteed right of access to a lawyer, parent, guardian or other representative, the Inspector-General of Intelligence and Security, and the Commonwealth Ombudsman. A young person subject to a warrant will be able to be questioned only in the presence of a parent, guardian or another representative and may not be questioned for more than two hours without a break. If a person who appears before a prescribed authority is, in the opinion of the prescribed authority, at least 14 years old but under 18 years old, the prescribed authority must ensure that the young person is afforded all of their rights. As with lawyers, special rules have been developed to ensure that sensitive information is not disclosed without authorisation and that the interview process is not unduly interrupted.

Recommendation 7 is that the bill be amended to provide for the development of protocols that would govern the custody, detention and interview process and that the legislation not commence until the protocols are in place. The amendments set out the process by which a written statement dealing with the custody, detention and interview of persons must be put in place. The written statement must be developed by the Director-General of Security in consultation with the Inspector-General of Intelligence and Security, the Commissioner of the Australian Federal Police and the President of the Administrative Appeals Tribunal. The statement must be approved by the Attorney-General, presented to each house of parliament and outlined in a briefing to the Parliamentary Joint Committee on ASIO, ASIS and DSD.

Making the commencement of the legislation contingent upon the creation of protocols is inappropriate. Commencement of legislation should not hinge on the completion of an administrative act. The government's amendment has the same practical effect. A valid warrant will not be able to be issued unless written procedures dealing with the custody, detention and interview of persons are in place. This is a more appropriate way of achieving the objective of the committee to have protocols for the detention and questioning of people.

In recommendation 12, the parliamentary joint committee recommended that the bill include a sunset clause so that it would automatically terminate after three years. In the government's view, there is no justification for the bill to be subject to a sunset clause. The international and domestic security environment has changed forever, and we cannot say for certain at what point in time, if any, the provisions of the bill will no longer be necessary. International experts on terrorism, such as Matthew Devost, the President of the Terrorism Research Centre, remind us that we must avoid complacency. In a recent appearance on the *Sunday Sunrise* program, Mr Devost noted that terrorists have time on their side. They can be patient and wait until the circumstances are right for a terrorist attack. It is simply not possible to say that in three years time ASIO will no longer need an enhanced intelligence-gathering capacity.

Terrorists are not going to just give up and the threat is not going to go away. Just because terrorists have not acted in the past year does not mean that they lack the capability or the intent to do so. The best way to prevent the horror of a terrorist attack in Australia is to ensure that we do not allow the circumstances to exist in which a terrorist attack could succeed. We cannot become complacent after three years and expose ourselves to a higher level of risk. It is not appropriate to simply allow the legislation to automatically expire after some arbitrary time period. A preferable approach is to introduce a more formalised review process that would allow the legislation to be carefully considered in the absence of arbitrary time pressures. The amendment will require the Parliamentary Joint Committee on ASIO, ASIS and DSD to review the operation, effectiveness and implications of the amendments made by the Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002 as soon as possible after the third anniversary of the legislation receiving royal assent.

Recommendation 14 of the committee's report was for the bill to be amended to provide the Inspector-General of Intelligence and Security with the power to suspend an interview under a warrant on the basis of noncompliance with the law or the occurrence of an impropriety. The committee further recommended that the inspector-general should immediately report the nature of such cases to the committee. The government has not accepted this recommendation. It would be inconsistent with the roles of the inspector-general and the prescribed authority to allow the inspector-general to suspend an interview. The prescribed authority is there to ensure that the interview is conducted appropriately and that the subject of the warrant is afforded his or her rights. However, the government proposes an alternative amendment to implement the substance of the committee's recommendation. The inspector-general will be able to inform the prescribed authority *(Extension of time granted)* and the director-general of any concerns he or she may have about impropriety or illegality in connection with the exercise of powers under a warrant.

Where the inspector-general informs the prescribed authority of such a concern, the prescribed authority must consider the inspector-general's concern and may give a direction deferring the questioning of the person or the exercise of any other power until satisfied that the inspector-general's concern has been satisfactorily addressed. In the event that the inspector-general expresses a concern about impropriety or illegality, the Director-General of Security must furnish the inspector-general with a statement describing any action the director-general has taken as a result of being informed about the concern.

There are a number of additional minor government amendments to the bill. Clause 2 and schedule 1 to the bill are amended to simplify the commencement of the bill. An amendment deals with High Court and Federal Court rules and another deals with the jurisdiction of state and territory supreme courts.