

APPENDIX 3

DETENTION SAFEGUARDS: SOME PROCEDURAL COMPARISONS

<p>ASIO Act 1979</p> <p>(Division 3 of Part III)</p> <p>Questioning and Detention Warrants</p>	<p>Anti-Terrorism Bill (No.2) 2005</p> <p>(Schedule 4)</p> <p>Preventative Detention Orders</p>
<p>(a) Written statement of procedures issued before any warrants could be sought (s.34C (3A)). This is in addition to a general requirement for humane treatment of the subjects of a warrant (s.34J).</p>	<p>(b) Item 105.33 has the same general requirement for humane treatment, but nothing specific beyond that. Consideration should be given to including a similar statement of procedures requirement.</p>
<p>(a) Detailed explanation to subject of warrant by prescribed authority of rights and obligations, including the right to complain to Ombudsman and/or Inspector-General (s34E).</p>	<p>(b) Explanation to subject of order by police officer, including of right to make representations to a nominated senior AFP member or complain to Ombudsman (Items 105.19, 105.28 and 105.29). Some matters could be added to what must be explained (eg Item 105.51 (5) on right to appeal to the AAT, and Item 105.42 on limits on questioning).</p>

<p>(a) Contact with Ombudsman or Inspector-General – subject’s rights preserved and must be provided with facilities to do so (s34F(9), 34NC and 34VAA(5)).</p>	<p>(b) The person being detained is entitled to contact the Ombudsman or a State or Territory police ombudsman where such a body exists (Item 105.36)</p> <p>(c) Section 22 of Complaints (AFP) Act 1981 gives detained persons who wish to complain to the Ombudsman, a right to have facilities to do so (Should this at least be a note to Item 105.36?).</p>
<p>(a) Subject’s legal adviser has right to a copy of warrant (s34U(2A)).</p> <p>(b) ASIO must provide the IGIS with a copy of any draft request for a warrant given to the Attorney-General, any warrant issued, a copy of the video recordings which must be made, and a statement containing details of any seizure, taking into custody or detention or action taken in response to IGIS concerns (s.34Q).</p>	<p>(c) Copies of orders provided to subject and if requested their legal representative (Item 105.32).</p> <p>(d) A summary of grounds for order (but not including information likely to prejudice national security) must also be given to subject and if requested their legal representative (Item 105.32).</p> <p>(e) Suggest a copy of order and grounds for order must be provided to the Ombudsman, where subject does not have a legal representative.</p>
<p>(a) IGIS can be present at questioning and can raise a concern with the prescribed authority who must consider it (s.34 HAB, s.34 HA).</p>	<p>(b) Questioning by AFP only to extent necessary to give effect to order (Item 105.42); ASIO not to question (Item 105.42(2)) although can obtain a questioning and detention warrant (Item 105.25).</p>

<p>(a) Inspector-General must report on examinations when multiple detention warrants are issued (s.34QA). ASIO must report to Attorney-General on outcomes of each warrant (s.34P).</p>	<p>(b) Item 105.47 requires annual report by Attorney-General to Parliament.</p> <p>[Note: issue of whether the required contents of the report should be expanded eg orders voided by federal court or AAT.]</p>
<p>(a) With effect from 2/12/05, Inspector-General has right of access to any place being used for detention (new s.9B and 19B in IGIS Act).</p>	<p>(b) No equivalent, although a nominated senior AFP member must oversee exercise of powers under, and performance of obligations in relation to, orders (Item 105.19(5) – (9)). This could be expressed to include that conditions of detention meet standards (and perhaps that breaches should be advised to issuing authority and/or Ombudsman).</p>
<p>(a) General preservation of functions and powers of Ombudsman and Inspector-General (s.34T).</p>	<p>(b) General preservation of functions and powers of Ombudsman (Item 105.48).</p>
<p>(a) No access to AAT.</p>	<p>(b) Right of appeal to AAT on merits after order no longer in force, AAT can determine compensation payable (Item 105.51).</p>
<p>(a) Subject can seek a remedy from a federal court. No access to State/Territory courts while warrant in force (s.34X).</p>	<p>(b) Access to courts for remedies after order no longer in force. (Items 105.51 and 105.52).</p>

<p>1. (a) Attorney-General must consent to request for warrant (by Director-General of Security to Issuing Authority) (s.34C).</p> <p>(b) Attorney-General must be satisfied that several requirements are met (s.34C (3)).</p>	<p>1. (c) No similar requirement but these will be time critical situations.</p> <p>(d) Note that control orders (which will not be as time critical) do require consent of Attorney-General, although not satisfaction on the specific requirements akin to 11 (b) – see Item 104.2 – perhaps this should be added to control order provisions.</p>
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This document was provided to the Committee by the Inspector General of Intelligence and Security during the Public Hearings.