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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

**Australian Security Intelligence
Organisation Amendment Bill 2020**

No. , 2020

(Home Affairs)

**A Bill for an Act to amend the *Australian Security
Intelligence Organisation Act 1979*, and for related
purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	3
Schedule 1—Amendments relating to compulsory questioning powers		4
Part 1—Amendments		4
<i>Australian Security Intelligence Organisation Act 1979</i>		4
Part 2—Application and saving provisions		93
Part 3—Consequential amendments		96
<i>Crimes Act 1914</i>		96
<i>Criminal Code Act 1995</i>		96
<i>Foreign Evidence Act 1994</i>		97
<i>Inspector-General of Intelligence and Security Act 1986</i>		97
Part 4—Amendments contingent on the commencement of the Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2020		99
<i>Australian Security Intelligence Organisation Act 1979</i>		99
Schedule 2—Amendments relating to tracking devices		100
<i>Australian Security Intelligence Organisation Act 1979</i>		100

1 **A Bill for an Act to amend the *Australian Security***
2 ***Intelligence Organisation Act 1979*, and for related**
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Australian Security Intelligence Organisation*
7 *Amendment Act 2020*.

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.

13

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1, Parts 1 to 3	The earlier of: (a) a single day to be fixed by Proclamation; and (b) 7 September 2020.	
3. Schedule 1, items 27 and 28	Immediately after the commencement of the provisions covered by table item 2. However, the provisions do not commence at all unless Schedule 2 to the <i>Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2020</i> commences before the commencement of the provisions covered by table item 2.	
4. Schedule 1, item 29	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Schedule 2 to the <i>Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2020</i> . However, the provision does not commence at all if the event mentioned in paragraph (b) does not occur.	
5. Schedule 2	The earlier of: (a) the start of the day after this Act receives the Royal Assent; and (b) immediately before the commencement of the provisions covered by table item 2.	

1 **Schedule 1—Amendments relating to**
2 **compulsory questioning powers**

3 **Part 1—Amendments**

4 *Australian Security Intelligence Organisation Act 1979*

5 **1 Section 4**

6 Insert:

7 *computer* means all or part of:

- 8 (a) one or more computers; or
9 (b) one or more computer systems; or
10 (c) one or more computer networks; or
11 (d) any combination of the above.

12 **2 Section 4 (paragraph (ba) of the definition of *politically***
13 ***motivated violence*)**

14 Repeal the paragraph, substitute:

- 15 (ba) acts that are offences punishable under Subdivision A of
16 Division 72, or Part 5.3, of the *Criminal Code*; or

17 **3 Section 4 (definition of *terrorism offence*)**

18 Repeal the definition.

19 **4 Section 22 (definition of *computer*)**

20 Repeal the definition.

21 **5 Subsection 25A(2) (note)**

22 Omit “section 22”, substitute “section 4”.

23 **6 Subsection 34(1A)**

24 Omit “subsection 34AAA(2)”, substitute “subsection 34AAD(2)”.

25 **7 Section 34A (first occurring) (heading)**

26 Repeal the heading, substitute:

1 **34AAA Director-General to report to Attorney-General—**
2 **concealment of access**

3 **8 Section 34AA (heading)**

4 Repeal the heading, substitute:

5 **34AAC Evidentiary certificates**

6 **9 Section 34AAA (heading)**

7 Repeal the heading, substitute:

8 **34AAD Person with knowledge of a computer or a data storage**
9 **device to assist access to data**

10 **10 Division 3 of Part III**

11 Repeal the Division, substitute:

12 **Division 3—Compulsory questioning powers**

13 **Subdivision A—General provisions**

14 **34A Definitions**

15 In this Division:

16 ***adult questioning matter*** means a matter that relates to the
17 protection of, and of the people of, the Commonwealth and the
18 several States and Territories from any of the following:

- 19 (a) espionage;
20 (b) politically motivated violence;
21 (c) acts of foreign interference;

22 whether directed from, or committed within, Australia or not.

23 ***adult questioning warrant*** means a warrant issued under section
24 34BA (including such a warrant as varied under section 34BG).

25 ***against***: a confiscation proceeding is ***against*** a person if:

- 26 (a) for a proceeding under the *Proceeds of Crime Act 2002*—the
27 person is a suspect (within the meaning of that Act) for the
28 proceeding; or

1 (b) for a proceeding under a law of a State or Territory—the
2 person is in a corresponding category for that law.

3 **charged:** a person is **charged** with an offence if a process for
4 prosecuting the person for the offence commences.

5 **communication device** means:

- 6 (a) a device that a person may use to communicate information
7 to another person; or
8 (b) a surveillance device (within the meaning of Division 2).

9 **complaints agency** means an Ombudsman, agency or body:

- 10 (a) that is appointed or established by a law of a State or
11 Territory; and
12 (b) that is permitted or required to investigate complaints about
13 the police force or police service of the State or Territory;
14 other than an agency or body prescribed by the regulations for the
15 purposes of this definition.

16 **confiscation proceeding** means a proceeding under:

- 17 (a) the *Proceeds of Crime Act 1987* or the *Proceeds of Crime Act*
18 *2002*; or
19 (b) a corresponding law within the meaning of either of those
20 Acts;

21 but does not include a criminal prosecution for an offence under
22 either of those Acts or a corresponding law.

23 **criminal proceeding** means:

- 24 (a) a prosecution for an offence against a law of the
25 Commonwealth or of a State or Territory; or
26 (b) a confiscation proceeding.

27 **dangerous item** means:

- 28 (a) a weapon; or
29 (b) any other thing that is or could be used in a dangerous or
30 threatening way.

31 **derivative material** means any evidence, information, record or
32 other thing obtained directly or indirectly from questioning
33 material.

34 **disclose**, for questioning material or derivative material, includes:

-
- 1 (a) to make available; and
2 (b) to disclose copies, contents or descriptions of that material.

3 ***extra permitted questioning period*** has the meaning given by
4 subsection 34DK(3).

5 ***immediate appearance requirement***: a questioning warrant
6 includes an ***immediate appearance requirement*** if it requires the
7 subject of the warrant to appear before a prescribed authority for
8 questioning under the warrant immediately after the subject is
9 given notice of the requirement in accordance with section 34BH.

10 ***imminent***:

- 11 (a) a charge against a person is ***imminent*** if:
12 (i) the person is under arrest for an offence, but has not
13 been charged with the offence; or
14 (ii) a person with authority to commence a process for
15 prosecuting the person for an offence has decided to
16 commence, but not yet commenced, the process; or
17 (b) a confiscation proceeding against a person is ***imminent*** if a
18 person with authority to commence the proceeding has
19 decided to commence, but not yet commenced, the
20 proceeding.

21 Note: Subparagraph (a)(ii) applies, for example, if a person with authority to
22 lay the charge has decided to lay, but not yet laid, the charge.

23 ***lawyer*** means a person who:

- 24 (a) is enrolled as a legal practitioner of a federal court or of the
25 Supreme Court of a State or Territory; and
26 (b) holds a practising certificate granted under a law of a State or
27 Territory.

28 ***minor questioning matter*** means a matter that relates to the
29 protection of, and of the people of, the Commonwealth and the
30 several States and Territories from politically motivated violence,
31 whether directed from, or committed within, Australia or not.

32 ***minor questioning warrant*** means a warrant issued under section
33 34BB (including such a warrant as varied under section 34BG).

34 ***minor's representative***, for the subject of a minor questioning
35 warrant, has the meaning given by section 34AA.

1 ***permitted questioning period*** has the meaning given by subsection
2 34DJ(3).

3 ***police officer*** means any of the following:

- 4 (a) a member of the Australian Federal Police (within the
5 meaning of the *Australian Federal Police Act 1979*);
6 (b) a special member of the Australian Federal Police (within the
7 meaning of that Act);
8 (c) a member of the police force or police service of a State or
9 Territory.

10 ***post-charge***:

- 11 (a) a use or disclosure of questioning material or derivative
12 material is a ***post-charge*** use or disclosure if the use or
13 disclosure happens at a time when:
14 (i) the subject for the material has been charged with a
15 related offence and that charge is still to be resolved; or
16 (ii) such a charge is imminent; or
17 (b) material is ***post-charge*** questioning material if the material
18 becomes questioning material at a time when:
19 (i) the subject for the material has been charged with a
20 related offence and that charge is still to be resolved; or
21 (ii) such a charge is imminent; or
22 (c) questioning under a questioning warrant is ***post-charge***
23 questioning if the questioning commences at a time when:
24 (i) the subject of the warrant has been charged with a
25 related offence and that charge is still to be resolved; or
26 (ii) such a charge is imminent; or
27 (d) a questioning warrant is a ***post-charge*** questioning warrant if
28 the warrant is issued at a time when:
29 (i) the subject of the warrant has been charged with a
30 related offence and that charge is still to be resolved; or
31 (ii) such a charge is imminent.

32 ***post-confiscation application***:

- 33 (a) a use or disclosure of questioning material or derivative
34 material is a ***post-confiscation application*** use or disclosure
35 if the use or disclosure happens at a time when:

-
- 1 (i) a related confiscation proceeding has commenced
2 against the subject for the material and that proceeding
3 is still to be resolved; or
4 (ii) such a proceeding is imminent; or
5 (b) material is *post-confiscation application* questioning
6 material if the material becomes questioning material at a
7 time when:
8 (i) a related confiscation proceeding has commenced
9 against the subject for the material and that proceeding
10 is still to be resolved; or
11 (ii) such a proceeding is imminent; or
12 (c) questioning under a questioning warrant is *post-confiscation*
13 *application* questioning if the questioning commences at a
14 time when:
15 (i) a related confiscation proceeding has commenced
16 against the subject of the warrant and that proceeding is
17 still to be resolved; or
18 (ii) such a proceeding is imminent; or
19 (d) a questioning warrant is a *post-confiscation application*
20 questioning warrant if the warrant is issued at a time when:
21 (i) a related confiscation proceeding has commenced
22 against the subject of the warrant and that proceeding is
23 still to be resolved; or
24 (ii) such a proceeding is imminent.

25 ***pre-charge:***

- 26 (a) a use or disclosure of questioning material or derivative
27 material is a *pre-charge* use or disclosure if the use or
28 disclosure happens at a time when:
29 (i) the subject for the material has not been charged with a
30 related offence, and such a charge is not imminent; or
31 (ii) all such charges have been resolved; or
32 (b) material is *pre-charge* questioning material if the material
33 becomes questioning material at a time when:
34 (i) the subject for the material has not been charged with a
35 related offence, and such a charge is not imminent; or
36 (ii) all such charges have been resolved; or
37 (c) questioning under a questioning warrant is *pre-charge*
38 questioning if the questioning commences at a time when:

-
- 1 (i) the subject of the warrant has not been charged with a
2 related offence, and such a charge is not imminent; or
3 (ii) all such charges have been resolved.

4 ***pre-confiscation application:***

5 (a) a use or disclosure of questioning material or derivative
6 material is a ***pre-confiscation application*** use or disclosure if
7 the use or disclosure happens at a time when:

8 (i) a related confiscation proceeding has not commenced
9 against the subject for the material, and such a
10 proceeding is not imminent; or

11 (ii) all such proceedings have been resolved; or

12 (b) material is ***pre-confiscation application*** questioning material
13 if the material becomes questioning material at a time when:

14 (i) a related confiscation proceeding has not commenced
15 against the subject for the material, and such a
16 proceeding is not imminent; or

17 (ii) all such proceedings have been resolved; or

18 (c) questioning under a questioning warrant is ***pre-confiscation***
19 ***application*** questioning if the questioning commences at a
20 time when:

21 (i) a related confiscation proceeding has not commenced
22 against the subject of the warrant, and such a proceeding
23 is not imminent; or

24 (ii) all such proceedings have been resolved.

25 ***prescribed authority*** means a person appointed under subsection
26 34AD(1).

27 ***proceeds of crime authority*** means:

28 (a) a proceeds of crime authority within the meaning of the
29 *Proceeds of Crime Act 2002*; or

30 (b) an authority of a State or Territory responsible for conducting
31 a confiscation proceeding under a corresponding law (within
32 the meaning of the *Proceeds of Crime Act 2002*).

33 ***prosecuting authority*** means an individual, or authority, authorised
34 by or under a law of the Commonwealth or of a State or Territory
35 to prosecute an offence.

1 **prosecutor**, of the subject of a questioning warrant, means an
2 individual:
3 (a) who is a prosecuting authority or is employed or engaged by
4 a prosecuting authority; and
5 (b) who:
6 (i) makes, or is involved in the making of, a decision
7 whether to prosecute the subject for a related offence; or
8 (ii) is one of the individuals engaging in such a prosecution
9 of the subject.

10 **questioning material** has the meaning given by subsection
11 34AB(1).

12 **questioning warrant** means:

- 13 (a) an adult questioning warrant; or
14 (b) a minor questioning warrant.

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

16 **related confiscation proceeding**, for questioning material,
17 derivative material or the subject of a questioning warrant, means a
18 confiscation proceeding if the subject matter of the relevant
19 questioning relates to the subject matter of the proceeding.

20 **related offence**, for questioning material, derivative material or the
21 subject of a questioning warrant, means an offence if the subject
22 matter of the relevant questioning relates to the subject matter of
23 the offence.

24 **resolved**, in relation to a charge or a confiscation proceeding, has
25 the meaning given by section 34AC.

26 **screening equipment** means a metal detector or a device for
27 detecting objects or particular substances.

28 **subject**:

- 29 (a) in relation to a questioning warrant—means the person
30 specified in the warrant; or
31 (b) for questioning material or derivative material—has the
32 meaning given by subsection 34AB(3).

33 **superior court** means:

- 34 (a) the High Court; or

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

5 ***undergo a screening procedure***: a person ***undergoes a screening***
6 ***procedure*** at a place if:

- 7 (a) the person walks, or is moved, through screening equipment
8 at the place; or
9 (b) handheld screening equipment is passed over or around the
10 person or around things that are at the place and in the
11 person's possession or control; or
12 (c) things that are at the place and in the person's possession or
13 control are passed through screening equipment or examined
14 by X-ray.

15 ***use***, for questioning material or derivative material, includes use of
16 copies, contents or descriptions of that material.

17 **34AA Meaning of *minor's representative***

- 18 (1) A person is a ***minor's representative*** for the subject of a minor
19 questioning warrant if the person is:
20 (a) a parent of the subject; or
21 (b) a guardian of the subject; or
22 (c) another person who meets the requirements in subsection (2).
- 23 (2) A person meets the requirements of this subsection if the person:
24 (a) is able to represent the subject's interests; and
25 (b) is, as far as practicable in the circumstances, acceptable to the
26 subject and, if applicable, to the prescribed authority; and
27 (c) is not one of the following:
28 (i) a police officer;
29 (ii) the Director-General;
30 (iii) an ASIO employee or an ASIO affiliate;
31 (iv) a person approved under section 24.

32 Note: A lawyer for the subject of a minor questioning warrant, including a
33 lawyer appointed under paragraph 34FC(2)(a) or (3)(b), may also be a
34 minor's representative for the subject if the lawyer meets the
35 requirements of this subsection.

1 **34AB Meaning of *questioning material* and *subject***

2 (1) ***Questioning material*** is:

- 3 (a) any information given by a person while before a prescribed
4 authority for questioning under a questioning warrant; or
5 (b) a record or other thing produced by a person while before a
6 prescribed authority for questioning under a questioning
7 warrant; or
8 (c) any information that might enable a person, who has
9 appeared before a prescribed authority for questioning under
10 a questioning warrant, to be identified; or
11 (d) the fact that a person has appeared, or is required to appear,
12 before a prescribed authority for questioning under a
13 questioning warrant.

14 (2) To avoid doubt, information, a record or a thing is not covered by
15 paragraph (1)(a) or (b) to the extent that it is obtained otherwise
16 than before a prescribed authority under a questioning warrant.

17 Example: Before a record is produced before a prescribed authority, a copy of
18 the record is obtained when executing a search warrant. The copy
19 obtained under the search warrant is not questioning material.

20 (3) The ***subject*** is:

- 21 (a) for questioning material—the person referred to in
22 paragraph (1)(a), (b), (c) or (d); or
23 (b) for derivative material—the person who is the subject for the
24 questioning material from which the derivative material was
25 obtained.

26 **34AC Meaning of *resolved***

27 (1) A charge for an offence is ***resolved*** in relation to a person at the
28 later of the following times:

- 29 (a) when:
30 (i) the charge is withdrawn; or
31 (ii) the charge is dismissed; or
32 (iii) the person is not committed on the charge following a
33 committal hearing; or
34 (iv) the person is acquitted of the offence; or
35 (v) the person is sentenced for the offence; or

-
- 1 (vi) the person is dealt with by being the subject of a court
2 order made as a consequence of a finding of guilt; or
3 (vii) the charge is otherwise finally dealt with;
4 (b) if an appeal relating to the charge is not lodged within the
5 period for lodging such an appeal—when that period ends;
6 (c) if an appeal relating to the charge is lodged—when the
7 appeal lapses or is finally determined.
8 Despite paragraph (b), if an appeal relating to the charge is lodged
9 after that period ends, the charge ceases to be *resolved* until that
10 appeal lapses or is finally determined.

- 11 (2) A confiscation proceeding is *resolved* in relation to a person at the
12 later of the following times:
13 (a) when the proceeding is discontinued;
14 (b) if an appeal relating to the proceeding is not lodged within
15 the period for lodging such an appeal—when that period
16 ends;
17 (c) if an appeal relating to the proceeding is lodged—when the
18 appeal lapses or is finally determined.
19 Despite paragraph (b), if an appeal relating to the proceeding is
20 lodged after that period ends, the proceeding ceases to be *resolved*
21 until that appeal lapses or is finally determined.

22 **34AD Prescribed authorities**

23 *Appointment of prescribed authority*

- 24 (1) The Attorney-General may, in writing, appoint as a prescribed
25 authority:
26 (a) a person who:
27 (i) has served as a judge in one or more superior courts for
28 a period of at least 5 years; and
29 (ii) no longer holds a commission as a judge of a superior
30 court; or
31 (b) a person who:
32 (i) holds an appointment to the Administrative Appeals
33 Tribunal as President or Deputy President; and
34 (ii) is enrolled as a legal practitioner of a federal court or of
35 the Supreme Court of a State or Territory; and
36 (iii) has been enrolled for at least 5 years; or

-
- 1 (c) a person who:
- 2 (i) is enrolled as a legal practitioner of a federal court or of
- 3 the Supreme Court of a State or Territory; and
- 4 (ii) has engaged in practice as a legal practitioner for at least
- 5 10 years; and
- 6 (iii) holds a practising certificate granted under a law of a
- 7 State or Territory.
- 8 (2) A person is not eligible for appointment under subsection (1) if the
- 9 person is:
- 10 (a) an ASIO employee or an ASIO affiliate; or
- 11 (b) the Director-General; or
- 12 (c) an AGS lawyer (within the meaning of the *Judiciary Act*
- 13 *1903*); or
- 14 (d) an IGIS official; or
- 15 (e) a person referred to in subsection 6(1) of the *Australian*
- 16 *Federal Police Act 1979*; or
- 17 (f) a staff member of a law enforcement agency (other than the
- 18 Australian Federal Police); or
- 19 (g) a staff member of an intelligence or security agency.
- 20 (3) The Attorney-General must not appoint a person to whom
- 21 paragraph (1)(c) applies unless the Attorney-General is satisfied
- 22 that the person has the knowledge or experience necessary to
- 23 properly perform the duties of a prescribed authority.
- 24 (4) The Attorney-General must not appoint a person unless:
- 25 (a) the person has, in writing, consented to being appointed; and
- 26 (b) the consent is in force.
- 27 (5) Before appointing a person as a prescribed authority, the
- 28 Attorney-General must have regard to:
- 29 (a) whether the person engages in any paid or unpaid work that
- 30 conflicts, or could conflict, with the proper performance of
- 31 the person's duties as a prescribed authority; and
- 32 (b) whether the person has any interests, pecuniary or otherwise,
- 33 that conflict, or could conflict, with the proper performance
- 34 of the person's duties as a prescribed authority.

1 *Duty to disclose interests*

- 2 (6) A person who:
- 3 (a) is appointed as a prescribed authority; and
- 4 (b) has a material personal interest that relates to the proper
- 5 performance of the person's duties as a prescribed authority;
- 6 must disclose that interest, in writing, to the Attorney-General.
- 7 (7) The disclosure must include details of:
- 8 (a) the nature and extent of the interest; and
- 9 (b) how the interest relates to the proper performance of the
- 10 person's duties as a prescribed authority.
- 11 (8) The person must make the disclosure:
- 12 (a) as soon as practicable after the person becomes aware of the
- 13 interest; and
- 14 (b) if there is a change in the nature or extent of the interest after
- 15 the person has disclosed the interest under this section—as
- 16 soon as practicable after the person becomes aware of that
- 17 change.

18 *Termination of appointment*

- 19 (9) The Attorney-General may terminate the appointment of a
- 20 prescribed authority:
- 21 (a) for misbehaviour; or
- 22 (b) if the prescribed authority is unable to perform the duties of a
- 23 prescribed authority because of physical or mental
- 24 incapacity; or
- 25 (c) if the prescribed authority becomes bankrupt; or
- 26 (d) if the prescribed authority fails, without reasonable excuse, to
- 27 comply with subsection (6), (7) or (8); or
- 28 (e) if the prescribed authority engages in paid or unpaid work, or
- 29 has an interest, pecuniary or otherwise, that, in the
- 30 Attorney-General's opinion, conflicts or could conflict with
- 31 the proper performance of the prescribed authority's duties.

32 *Definitions*

- 33 (10) In this section:

1 ***paid work*** means work for financial gain or reward (whether as an
2 employee, a self-employed person or otherwise).

3 ***unpaid work*** means work that is not paid work.

4 **34AE Status of prescribed authorities**

5 A prescribed authority has, in the performance of the prescribed
6 authority's duties under this Division, the same protection and
7 immunity as a Justice of the High Court.

8 **34AF Written statement of procedures**

9 (1) The Director-General may prepare a written statement of
10 procedures to be followed in the exercise of authority under a
11 questioning warrant.

12 *Consultation*

13 (2) The Director-General must consult the following about the
14 preparation of the statement:

- 15 (a) the Inspector-General of Intelligence and Security;
16 (b) the Commissioner of the Australian Federal Police.

17 *Approval by Attorney-General*

18 (3) The Director-General must give the statement to the
19 Attorney-General for approval.

20 (4) The Attorney-General must approve or refuse to approve the
21 statement.

22 *Approved statement is a legislative instrument*

23 (5) A statement approved by the Attorney-General is a legislative
24 instrument made by the Attorney-General on the day on which the
25 statement is approved, but section 42 (disallowance) of the
26 *Legislation Act 2003* does not apply to the statement.

27 Note: Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* does not
28 apply to the statement: see regulations made for the purposes of
29 paragraph 54(2)(b) of that Act.

1 *Briefing of Parliamentary Joint Committee on Intelligence and*
2 *Security*

- 3 (6) The Director-General must brief the Parliamentary Joint
4 Committee on Intelligence and Security on the statement after it is
5 approved by the Attorney-General. The briefing may be done
6 orally or in writing.

7 **34AG Humane treatment of subject of questioning warrant**

- 8 (1) This section applies to the subject of a questioning warrant while
9 anything is being done in relation to the subject under:
10 (a) the warrant; or
11 (b) a direction given by a prescribed authority in relation to the
12 warrant.
- 13 (2) The subject must be treated with humanity and with respect for
14 human dignity, and must not be subjected to torture or to cruel,
15 inhuman or degrading treatment, by any person exercising
16 authority under the warrant or implementing or enforcing the
17 direction.

18 **Subdivision B—Questioning warrants**

19 **34B Request for questioning warrant**

20 *Request for warrant*

- 21 (1) The Director-General may request the Attorney-General to issue,
22 in relation to a person:
23 (a) an adult questioning warrant; or
24 (b) a minor questioning warrant.
- 25 (2) The request may be made:
26 (a) in writing; or
27 (b) if the Director-General reasonably believes that the delay
28 caused by making a written request may be prejudicial to
29 security—orally in person, or by telephone or other means of
30 communication.
- 31 (3) To avoid doubt, this section operates in relation to a request for the
32 issue of a questioning warrant in relation to a person, even if a

1 request (a *previous request*) for the issue of a questioning warrant
2 has previously been made under this section in relation to the
3 person.

4 *Requirements for requests*

- 5 (4) A request under subsection (1) must include:
- 6 (a) a statement of the facts and other grounds on which the
7 Director-General considers it necessary that the warrant
8 should be issued; and
 - 9 (b) a statement of the particulars and outcomes of any previous
10 requests for the issue of a questioning warrant in relation to
11 the person; and
 - 12 (c) if one or more warrants were issued as a result of the
13 previous requests—a statement of:
 - 14 (i) the period for which the person was questioned under
15 each of those warrants; and
 - 16 (ii) whether the person was apprehended in connection with
17 any of those warrants; and
 - 18 (d) whether the request is for a warrant that includes an
19 immediate appearance requirement; and
 - 20 (e) if the request is for a warrant that includes an immediate
21 appearance requirement—whether the request is also for a
22 questioning warrant that authorises the apprehension of the
23 person; and
 - 24 (f) if the request is for a minor questioning warrant—all
25 information known to the Director-General, at the time of the
26 making of the request, about the matters mentioned in
27 subsection 34BB(3).

28 *Additional requirements for oral requests*

- 29 (5) If a request under subsection (1) is to be made orally, the
30 Director-General must, before or as soon as practicable after the
31 request is made, cause the Inspector-General of Intelligence and
32 Security to be notified that the request will be or has been made.
- 33 (6) If a request under subsection (1) is made orally, the
34 Director-General must:
- 35 (a) make a written record of the request that includes:
 - 36 (i) the day and time the request is made; and

-
- 1 (ii) the reasons why the Director-General believes that the
2 delay caused by making a written request may be
3 prejudicial to security; and
4 (iii) the matters mentioned in subsection (4); and
5 (b) as soon as practicable, and no later than 48 hours after the
6 request is made, provide the written record to:
7 (i) the Attorney-General; and
8 (ii) the Inspector-General of Intelligence and Security.

9 **34BA Test for issue of questioning warrant—persons who are at**
10 **least 18**

- 11 (1) If the Director-General requests the Attorney-General to do so, the
12 Attorney-General may issue a warrant in relation to a person under
13 this section if the Attorney-General is satisfied that:
14 (a) the person is at least 18 years old; and
15 (b) there are reasonable grounds for believing that the warrant
16 will substantially assist the collection of intelligence that is
17 important in relation to an adult questioning matter; and
18 (c) having regard to other methods (if any) of collecting the
19 intelligence that are likely to be as effective, it is reasonable
20 in all the circumstances for the warrant to be issued; and
21 (d) if the warrant is a post-charge, or post-confiscation
22 application, questioning warrant—it is necessary, for the
23 purposes of collecting the intelligence, for the warrant to be
24 issued even though:
25 (i) the person has been charged or the confiscation
26 proceeding has commenced; or
27 (ii) that charge or proceeding is imminent; and
28 (e) there is in force under section 34AF a written statement of
29 procedures to be followed in the exercise of authority under a
30 questioning warrant.
- 31 (2) Without limiting its effect apart from this subsection, this Act also
32 has the effect it would have if:
33 (a) paragraph (1)(d) had not been enacted; or
34 (b) paragraph (1)(d) were, by express provision, confined to
35 dealing with a charge against the person or such a charge that
36 is imminent; or

1 (c) paragraph (1)(d) were, by express provision, confined to
2 dealing with a confiscation proceeding against the person that
3 has commenced or is imminent.

4 **34BB Test for issue of questioning warrant—persons who are at**
5 **least 14**

- 6 (1) If the Director-General requests the Attorney-General to do so, the
7 Attorney-General may issue a warrant in relation to a person under
8 this section if the Attorney-General is satisfied that:
- 9 (a) the person is at least 14 years old; and
 - 10 (b) there are reasonable grounds for believing that the person has
11 likely engaged in, is likely engaged in, or is likely to engage
12 in activities prejudicial to the protection of, and of the people
13 of, the Commonwealth and the several States and Territories
14 from politically motivated violence, whether directed from,
15 or committed within, Australia or not; and
 - 16 (c) there are reasonable grounds for believing that the warrant
17 will substantially assist the collection of intelligence that is
18 important in relation to a minor questioning matter; and
 - 19 (d) having regard to other methods (if any) of collecting the
20 intelligence that are likely to be as effective, it is reasonable
21 in all the circumstances for the warrant to be issued; and
 - 22 (e) if the warrant is a post-charge, or post-confiscation
23 application, questioning warrant—it is necessary, for the
24 purposes of collecting the intelligence, for the warrant to be
25 issued even though:
 - 26 (i) the person has been charged or the confiscation
27 proceeding has commenced; or
 - 28 (ii) that charge or proceeding is imminent; and
 - 29 (f) there is in force under section 34AF a written statement of
30 procedures to be followed in the exercise of authority under a
31 questioning warrant.
- 32 (2) In deciding whether to issue the warrant, the Attorney-General
33 must consider the best interests of the person.
- 34 (3) In considering the best interests of a person for the purposes of
35 subsection (2), the Attorney-General must take into account the
36 following matters:

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- 1 (a) the age, maturity, sex and background (including lifestyle,
2 culture and traditions) of the person;
3 (b) the physical and mental health of the person;
4 (c) the benefit to the person of having a meaningful relationship
5 with the person's family and friends;
6 (d) the right of the person to receive an education;
7 (e) the right of the person to practise the person's religion;
8 (f) any other matter the Attorney-General considers relevant.

9 (4) The Attorney-General must take into account the matters in
10 subsection (3) only to the extent that:

- 11 (a) the matters are known to the Attorney-General; and
12 (b) the matters are relevant.

13 Note: Information about the matters in subsection (3) is provided to the
14 Attorney-General as part of the request for the warrant: see paragraph
15 34B(4)(f).

16 (5) Without limiting its effect apart from this subsection, this Act also
17 has the effect it would have if:

- 18 (a) paragraph (1)(e) had not been enacted; or
19 (b) paragraph (1)(e) were, by express provision, confined to
20 dealing with a charge against the person or such a charge that
21 is imminent; or
22 (c) paragraph (1)(e) were, by express provision, confined to
23 dealing with a confiscation proceeding against the person that
24 has commenced or is imminent.

25 **34BC Warrant has no effect if person under 14**

26 A questioning warrant has no effect if the subject of the warrant is
27 under 14 years old.

28 **34BD What a questioning warrant authorises**

29 (1) A questioning warrant must, subject to any restrictions or
30 conditions specified in the warrant:

- 31 (a) require the subject of the warrant to appear before a
32 prescribed authority for questioning under the warrant either:
33 (i) if the warrant includes an immediate appearance
34 requirement—immediately after the subject is given

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- 1 notice of the requirement in accordance with section
2 34BH; or
- 3 (ii) at a day and time specified in the warrant; and
- 4 (b) subject to subsection (2), authorise the Organisation to
5 question the subject of the warrant before a prescribed
6 authority by requesting the subject to:
- 7 (i) if the warrant is an adult questioning warrant—give
8 information, or produce a record or other thing, that is,
9 or may be, relevant to intelligence that is important in
10 relation to an adult questioning matter; or
- 11 (ii) if the warrant is a minor questioning warrant—give
12 information, or produce a record or other thing, that is,
13 or may be, relevant to intelligence that is important in
14 relation to a minor questioning matter; and
- 15 (c) authorise the Organisation to make copies or transcripts of a
16 record produced by the subject while before a prescribed
17 authority for questioning under the warrant.

18 *Additional requirements for minors*

- 19 (2) For the purposes of paragraph (1)(b), if the warrant is a minor
20 questioning warrant, the warrant authorises the Organisation to
21 question the subject of the warrant before a prescribed authority:
- 22 (a) only in the presence of a minor’s representative for the
23 subject; and
- 24 (b) only for continuous periods of 2 hours or less, separated by
25 breaks directed by the prescribed authority.
- 26 Note 1: Also, the subject of a minor questioning warrant may be questioned
27 only in the presence of a lawyer for the subject: see subsection
28 34FA(1).
- 29 Note 2: The prescribed authority may set the breaks between periods of
30 questioning by giving appropriate directions under paragraph
31 34DE(1)(e) for the subject’s further appearance before the prescribed
32 authority for questioning.
- 33 (3) To avoid doubt, subsection (2) does not affect the operation of
34 section 34DJ (permitted questioning time) or 34DK (extra
35 permitted questioning time if interpreter present).

1 *Matters in relation to which the Organisation may request*
2 *information etc.*

- 3 (4) For the purposes of paragraph (1)(b), the matters in relation to
4 which the Organisation may request the subject to give
5 information, or produce records or things, may include:
6 (a) the subject matter of any charge, or imminent charge, against
7 the subject; and
8 (b) the subject matter of any confiscation proceeding, or
9 imminent confiscation proceeding, against the subject.

10 *Severability*

- 11 (5) Without limiting its effect apart from this subsection, this Act also
12 has the effect it would have if:
13 (a) subsection (4) had not been enacted; or
14 (b) subsection (4) were, by express provision, confined to
15 dealing with a charge against the subject or such a charge that
16 is imminent; or
17 (c) subsection (4) were, by express provision, confined to
18 dealing with a confiscation proceeding against the subject
19 that has commenced or is imminent.

20 **34BE Other things that may be authorised in questioning warrant**

21 *Warrant may require immediate appearance*

- 22 (1) A questioning warrant may include an immediate appearance
23 requirement if the Attorney-General is satisfied that it is reasonable
24 and necessary in the circumstances.

25 Note: For the definition of *immediate appearance requirement*, see section
26 34A.

27 *Warrant may authorise apprehension*

- 28 (2) If:
29 (a) a questioning warrant is to include an immediate appearance
30 requirement under subsection (1); and
31 (b) the Attorney-General is satisfied that there are reasonable
32 grounds for believing that, if the subject of the warrant is not
33 apprehended, the subject is likely to:

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- 1 (i) alert a person involved in an activity prejudicial to
2 security that the activity is being investigated; or
3 (ii) not appear before the prescribed authority; or
4 (iii) destroy, damage or alter, or cause another person to
5 destroy, damage or alter, a record or other thing the
6 subject has been or may be requested under the warrant
7 to produce;

8 the warrant may also authorise the apprehension of the subject by a
9 police officer in order to immediately bring the subject before the
10 prescribed authority for questioning under the warrant.

11 Note: A police officer may also apprehend the subject of a questioning
12 warrant if the subject makes certain representations: see subsection
13 34C(2).

14 *Warrant may authorise seizure of certain records or other things*
15 *found during search*

16 (3) If the Attorney-General is satisfied that it is reasonable and
17 necessary in the circumstances, a questioning warrant may provide
18 that if:

- 19 (a) a police officer conducts a search of the subject of the
20 warrant under section 34CC; and
21 (b) a record or other thing is found during the search that the
22 officer reasonably believes is relevant to the collection of
23 intelligence that is important in relation to:
24 (i) if the warrant is an adult questioning warrant—an adult
25 questioning matter; or
26 (ii) if the warrant is a minor questioning warrant—a minor
27 questioning matter;

28 the officer is authorised to seize the record or other thing.

29 Note: A police officer may only conduct a search of the subject of a
30 questioning warrant under section 34CC if the subject is apprehended
31 in connection with the warrant.

32 *Warrant may request production of records or things*

33 (4) A questioning warrant may request the subject of the warrant to
34 produce, before a prescribed authority:

- 35 (a) a specified record or other thing; or
36 (b) a specified class of record or other thing;

1 if the Attorney-General is satisfied that the record or thing, or class
2 of record or thing, is, or may be, relevant to intelligence that is
3 important in relation to:

- 4 (c) if the warrant is an adult questioning warrant—an adult
5 questioning matter; or
6 (d) if the warrant is a minor questioning warrant—a minor
7 questioning matter.

8 *Warrant may require immediate further appearance etc.*

9 (5) If:

- 10 (a) a questioning warrant is in force; and
11 (b) the subject of the warrant has appeared before a prescribed
12 authority for questioning under the warrant; and
13 (c) the subject has not been questioned under the warrant for
14 longer than the permitted questioning period or, if applicable,
15 the extra permitted questioning period; and
16 (d) the Attorney-General is satisfied that it is reasonable and
17 necessary in the circumstances;

18 the warrant may, despite any direction given under subsection
19 34DE(1) to the contrary:

- 20 (e) require the subject's further appearance before a prescribed
21 authority for questioning under the warrant; and
22 (f) include an immediate appearance requirement under
23 subsection (1) in relation to the further appearance.

24 Note: This subsection only applies if a questioning warrant that is in force is
25 varied under section 34BG.

26 (6) If:

- 27 (a) a questioning warrant is to include the requirements
28 mentioned in paragraphs (5)(e) and (f); and
29 (b) the Attorney-General is satisfied that there are reasonable
30 grounds for believing that, if the subject of the warrant is not
31 apprehended:
32 (i) the subject is likely to alert a person involved in an
33 activity prejudicial to security that the activity is being
34 investigated; or
35 (ii) the subject is likely to not comply with the requirements
36 mentioned in paragraphs (5)(e) and (f); or

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- 1 (iii) the subject is likely to destroy, damage or alter, or cause
2 another person to destroy, damage or alter, a record or
3 other thing the subject has been or may be requested
4 under the warrant to produce;
5 the warrant may also authorise the apprehension of the subject by a
6 police officer in order to immediately bring the subject before the
7 prescribed authority for further questioning under the warrant.

8 **34BF Requirements for questioning warrant**

- 9 (1) A questioning warrant may be issued:
10 (a) by means of a written document signed by the
11 Attorney-General; or
12 (b) if the Attorney-General is satisfied that there are reasonable
13 grounds on which to believe that the delay caused by issuing
14 a written warrant may be prejudicial to security—orally in
15 person, or by telephone or other means of communication.

16 *Requirements for written warrants*

- 17 (2) If a questioning warrant is issued by means of a written document,
18 the warrant must specify:
19 (a) that the warrant authorises the things mentioned in subsection
20 34BD(1); and
21 (b) which of the things mentioned in section 34BE are authorised
22 by the warrant (if any); and
23 (c) the period during which the warrant is to be in force.

24 *Requirements for oral warrants*

- 25 (3) If a questioning warrant is issued orally, the Director-General must
26 cause a written record of the warrant, that includes the matters
27 mentioned in subsection (2), to be made as soon as practicable, and
28 no later than 48 hours after the warrant is issued.

29 *Duration of warrant*

- 30 (4) A questioning warrant may remain in force for a period of no more
31 than 28 days, although the Attorney-General may revoke the
32 warrant before the period has expired.

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Issue of further warrants not prevented

(5) Subsection (4) does not prevent the issue of any further warrant.

Written warrants and records not legislative instruments

(6) The following are not legislative instruments:

- (a) a document referred to in paragraph (1)(a);
- (b) a written record referred to in subsection (3).

34BG Variation of questioning warrant

Request for variation

- (1) The Attorney-General may, on request by the Director-General, vary a questioning warrant.
- (2) The request may be made:
 - (a) in writing; or
 - (b) if the Director-General reasonably believes that the delay caused by making a written request may be prejudicial to security—orally in person, or by telephone or other means of communication.
- (3) The request must include the facts and other grounds on which the Director-General considers it necessary that the warrant should be varied.

Requirements for oral requests

- (4) If a request under subsection (1) is to be made orally, the Director-General must, before or as soon as practicable after the request is made, notify the Inspector-General of Intelligence and Security that the request will be or has been made.
- (5) If a request under subsection (1) is made orally, the Director-General must:
 - (a) make a written record of the request that includes:
 - (i) the day and time the request is made; and
 - (ii) the reasons why the Director-General believes that the delay caused by making a written request may be prejudicial to security; and
 - (iii) the matter mentioned in subsection (3); and

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- 1 (iv) whether the request is to vary the warrant to include an
2 immediate appearance requirement; and
3 (v) whether the request is to vary the warrant to authorise
4 the apprehension of the subject of the warrant; and
5 (vi) any other matter the Director-General considers
6 relevant; and
7 (b) as soon as practicable, and no later than 48 hours after the
8 request is made, provide the written record to:
9 (i) the Attorney-General; and
10 (ii) the Inspector-General of Intelligence and Security.

11 *Issue of variation*

- 12 (6) The variation may be issued:
13 (a) by means of a written document signed by the
14 Attorney-General; or
15 (b) if the Attorney-General is satisfied that there are reasonable
16 grounds on which to believe that the delay caused by issuing
17 a written variation may be prejudicial to security—orally in
18 person, or by telephone or other means of communication.
- 19 (7) If the variation is issued orally, the Director-General must cause a
20 written record of the variation to be made as soon as practicable,
21 and no later than 48 hours after the variation is issued.

22 *Limits on variation*

- 23 (8) If the variation extends, or further extends, the period during which
24 the warrant is in force, the total period during which the warrant is
25 in force must not exceed 28 days.

26 *Warrant may be varied more than once*

- 27 (9) A questioning warrant may be varied more than once under this
28 section.

29 *Written variations and records not legislative instruments*

- 30 (10) The following are not legislative instruments:
31 (a) a document referred to in paragraph (6)(a);
32 (b) a written record referred to in subsection (7).

1 **34BH Notification requirements in relation to questioning warrant**

- 2 (1) This section applies if the Attorney-General issues a questioning
3 warrant.
- 4 (2) The Director-General must cause the subject of the warrant to be
5 given written notice of:
- 6 (a) the warrant; and
- 7 (b) the place where the subject is required to appear before a
8 prescribed authority for questioning under the warrant; and
- 9 (c) either:
- 10 (i) if the warrant includes an immediate appearance
11 requirement—the fact that the subject must appear
12 before the prescribed authority for questioning under the
13 warrant immediately after the subject is given notice of
14 the requirement under this section; or
- 15 (ii) otherwise—the day and time when the subject is
16 required to appear before the prescribed authority for
17 questioning under the warrant; and
- 18 (d) the fact that the subject is able to contact a lawyer in
19 accordance with section 34F; and
- 20 (e) if the warrant is a minor questioning warrant—the fact that:
- 21 (i) the subject may request that a minor’s representative for
22 the subject be present during the questioning; and
- 23 (ii) the subject may be questioned only in the presence of a
24 minor’s representative for the subject; and
- 25 (f) the subject’s obligations under sections 34GD and 34GF; and
- 26 (g) the subject’s right to make a complaint orally or in writing to:
- 27 (i) in relation to the Organisation—the Inspector-General
28 of Intelligence and Security under the
29 *Inspector-General of Intelligence and Security Act*
30 1986; or
- 31 (ii) in relation to the Australian Federal Police—the
32 Ombudsman under the *Ombudsman Act 1976*; or
- 33 (iii) in relation to the police force or police service of a State
34 or Territory—a complaints agency of the State or
35 Territory concerned; and
- 36 (h) the fact that the subject may seek from a federal court a
37 remedy relating to the warrant or the treatment of the subject
38 in connection with the warrant.

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- 1 (3) If the warrant is varied before the subject is given notice of the
2 warrant in accordance with this section, the Director-General must
3 cause the subject to be given written notice of:
4 (a) the warrant as varied; and
5 (b) the matters mentioned in paragraphs (2)(b) to (h).
- 6 (4) If:
7 (a) the warrant is varied after the subject is given notice of the
8 warrant in accordance with this section; and
9 (b) the variation may affect the subject's obligations under the
10 warrant or the information provided in the notice;
11 the Director-General must, as soon as practicable, cause the subject
12 to be given written notice of:
13 (c) the variation; and
14 (d) the effect of the variation on the subject's obligations under
15 the warrant.
- 16 Note: For example, if the warrant is varied to include an immediate
17 appearance requirement, the Director-General must cause the subject
18 to be given written notice of the fact that the subject must appear
19 before the prescribed authority immediately after the notice is given.
- 20 (5) If the warrant is revoked after the subject is given notice of the
21 warrant in accordance with this section, the Director-General must,
22 as soon as practicable, cause the subject to be given written notice
23 of:
24 (a) the revocation; and
25 (b) the fact that the subject is no longer required to appear before
26 a prescribed authority for questioning under the warrant; and
27 (c) the effect of section 34GF; and
28 (d) the subject's right to contact a lawyer in relation to the
29 warrant at any time.

30 **Subdivision C—Apprehension and search powers etc.**

31 **34C Police officer may apprehend subject of questioning warrant in** 32 **certain circumstances**

33 *Apprehension where authorised by warrant*

- 34 (1) If a questioning warrant authorises the apprehension of the subject
35 of the warrant, a police officer may apprehend the subject in order

1 to immediately bring the subject before a prescribed authority for
2 questioning under the warrant.

3 Note 1: The Attorney-General may only issue a questioning warrant that
4 authorises the apprehension of the subject of the warrant if:
5 (a) the warrant includes an immediate appearance requirement; and
6 (b) the Attorney-General is satisfied of certain matters.
7 See subsection 34BE(2).

8 Note 2: A police officer's power to apprehend the subject of a questioning
9 warrant under this subsection ends when the subject appears before a
10 prescribed authority for questioning under the warrant.

11 *Apprehension where certain representations made*

- 12 (2) If:
- 13 (a) a questioning warrant includes an immediate appearance
14 requirement; and
 - 15 (b) the warrant does not authorise the apprehension of the subject
16 of the warrant; and
 - 17 (c) at the time the subject is given notice of the requirement in
18 accordance with section 34BH, the subject makes a
19 representation that the subject intends to:
 - 20 (i) alert a person involved in an activity prejudicial to
21 security that the activity is being investigated; or
 - 22 (ii) not appear before the prescribed authority; or
 - 23 (iii) destroy, damage or alter, or cause another person to
24 destroy, damage or alter, a record or other thing the
25 subject has been or may be requested in accordance with
26 the warrant to produce;
- 27 a police officer may apprehend the subject in order to immediately
28 bring the subject before a prescribed authority for questioning
29 under the warrant.

30 Note: A police officer's power to apprehend the subject of a questioning
31 warrant under this subsection ends when the subject appears before a
32 prescribed authority for questioning under the warrant.

33 *Apprehension where subject fails to appear*

- 34 (3) If the subject of a questioning warrant fails to appear before a
35 prescribed authority as required by:
36 (a) the warrant; or

1 (b) a direction given by the prescribed authority under subsection
2 34DE(1);
3 a police officer may apprehend the subject in order to immediately
4 bring the subject before the prescribed authority for questioning
5 under the warrant.

6 Note: A police officer's power to apprehend the subject of a questioning
7 warrant under this subsection ends when the subject appears before a
8 prescribed authority for questioning under the warrant.

9 *Definitions*

- 10 (4) In this section, *representation* includes:
- 11 (a) an express or implied representation (whether oral or in
12 writing); and
 - 13 (b) a representation that could be inferred from conduct; and
 - 14 (c) a representation not intended by its maker to be
15 communicated to or seen by another person; and
 - 16 (d) a representation that for any reason is not communicated.

17 **34CA Entering premises to apprehend subject**

18 If:

- 19 (a) a police officer is authorised under section 34C to apprehend
20 the subject of a questioning warrant; and
- 21 (b) the officer believes on reasonable grounds that the subject is
22 on particular premises;

23 the officer may enter the premises, using such force as is necessary
24 and reasonable in the circumstances, at any time of the day or
25 night, for the purpose of searching the premises for the subject or
26 apprehending the subject.

27 **34CB Communications while apprehended**

- 28 (1) The subject of a questioning warrant who is apprehended under
29 this Division is not permitted to contact, and may be prevented
30 from contacting, any person at any time during the period:
- 31 (a) beginning when the subject is apprehended; and
 - 32 (b) ending when the subject appears before a prescribed
33 authority for questioning under the warrant.
- 34 (2) However:

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- (a) the subject may contact any or all of the following:
 - (i) a lawyer;
 - (ii) if the warrant is a minor questioning warrant—a minor’s representative for the subject;
 - (iii) any other person the subject is permitted to contact by the warrant, or by a direction given under paragraph 34DE(1)(b); and
- (b) subsection (1) does not affect the following:
 - (i) the operation of the *Inspector-General of Intelligence and Security Act 1986* in relation to contact between the subject and the Inspector-General of Intelligence and Security;
 - (ii) the operation of section 7 of the *Ombudsman Act 1976* in relation to contact between the subject and the Ombudsman in respect of a complaint, or proposed complaint, about the Australian Federal Police;
 - (iii) the subject’s right to make a complaint to a complaints agency in relation to the police force or police service of the State or Territory concerned; and
- (c) any person apprehending the subject under this Division must, if requested by the subject, give the subject facilities for the following:
 - (i) contacting a person mentioned in paragraph (a);
 - (ii) contacting the Inspector-General of Intelligence and Security;
 - (iii) contacting the Ombudsman to make a complaint under section 7 of the *Ombudsman Act 1976*;
 - (iv) contacting the Commissioner of the Australian Federal Police to give information under section 40SA of the *Australian Federal Police Act 1979*;
 - (v) contacting a complaints agency to make a complaint of the kind mentioned in subparagraph (b)(iii).

Note: For the purposes of paragraph (a), section 34F provides for the subject of a questioning warrant to contact a lawyer for the purpose of obtaining legal advice in relation to the warrant and, if the warrant is a minor questioning warrant, to also contact a minor’s representative.

1 **34CC Power to conduct search of apprehended subject of**
2 **questioning warrant**

- 3 (1) This section applies if:
4 (a) a questioning warrant is in force; and
5 (b) the subject of the warrant is apprehended under this Division
6 in connection with the warrant.

7 *Power to conduct search*

- 8 (2) A police officer may conduct an ordinary search or a frisk search
9 of the subject at any time during the period:
10 (a) beginning when the subject is apprehended; and
11 (b) ending when the subject appears before a prescribed
12 authority for questioning under the warrant.
- 13 (3) An ordinary search or a frisk search of the subject must, if
14 practicable, be conducted by a police officer of the same sex as the
15 subject.

16 *Records or other things found during search*

- 17 (4) If:
18 (a) a record or other thing is found during a search of the subject
19 of a questioning warrant under this section; and
20 (b) the record or other thing is:
21 (i) a seizable item; or
22 (ii) a communication device;
23 the record or other thing may be seized under this subsection by the
24 police officer conducting the search.
- 25 (5) If:
26 (a) a record or other thing is found during a search of the subject
27 of a questioning warrant under this section; and
28 (b) the police officer conducting the search reasonably believes
29 that the record or other thing is relevant to the collection of
30 intelligence that is important in relation to:
31 (i) if the warrant is an adult questioning warrant—an adult
32 questioning matter; or
33 (ii) if the warrant is a minor questioning warrant—a minor
34 questioning matter; and

1 (c) the warrant authorises the seizure of such a record or other
2 thing;
3 the record or other thing may be seized under this subsection by the
4 officer.

- 5 (6) Despite subsection (4), a seizable item or a communication device
6 is taken to have been seized under subsection (5) if:
7 (a) the item or device is found during a search of the subject of a
8 questioning warrant under this section; and
9 (b) the item or device is seized by the police officer conducting
10 the search; and
11 (c) the requirements of paragraphs (5)(b) and (c) are met in
12 relation to the item or device.

13 **34CD Use of force in apprehending or searching subject**

14 A police officer may use such force as is necessary and reasonable
15 in:

- 16 (a) apprehending the subject of a questioning warrant in
17 accordance with section 34C, or preventing the escape of the
18 subject from such apprehension; or
19 (b) conducting an ordinary search or a frisk search of the subject
20 of a questioning warrant under subsection 34CC(2).

21 **34CE Power to remove, retain and copy materials etc.**

22 *Powers of the Organisation*

- 23 (1) In addition to the things that the Organisation is authorised to do
24 that are specified in a questioning warrant, the Organisation is also
25 authorised:
26 (a) to remove and retain any record or other thing produced by
27 the subject of the warrant while before a prescribed authority
28 for questioning under the warrant, or to retain any record or
29 other thing seized under subsection 34CC(5), for the
30 purposes of:
31 (i) inspecting or examining the record or thing; and
32 (ii) in the case of a record—making copies or transcripts of
33 the record; and
34 (b) to do any other thing reasonably incidental to:
35 (i) the things mentioned in paragraph (a); or

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(ii) any of the things that the Organisation is authorised to do that are specified in the warrant.

- (2) A record or other thing retained as mentioned in paragraph (1)(a) may be retained:
 - (a) if returning the record or other thing would be prejudicial to security—only until returning the record or other thing would no longer be prejudicial to security; and
 - (b) otherwise—for only such time as is reasonable.

Powers of police officers

- (3) A seizable item seized by a police officer under subsection 34CC(4) may be retained for such time as is reasonable.
- (4) A communication device seized by a police officer under subsection 34CC(4) may be retained:
 - (a) if returning the device would be prejudicial to security—only until returning the device would no longer be prejudicial to security; and
 - (b) otherwise—for only such time as the prescribed authority before whom the subject is appearing for questioning under the warrant considers reasonable.

Subdivision D—Matters relating to questioning under questioning warrants

34D Screening of persons

(1) This section applies in relation to a person who is seeking to enter a place (the *questioning place*) where the subject of a questioning warrant is appearing, or is due to appear, before a prescribed authority for questioning under the warrant.

Note: This section applies in relation to any person who is seeking to enter a questioning place, including the subject.

Persons may be screened or searched

- (2) A police officer may request the person to do any of the following:
 - (a) undergo a screening procedure at a place;

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- 1 (b) produce a thing in the person’s possession for inspection or
2 examination, including anything worn or carried by the
3 person that can be conveniently removed by the person;
- 4 (c) undergo an ordinary search or a frisk search, if the officer
5 suspects on reasonable grounds that it is prudent to conduct
6 an ordinary search or a frisk search of the person in order to
7 ascertain whether the person is carrying a dangerous item or
8 a communication device.
- 9 (3) An ordinary search or a frisk search under paragraph (2)(c) must, if
10 practicable, be conducted by a police officer of the same sex as the
11 person.
- 12 (4) A police officer may, for the purposes of subsection (2), request
13 the person to remove a thing in the person’s possession, including
14 anything worn or carried by the person that can be conveniently
15 removed by the person.
- 16 *Certain items may be retained*
- 17 (5) A police officer may request the person to give a dangerous item or
18 a communication device to the officer for safekeeping while the
19 questioning is being conducted.
- 20 (6) A dangerous item given to a police officer under subsection (5)
21 may be retained by the officer for such time as is reasonable.
- 22 (7) A communication device given to a police officer under
23 subsection (5) by the subject may be retained by the officer:
- 24 (a) if returning the device would be prejudicial to security—only
25 until returning the device would no longer be prejudicial to
26 security; and
- 27 (b) otherwise—for only such time as the prescribed authority
28 before whom the subject is appearing for questioning under
29 the warrant considers reasonable.
- 30 (8) A communication device given to a police officer under
31 subsection (5) by a person other than the subject must be returned
32 to the person if:
- 33 (a) the person requests the officer to return the device; and
34 (b) at the time of the request, the person has left the questioning
35 place.

1 *Person may be requested to answer questions about certain things*

2 (9) If a thing is:

- 3 (a) in the possession or control of a person while the person
4 undergoes a screening procedure in accordance with
5 paragraph (2)(a); or
6 (b) produced by a person for inspection or examination in
7 accordance with paragraph (2)(b); or
8 (c) removed by a person in accordance with subsection (4); or
9 (d) given by a person to a police officer for safekeeping in
10 accordance with subsection (5);

11 a police officer may request the person to answer reasonable
12 questions about the thing.

13 *Power to refuse entry*

14 (10) A police officer may refuse a person entry to a questioning place if:

- 15 (a) a police officer makes a request of the person under this
16 section; and
17 (b) the person does not comply with the request.

18 Note: If:

- 19 (a) a person is the subject of a questioning warrant; and
20 (b) the person is refused entry under this subsection to the
21 questioning place;

22 the person will be taken to have failed to appear for questioning under
23 the warrant: see subsection 34GD(2).

24 *Exceptions*

25 (11) This section does not apply in relation to:

- 26 (a) a communication device that is in the possession of, or being
27 used lawfully by:
28 (i) an ASIO employee; or
29 (ii) an ASIO affiliate; or
30 (iii) a police officer; or
31 (b) a dangerous item that is in the lawful possession of a police
32 officer.

1 **34DA Prohibition on possessing certain things during questioning**

- 2 (1) This section applies in relation to a person who is at a place where
3 the subject of a questioning warrant is appearing before a
4 prescribed authority for questioning under the warrant.

5 Note: This section applies in relation to any person who is at the place,
6 including the subject.

- 7 (2) The person must not possess either of the following while the
8 subject is appearing for questioning:

- 9 (a) a communication device;
10 (b) a dangerous item.

- 11 (3) However, this section does not apply in relation to:

- 12 (a) a communication device that is in the possession of:

- 13 (i) an ASIO employee; or
14 (ii) an ASIO affiliate; or
15 (iii) a police officer; or

- 16 (b) a dangerous item that is in the lawful possession of a police
17 officer; or

- 18 (c) a communication device or a dangerous item that is in the
19 possession of the subject, if:

- 20 (i) the device or item is seized under section 34CC, or
21 retained under section 34CE or 34D; and
22 (ii) the device or item is returned to the subject for the
23 purpose of complying with a request made by the
24 Organisation in accordance with the warrant; and
25 (iii) the possession is solely for that purpose.

26 **34DB Questioning under a questioning warrant**

- 27 (1) The questioning of a person under a questioning warrant may be:

- 28 (a) pre-charge questioning or post-charge questioning; or
29 (b) pre-confiscation application questioning or post-confiscation
30 application questioning.

- 31 (2) Without limiting its effect apart from this subsection, this Act also
32 has the effect it would have if:

- 33 (a) paragraph (1)(a) were, by express provision, confined to
34 pre-charge questioning; or

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(b) paragraph (1)(b) were, by express provision, confined to pre-confiscation application questioning.

34DC Prescribed authority must explain certain matters

- (1) When the subject of a questioning warrant first appears before a prescribed authority for questioning under the warrant, the prescribed authority must inform the subject of the following:
- (a) what the warrant authorises the Organisation to do;
 - (b) the period for which the warrant is in force;
 - (c) the circumstances in which the subject may be apprehended during the period in which the warrant is in force;
 - (d) the role of the prescribed authority, and in particular that the role includes:
 - (i) supervising the questioning of the subject; and
 - (ii) giving appropriate directions in relation to the subject;
 - (e) that the subject is able to contact a lawyer in accordance with section 34F;
 - (f) the effect of section 34GD (including the fact that the section creates offences);
 - (g) the effect of section 34GF (including the fact that the section creates offences and allows the prescribed authority to permit certain disclosures to be made);
 - (h) the subject's right to apply to the Attorney-General for the provision of financial assistance under section 34JE;
 - (i) the subject's right to make a complaint orally or in writing to:
 - (i) in relation to the Organisation—the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or
 - (ii) in relation to the Australian Federal Police—the Ombudsman under the *Ombudsman Act 1976*; or
 - (iii) in relation to the police force or police service of a State or Territory—a complaints agency of the State or Territory concerned;
 - (j) the subject's right to give information orally or in writing, under Division 2 of Part V of the *Australian Federal Police Act 1979*, to a person referred to in subsection 40SA(1) of that Act in relation to the Australian Federal Police;

1 (k) the fact that the subject may seek from a federal court a
2 remedy relating to the warrant or the treatment of the subject
3 in connection with the warrant.

4 Note: Under sections 34DN and 34DO, if an interpreter is required, the
5 prescribed authority must defer informing the subject under this
6 section until the interpreter is present.

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

10 (3) The prescribed authority must also:

11 (a) inform the subject of the reason for the presence of each
12 person who is present at any time during the questioning; and

13 (b) at least once in every 24 hour period during which
14 questioning of the subject under the warrant occurs, inform
15 the subject of the fact that the subject may seek from a
16 federal court a remedy relating to the warrant or the treatment
17 of the subject in connection with the warrant.

18 Note: For example, the subject may be able to apply to the Federal Court of
19 Australia under subsection 39B(1) of the *Judiciary Act 1903*, or the
20 High Court under paragraph 75(v) of the Constitution, for a remedy in
21 relation to the warrant or the treatment of the subject in connection
22 with the warrant.

23 (4) Despite paragraph (3)(a):

24 (a) the prescribed authority must not name any person except
25 with the consent of the person to be named; and

26 (b) the obligation to inform the subject about the reason for a
27 particular person's presence need only be complied with once
28 (even if that particular person subsequently returns to the
29 questioning).

30 **34DD Additional requirements for prescribed authorities in relation**
31 **to minor questioning warrants**

32 (1) This section applies if the subject of a minor questioning warrant
33 appears before a prescribed authority for questioning under the
34 warrant.

35 (2) In addition to the requirements of section 34DC, the prescribed
36 authority must, as soon as practicable:

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- (a) inform the subject that a lawyer for the subject must be present during the questioning; and
- (b) direct any person proposing to question the subject under the warrant that questioning is to occur only when the lawyer is present; and
- (c) inform the subject that the subject may request that a minor's representative (a *non-lawyer representative*) for the subject who is not also a lawyer for the subject be present during the questioning; and
- (d) if the subject requests that a non-lawyer representative be present during the questioning:
 - (i) if the warrant includes an immediate appearance requirement—give a direction under paragraphs 34FD(2)(c) and (d); or
 - (ii) if the warrant does not include an immediate appearance requirement—give a direction under paragraph 34FD(3)(c) or (d); and
- (e) if the subject voluntarily chooses not to request that a non-lawyer representative be present during the questioning—give a direction under paragraph 34FD(2)(c) or subsection 34FD(4), as the case requires; and
- (f) direct any person proposing to question the subject 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 1: The prescribed authority may set breaks between periods of questioning by giving appropriate directions under paragraph 34DE(1)(e) for the subject's further appearance before the prescribed authority for questioning.

Note 2: Under sections 34DN and 34DO, if an interpreter is required, the prescribed authority must defer informing the subject under this section until the interpreter is present.

- (3) To avoid doubt, paragraph (2)(f) does not affect the operation of section 34DJ (permitted questioning time) or 34DK (extra permitted questioning time if interpreter present).

1 **34DE Directions while subject is before prescribed authority for**
2 **questioning**

3 (1) At any time when the subject of a questioning warrant is appearing
4 before a prescribed authority for questioning under the warrant, the
5 prescribed authority may, either orally or in writing, give any of
6 the following directions:

7 (a) a direction in accordance with subsection 34GF(6) permitting
8 the subject to disclose specified information to a specified
9 person;

10 (b) a direction permitting the subject to contact an identified
11 person (including a person identified by reference to the fact
12 that the person has a particular legal or familial relationship
13 with the subject) or any person, and to disclose information
14 other than specified information while in contact with that
15 person;

16 (c) a direction under paragraph 34FB(2)(a), 34FC(2)(a) or (3)(b)
17 that a specified lawyer must be present during the
18 questioning;

19 (d) a direction to defer questioning of the subject under the
20 warrant;

21 (e) a direction for the subject's further appearance before the
22 prescribed authority for questioning under the warrant, or for
23 the subject to be excused or released from further attendance
24 at questioning.

25 Note: A questioning warrant may be varied to require the subject's further
26 appearance before a prescribed authority at an earlier day and time
27 than that specified in a direction given under this subsection: see
28 subsection 34BE(5).

29 (2) However, the prescribed authority must not give a direction that is
30 inconsistent with the warrant unless:

31 (a) the prescribed authority:

32 (i) has been informed under section 34DM of a concern of
33 the Inspector-General of Intelligence and Security; and

34 (ii) is satisfied that giving the direction is necessary to
35 address the concern satisfactorily; or

36 (b) the direction has been approved, in writing, by the
37 Attorney-General.

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- 1 (3) If, at any time when the subject of a questioning warrant is
2 appearing before a prescribed authority for questioning under the
3 warrant:
4 (a) a record or other thing is in the possession or control of a
5 police officer because of the operation of section 34CC,
6 34CE or 34D; and
7 (b) a person exercising authority under the warrant requests that
8 the record or thing be returned to the subject for the purpose
9 of enabling the subject to comply with a request (the *warrant*
10 *request*) made by the Organisation in accordance with the
11 warrant;
12 the prescribed authority must give a direction that the record or
13 thing be given to the subject for only such time as the prescribed
14 authority considers reasonable to enable the subject to comply with
15 the warrant request.
- 16 (4) If a prescribed authority gives a direction under subsection (1) or
17 (3), the prescribed authority may vary or revoke the direction.

18 **34DF Directions in relation to confidentiality**

19 *Prohibition or limitation on use or disclosure*

- 20 (1) A prescribed authority must, in writing, give a direction that
21 questioning material:
22 (a) must not be used or disclosed; or
23 (b) may only be used by, or disclosed to, specified persons in
24 specified ways or on specified conditions;
25 if the prescribed authority is satisfied that the failure to give such a
26 direction:
27 (c) might prejudice a person's safety; or
28 (d) would reasonably be expected to prejudice the fair trial of the
29 subject for the material, if the subject has been charged with
30 a related offence or such a charge is imminent.
- 31 (2) A prescribed authority may give a direction under subsection (1) in
32 relation to questioning material at any time when the subject for
33 the material has not been excused or released from further
34 attendance at questioning.

1 (3) A direction given under subsection (1) by a prescribed authority in
2 relation to questioning material may be varied or revoked, in
3 writing, by:
4 (a) the prescribed authority; or
5 (b) if the subject for the material has been excused or released
6 from further attendance at questioning—the
7 Director-General.

8 (4) However, the direction cannot be varied or revoked if the
9 prescribed authority or the Director-General (as the case requires)
10 is satisfied that the variation or revocation:
11 (a) might prejudice a person's safety; or
12 (b) would reasonably be expected to prejudice the fair trial of the
13 subject for the material, if the subject has been charged with
14 a related offence or such a charge is imminent.

15 *Court certificate in relation to questioning material in respect of*
16 *which a direction has been given*

17 (5) If:
18 (a) a person has been charged with an offence before a federal
19 court or a court of a State or Territory; and
20 (b) the court considers that it may be desirable in the interests of
21 justice that particular questioning material, in respect of
22 which a prescribed authority has given a direction under
23 subsection (1), be made available to the person or to a lawyer
24 representing the person;
25 the court may give to the Director-General a certificate to that
26 effect. If the court does so, the Director-General must make the
27 questioning material available to the court.

28 (6) If:
29 (a) the Director-General makes questioning material available to
30 a court under subsection (5); and
31 (b) the court, after examining the questioning material, is
32 satisfied that the interests of justice so require;
33 the court may make the questioning material available to the
34 person charged with the offence concerned or to a lawyer
35 representing the person.

1 **34DG Direction that persons under 14 not be questioned**

2 If:

- 3 (a) the subject of a questioning warrant appears before a
4 prescribed authority for questioning under the warrant; and
5 (b) the prescribed authority is satisfied on reasonable grounds
6 that the subject is under 14 years old;
7 the prescribed authority must, as soon as practicable, give a
8 direction that the person is not to be questioned.

9 **34DH Other matters relating to the functions and powers of**
10 **prescribed authorities**

- 11 (1) A direction given by a prescribed authority has effect, and may be
12 implemented or enforced, according to its terms.

13 Note: A prescribed authority must not give a direction that is inconsistent
14 with a questioning warrant, except in limited circumstances: see
15 subsection 34DE(2).

- 16 (2) A prescribed authority is not subject to direction by the
17 Director-General or the Attorney-General in relation to the
18 performance of the prescribed authority's functions or the exercise
19 of the prescribed authority's powers (including the making of a
20 direction), other than in relation to the approval of a direction by
21 the Attorney-General under paragraph 34DE(2)(b).

22 Note: A prescribed authority must not give a direction that is inconsistent
23 with a questioning warrant, except in limited circumstances: see
24 subsection 34DE(2).

- 25 (3) To avoid doubt, a direction given by a prescribed authority cannot
26 be varied or revoked by the Director-General or the
27 Attorney-General, other than in accordance with subsection
28 34BE(5) or 34DF(3).

29 **34DI Complaints while appearing before prescribed authority for**
30 **questioning**

31 If:

- 32 (a) the subject of a questioning warrant is appearing before a
33 prescribed authority for questioning under the warrant; and
34 (b) the subject informs the prescribed authority that the subject
35 wants:

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- 1 (i) to make a complaint of a kind referred to in paragraph
2 34DC(1)(i); or
3 (ii) to give information of the kind referred to in paragraph
4 34DC(1)(j); and
5 (c) the subject requests facilities to make the complaint or give
6 the information; and
7 (d) the prescribed authority gives a direction under paragraph
8 34DE(1)(d) deferring questioning of the subject under the
9 warrant;
10 a person exercising authority under the warrant must give the
11 subject facilities for making the complaint or giving the
12 information.

13 **34DJ Permitted questioning time**

- 14 (1) This section applies if an interpreter is not present in accordance
15 with section 34DN or 34DO while the subject of a questioning
16 warrant is appearing before a prescribed authority for questioning
17 under the warrant.

18 Note: Section 34DK applies if an interpreter is present at any time during the
19 questioning.

20 *Time for questioning*

- 21 (2) The subject of a questioning warrant must not be questioned under
22 the warrant by a person exercising authority under the warrant for
23 longer than the permitted questioning period.

- 24 (3) For the purposes of subsection (2), the ***permitted questioning***
25 ***period*** is:

- 26 (a) 8 hours; or
27 (b) if a prescribed authority before whom the subject is being
28 questioned has extended the period in accordance with
29 subsection (4) or (5)—that longer period.

30 Note: The subject of a questioning warrant may be questioned for a longer
31 period of time if an interpreter is required: see section 34DK.

32 *Extension of time for questioning*

- 33 (4) If:
34 (a) the subject has been questioned under the warrant for a total
35 of less than 8 hours; and

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- 1 (b) the prescribed authority before whom the subject is being
2 questioned is satisfied of the matters in subsection (7);
3 the prescribed authority may, just before the end of the 8 hours,
4 extend the permitted questioning period to 16 hours.
- 5 (5) If:
- 6 (a) the subject has been questioned under the warrant for a total
7 of more than 8 hours and less than 16 hours; and
8 (b) the prescribed authority before whom the subject is being
9 questioned is satisfied of the matters in subsection (7);
10 the prescribed authority may, just before the end of the 16 hours,
11 extend the permitted questioning period to 24 hours.
- 12 (6) A person exercising authority under a questioning warrant may
13 request the prescribed authority to extend the permitted questioning
14 period. The request may be made in the absence of:
- 15 (a) the subject of the warrant; and
16 (b) a lawyer for the subject; and
17 (c) if the warrant is a minor questioning warrant—a minor’s
18 representative for the subject; and
19 (d) any person the subject is permitted to contact.
- 20 (7) The prescribed authority may extend the permitted questioning
21 period only if the prescribed authority is satisfied that:
- 22 (a) the questioning of the subject was conducted properly and
23 without delay; and
24 (b) there are reasonable grounds for believing that the extension
25 will substantially assist the collection of intelligence that is
26 important in relation to:
- 27 (i) if the warrant is an adult questioning warrant—an adult
28 questioning matter; or
29 (ii) if the warrant is a minor questioning warrant—a minor
30 questioning matter.
- 31 (8) The prescribed authority may revoke the extension of the permitted
32 questioning period. Revocation of the extension does not affect the
33 legality of anything done in relation to the subject under the
34 warrant before the revocation.

1 **34DK Extra permitted questioning time if interpreter present**

2 (1) This section applies if, in accordance with section 34DN or 34DO,
3 an interpreter is present at any time while the subject of a
4 questioning warrant is appearing before a prescribed authority for
5 questioning under the warrant.

6 (2) The subject must not be questioned under the warrant by a person
7 exercising authority under the warrant for longer than the extra
8 permitted questioning period.

9 (3) For the purposes of subsection (2), the *extra permitted questioning*
10 *period* is:

11 (a) 24 hours; or

12 (b) if a prescribed authority before whom the subject is being
13 questioned has extended the period in accordance with
14 subsection (4) or (5)—that longer period.

15 *Extension of extra time for questioning*

16 (4) If:

17 (a) the subject has been questioned under the warrant for a total
18 of less than 24 hours; and

19 (b) the prescribed authority before whom the subject is being
20 questioned is satisfied of the matters in subsection (7);

21 the prescribed authority may, just before the end of the 24 hours,
22 extend the extra permitted questioning period to 32 hours.

23 (5) If:

24 (a) the subject has been questioned under the warrant for a total
25 of more than 24 hours and less than 32 hours; and

26 (b) the prescribed authority before whom the subject is being
27 questioned is satisfied of the matters in subsection (7);

28 the prescribed authority may, just before the end of the 32 hours,
29 extend the extra permitted questioning period to 40 hours.

30 (6) A person exercising authority under a questioning warrant may
31 request the prescribed authority to extend the extra permitted
32 questioning period. The request may be made in the absence of:

33 (a) the subject of the warrant; and

34 (b) a lawyer for the subject; and

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- 1 (c) if the warrant is a minor questioning warrant—a minor’s
2 representative for the subject; and
3 (d) any person the subject is permitted to contact.
- 4 (7) The prescribed authority may extend the extra permitted
5 questioning period only if the prescribed authority is satisfied that:
6 (a) the questioning of the subject was conducted properly and
7 without delay; and
8 (b) there are reasonable grounds for believing that the extension
9 will substantially assist the collection of intelligence that is
10 important in relation to:
11 (i) if the warrant is an adult questioning warrant—an adult
12 questioning matter; or
13 (ii) if the warrant is a minor questioning warrant—a minor
14 questioning matter.
- 15 (8) The prescribed authority may revoke the extension of the extra
16 permitted questioning period. Revocation of the extension does not
17 affect the legality of anything done in relation to the subject under
18 the warrant before the revocation.

19 **34DL Time that is not questioning time**

- 20 For the purposes of working out the time that the subject of a
21 questioning warrant has been questioned under the warrant,
22 disregard the following times:
- 23 (a) the time taken by a prescribed authority to inform the subject
24 of the matters referred to in section 34DC and, if applicable,
25 section 34DD;
- 26 (b) any time during which a prescribed authority has deferred
27 questioning of the subject under the warrant to allow:
28 (i) the change of a thing in equipment being used to record
29 the questioning of the subject; or
30 (ii) the subject to make a complaint of the kind referred to
31 in paragraph 34DC(1)(i); or
32 (iii) the subject to give information of the kind referred to in
33 paragraph 34DC(1)(j); or
34 (iv) the subject to contact a lawyer or another person as
35 provided by this Division; or

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- 1 (v) a lawyer to be present in accordance with a direction
2 given under paragraph 34FB(2)(a) or 34FC(2)(a) or
3 (3)(b); or
4 (vi) the subject to receive medical attention; or
5 (vii) the subject to engage in religious practices in
6 accordance with the subject's religion; or
7 (viii) the subject to rest or recuperate;
8 (c) any time during which a prescribed authority has suspended
9 questioning of the subject under the warrant as mentioned in
10 paragraph 34DM(4)(a);
11 (d) any other time determined by a prescribed authority before
12 whom the subject appears for questioning.

13 **34DM Suspension of questioning etc. in response to concern of**
14 **Inspector-General of Intelligence and Security**

- 15 (1) This section applies if the Inspector-General of Intelligence and
16 Security is concerned about impropriety or illegality in connection
17 with the exercise or purported exercise of powers under this
18 Division in relation to the subject of a questioning warrant.

19 Note: For example, the Inspector-General may be concerned because the
20 Inspector-General has been present at a questioning in accordance
21 with section 34JB.

- 22 (2) When the subject is appearing before a prescribed authority for
23 questioning under the warrant, the Inspector-General:
24 (a) may inform the prescribed authority of the
25 Inspector-General's concern; and
26 (b) must, as soon as practicable after informing the prescribed
27 authority, inform the Director-General of the concern.
- 28 (3) The prescribed authority must consider the Inspector-General's
29 concern.
- 30 (4) The prescribed authority may give a direction suspending:
31 (a) questioning of the subject under the warrant; or
32 (b) the exercise of another power under this Division that is
33 specified in the direction;
34 until the prescribed authority is satisfied that the
35 Inspector-General's concern has been satisfactorily addressed.

1 **34DN Interpreter provided at request of prescribed authority**

- 2 (1) This section applies if:
- 3 (a) the subject of a questioning warrant appears before a
- 4 prescribed authority for questioning under the warrant; and
- 5 (b) the prescribed authority believes on reasonable grounds that
- 6 the subject is unable, because of inadequate knowledge of the
- 7 English language or a physical disability, to communicate
- 8 with reasonable fluency in that language.
- 9 (2) A person exercising authority under the warrant must arrange for
- 10 the presence of an interpreter.
- 11 (3) The prescribed authority must:
- 12 (a) defer informing the subject under section 34DC and, if
- 13 applicable, section 34DD until the interpreter is present; and
- 14 (b) give a direction under paragraph 34DE(1)(d) deferring
- 15 questioning of the subject under the warrant until the
- 16 interpreter is present.

17 **34DO Interpreter provided at request of subject**

- 18 (1) This section applies if the subject of a questioning warrant
- 19 appearing before a prescribed authority under the warrant requests
- 20 the presence of an interpreter.
- 21 (2) The prescribed authority must determine that an interpreter is to be
- 22 present unless the prescribed authority believes on reasonable
- 23 grounds that the subject:
- 24 (a) has an adequate knowledge of the English language to
- 25 communicate with reasonable fluency in that language; or
- 26 (b) is physically able to communicate with reasonable fluency in
- 27 that language.
- 28 (3) A person exercising authority under the warrant must arrange for
- 29 the presence of an interpreter if the prescribed authority makes a
- 30 determination under subsection (2).
- 31 (4) If questioning under the warrant has not commenced and the
- 32 prescribed authority makes a determination under subsection (2):

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- 1 (a) the prescribed authority must defer informing the subject
2 under section 34DC and, if applicable, section 34DD until an
3 interpreter is present; and
4 (b) a person exercising authority under the warrant must defer
5 the questioning until an interpreter is present.
- 6 (5) If questioning under the warrant commences before the subject
7 requests the presence of an interpreter and the prescribed authority
8 makes a determination under subsection (2):
9 (a) a person exercising authority under the warrant must defer
10 any further questioning until an interpreter is present; and
11 (b) when an interpreter is present, the prescribed authority must
12 again inform the subject of anything of which the subject was
13 previously informed under section 34DC or 34DD.

14 **34DP Video recording of procedures**

- 15 (1) The Director-General must ensure that video recordings are made
16 of the following:
17 (a) the appearance of the subject of a questioning warrant before
18 a prescribed authority for questioning under the warrant;
19 (b) any other matter or thing in relation to the warrant that the
20 prescribed authority directs is to be video recorded.
- 21 (2) The Director-General must ensure that, if practicable, video
22 recordings are made of any complaint made by the subject of a
23 questioning warrant when the subject is not appearing before a
24 prescribed authority for questioning under the warrant.

25 **Subdivision E—Particular uses or disclosures of questioning 26 material and derivative material**

27 **34E Obtaining derivative material**

- 28 (1) An entity mentioned in subsection (3), that may lawfully use or
29 disclose questioning material, may lawfully use or disclose the
30 material for the purpose of obtaining derivative material if the use
31 or disclosure is:
32 (a) a pre-charge use or disclosure of the material; or
33 (b) a post-charge use or disclosure of pre-charge questioning
34 material; or

-
- 1 (c) a post-charge use or disclosure of post-charge questioning
2 material; or
3 (d) a pre-confiscation application use or disclosure of the
4 material; or
5 (e) a post-confiscation application use or disclosure of
6 pre-confiscation application questioning material; or
7 (f) a post-confiscation application use or disclosure of
8 post-confiscation application questioning material.
- 9 (2) Subsection (1) has effect subject to:
10 (a) any direction given under subsection 34DF(1); and
11 (b) paragraph 34EA(1)(b), in the case of a disclosure to a
12 prosecutor of the subject for the material.
13 Subsection (1) does not, by implication, limit the use or disclosure
14 of the questioning material for any other purpose.
- 15 (3) The entities are as follows:
16 (a) the Director-General;
17 (b) an entrusted person;
18 (c) a person or body investigating whether the subject for the
19 material committed an offence against a law of the
20 Commonwealth or of a State or Territory;
21 (d) a prosecutor of the subject for the material;
22 (e) a prosecuting authority;
23 (f) a proceeds of crime authority;
24 (g) any other person or body lawfully in possession of the
25 questioning material.
- 26 (4) Without limiting its effect apart from this subsection, this Act also
27 has the effect it would have if:
28 (a) one or more of paragraphs (1)(b), (c), (e) and (f) had not been
29 enacted; or
30 (b) subsection (3) were, by express provision, confined to
31 persons or bodies other than either or both of the following:
32 (i) prosecutors of the subject for the material;
33 (ii) proceeds of crime authorities.

1 **34EA Disclosing questioning material to prosecutors of the subject**

2 (1) A person or body, that may lawfully disclose questioning material,
3 may lawfully disclose the material to a prosecutor of the subject for
4 the material if the disclosure is:

5 (a) a pre-charge disclosure of the material; or

6 (b) a post-charge disclosure of:

7 (i) pre-charge questioning material; or

8 (ii) post-charge questioning material;

9 under an order made under subsection 34EC(1).

10 (2) Subsection (1) has effect subject to any direction given under
11 subsection 34DF(1), in the case of a pre-charge disclosure of the
12 material.

13 Note: In the case of a post-charge disclosure, the court may have regard to
14 any direction given under subsection 34DF(1) in deciding whether to
15 make an order under subsection 34EC(1).

16 (3) Without limiting its effect apart from this subsection, this Act also
17 has the effect it would have if paragraph (1)(b), or either of its
18 subparagraphs, had not been enacted.

19 **34EB Disclosing derivative material to prosecutors of the subject**

20 (1) A person or body, that may lawfully disclose derivative material,
21 may lawfully disclose the material to a prosecutor of the subject for
22 the material if the disclosure is:

23 (a) a pre-charge disclosure of the material; or

24 (b) a post-charge disclosure of derivative material obtained from
25 pre-charge questioning material (whether from a pre-charge
26 use of that questioning material or otherwise); or

27 (c) a post-charge disclosure of derivative material obtained from
28 post-charge questioning material, and the disclosure is under
29 an order made under subsection 34EC(1).

30 (2) Without limiting its effect apart from this subsection, this Act also
31 has the effect it would have if paragraph (1)(b) or (c), or both, had
32 not been enacted.

1 **34EC Court’s powers to order disclosure and to ensure a fair trial**

2 *Court may order that material may be disclosed*

3 (1) A court may, on application or on its own initiative, order that
4 questioning material or derivative material may be disclosed to
5 prosecutors of the subject for the material if the court is satisfied
6 that the disclosure is required:

7 (a) in the interests of justice; and

8 (b) despite any direction given under subsection 34DF(1).

9 The order may specify the prosecutors (by any means), and the
10 uses to which the prosecutors may put the material.

11 (2) Subsection (1) applies to:

12 (a) if the subject has been charged with a related offence before a
13 federal court or a court of a State or Territory—that court; or

14 (b) otherwise—a federal court (other than the Family Court of
15 Australia) or a court of a State or Territory.

16 *Court’s powers to ensure the subject’s fair trial*

17 (3) This Subdivision does not, by implication, restrict a court’s power
18 to make any orders necessary to ensure that the fair trial of a
19 subject for questioning material or derivative material is not
20 prejudiced by the possession or use of the material by a prosecutor
21 of the subject.

22 (4) However, a person’s trial for:

23 (a) an offence against a law of the Commonwealth or of a
24 Territory; or

25 (b) an offence against a law of a State that has a federal aspect
26 (within the meaning of the *Australian Crime Commission Act*
27 2002);

28 is not unfair merely because the person has been the subject of a
29 questioning warrant. This applies whether the person became the
30 subject:

31 (c) before being charged with the offence and before such a
32 charge was imminent; or

33 (d) after being charged with the offence or after such a charge
34 was imminent.

1 (5) Without limiting its effect apart from this subsection, this Act also
2 has the effect it would have if subsection (4), or paragraph (4)(d),
3 had not been enacted.

4 **34ED Certain material may always be disclosed to prosecutors of**
5 **the subject**

6 (1) A person or body, that may lawfully disclose questioning material
7 of a kind covered by paragraph 34AB(1)(c) or (d), may lawfully
8 disclose the material to a prosecutor of the subject for the material.

9 (2) A person or body, that may lawfully disclose questioning material
10 or derivative material, may lawfully disclose the material to a
11 prosecutor of the subject for the material if the subject is suspected
12 of, or has been charged with:

13 (a) an offence against this Division in relation to the relevant
14 questioning warrant; or

15 (b) an offence against section 137.1 or 137.2 of the *Criminal*
16 *Code* (about false or misleading information or documents)
17 in relation to the relevant questioning warrant.

18 (3) Subsection (1) or (2) has effect subject to any direction given under
19 subsection 34DF(1).

20 (4) Subsection (1) or (2) applies whether the disclosure is:

21 (a) a pre-charge disclosure of the material; or

22 (b) a post-charge disclosure of:

23 (i) pre-charge questioning material; or

24 (ii) derivative material obtained from pre-charge
25 questioning material (whether from a pre-charge use of
26 the questioning material or otherwise); or

27 (c) a post-charge disclosure of:

28 (i) post-charge questioning material; or

29 (ii) derivative material obtained from post-charge
30 questioning material;

31 and whether or not an order has been made under subsection
32 34EC(1).

33 (5) Without limiting its effect apart from this subsection, this Act also
34 has the effect it would have if paragraph (4)(b) or (c), or both, had
35 not been enacted.

1 **34EE Other matters about prosecutors and subjects**

2 (1) If:

3 (a) a person lawfully possesses questioning material or
4 derivative material; and

5 (b) the person is a prosecutor of the subject for the material;
6 the person may use that material for purposes that include:

7 (c) making a decision whether to prosecute the subject; and

8 (d) prosecuting the subject.

9 This use of the questioning material is subject to subsection
10 34GD(6) and any direction given under subsection 34DF(1).

11 (2) If material is lawfully in the possession of a prosecutor of the
12 subject for the material, the fact that the material is questioning
13 material or derivative material does not prevent it from being
14 admissible in evidence against the subject in a criminal proceeding.

15 Note: The material may be inadmissible for other reasons (for example,
16 because of subsection 34GD(6)).

17 (3) This Subdivision does not, by implication, restrict the use of
18 questioning material or derivative material by, or the disclosure of
19 that material to:

20 (a) a prosecuting authority; or

21 (b) an individual employed or engaged by a prosecuting
22 authority;

23 who is not a prosecutor of the subject for the material.

24 (4) This section has effect subject to any other law of the
25 Commonwealth, or a law of a State or a Territory.

26 **34EF Proceeds of crime authorities and questioning under a**
27 **questioning warrant**

28 (1) A person or body, that may lawfully disclose questioning material
29 or derivative material, may lawfully disclose the material to a
30 proceeds of crime authority if the disclosure is:

31 (a) a pre-confiscation application disclosure of the material; or

32 (b) a post-confiscation application disclosure of:

33 (i) pre-confiscation application questioning material; or

34 (ii) derivative material obtained from pre-confiscation
35 application questioning material (whether from a

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- 1 pre-confiscation application use of the questioning
2 material or otherwise); or
- 3 (c) a post-confiscation application disclosure of:
- 4 (i) post-confiscation application questioning material; or
5 (ii) derivative material obtained from post-confiscation
6 application questioning material.
- 7 (2) Subsection (1) has effect subject to any direction given under
8 subsection 34DF(1).
- 9 (3) If material is lawfully in the possession of a proceeds of crime
10 authority, the fact that the material is questioning material or
11 derivative material does not prevent it from being admissible in
12 evidence against the subject for the material in a confiscation
13 proceeding.
- 14 Note: The material may be inadmissible for other reasons (for example,
15 because of subsection 34GD(6)).
- 16 (4) Subsection (3) of this section and subsection 34GD(6) do not, by
17 implication, restrict a court's power to make any orders necessary
18 to prevent prejudice to the proper administration of justice.
- 19 (5) Without limiting its effect apart from this subsection, this Act also
20 has the effect it would have if paragraph (1)(b) or (c), or both, had
21 not been enacted.

22 **Subdivision F—Lawyers and minor's representatives**

23 **34F Person specified in warrant may contact lawyer or minor's** 24 **representative**

25 *Right to contact lawyer or minor's representative*

- 26 (1) At any time after the subject of a questioning warrant is given
27 notice of the warrant in accordance with subsection 34BH(2) or
28 (3), the subject may:
- 29 (a) contact a lawyer for the purpose of obtaining legal advice in
30 relation to the warrant; and
- 31 (b) if the warrant is a minor questioning warrant—contact a
32 minor's representative for the subject.

1 *Effect of section*

- 2 (6) This section has effect despite paragraph 34CB(2)(a).

3 **34FA Questioning in absence of lawyer for subject**

- 4 (1) The subject of a minor questioning warrant must not be questioned
5 under the warrant in the absence of a lawyer for the subject.
- 6 (2) The subject of an adult questioning warrant may be questioned
7 under the warrant in the absence of a lawyer for the subject if:
8 (a) the subject voluntarily chooses to be questioned in the
9 absence of a lawyer; or
10 (b) a prescribed authority gives a direction under paragraph
11 34FB(3)(b) or subparagraph 34FF(7)(c)(i) in relation to the
12 subject.
- 13 (3) This section does not permit questioning of the subject of a
14 questioning warrant by a person exercising authority under the
15 warrant at a time when a person exercising authority under the
16 warrant is required by another section of this Division not to
17 question the subject.

18 Example: This section does not permit the subject of a questioning warrant to be
19 questioned when a person exercising authority under the warrant is
20 required by section 34DN or 34DO to defer questioning because an
21 interpreter is not present.

22 **34FB Directions in relation to lawyers for subjects of adult**
23 **questioning warrants**

- 24 (1) This section applies in relation to the subject of an adult
25 questioning warrant if:
26 (a) a lawyer for the subject is not present while the subject is
27 appearing before a prescribed authority for questioning under
28 the warrant; and
29 (b) the subject requests at any time that a lawyer for the subject
30 be present during the questioning.

31 *If warrant includes immediate appearance requirement*

- 32 (2) If the warrant includes an immediate appearance requirement, the
33 prescribed authority must, either orally or in writing:
34 (a) give a direction that:

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- 1 (i) a specified person (the *appointed lawyer*) be appointed
2 as the lawyer for the subject; and
3 (ii) the appointed lawyer be present during the questioning;
4 and
5 (iii) the subject be questioned in the presence of the
6 appointed lawyer; and
7 (b) give a direction that a person exercising authority under the
8 warrant give the subject facilities for contacting a lawyer (a
9 *lawyer of choice*) other than the appointed lawyer.

10 *If warrant does not include immediate appearance requirement*

- 11 (3) If the warrant does not include an immediate appearance
12 requirement, the prescribed authority must, either orally or in
13 writing:
14 (a) both:
15 (i) give a direction under paragraph 34DE(1)(d) deferring
16 questioning of the subject for such time as the
17 prescribed authority considers reasonable to enable a
18 lawyer for the subject to be present during the
19 questioning; and
20 (ii) give a direction that a person exercising authority under
21 the warrant give the subject facilities for contacting a
22 lawyer of choice; or
23 (b) give a direction that the subject may be questioned in the
24 absence of a lawyer for the subject, if:
25 (i) the prescribed authority is satisfied that such time as is
26 reasonable to enable a lawyer for the subject to be
27 present during the questioning has passed; and
28 (ii) a lawyer for the subject is not present during the
29 questioning.

30 *When lawyer of choice is present*

- 31 (4) If:
32 (a) a direction under paragraph (2)(a) is in force in relation to the
33 appointed lawyer for the subject of an adult questioning
34 warrant; and
35 (b) both the appointed lawyer and a lawyer of choice are present
36 during the questioning;
37 the prescribed authority must, either orally or in writing:

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- 1 (c) give a direction under paragraph 34DE(1)(d) deferring
2 questioning of the subject for such time as the prescribed
3 authority considers reasonable to enable:
4 (i) the appointed lawyer to brief the lawyer of choice; and
5 (ii) the lawyer of choice to provide advice to the subject;
6 and
7 (d) revoke the direction under paragraph (2)(a).

8 *If subject chooses to be questioned in absence of lawyer*

- 9 (5) If a direction under paragraph (2)(a) is in force in relation to the
10 appointed lawyer for the subject of an adult questioning warrant,
11 the direction is revoked if the subject voluntarily chooses to be
12 questioned under the warrant in the absence of a lawyer.

13 **34FC Directions in relation to lawyers for subjects of minor**
14 **questioning warrants**

- 15 (1) This section applies in relation to the subject of a minor
16 questioning warrant if a lawyer for the subject is not present while
17 the subject is appearing before a prescribed authority for
18 questioning under the warrant.

19 *If warrant includes immediate appearance requirement*

- 20 (2) If the warrant includes an immediate appearance requirement, the
21 prescribed authority must, either orally or in writing:
22 (a) give a direction that:
23 (i) a specified person (the ***appointed lawyer***) be appointed
24 as the lawyer for the subject; and
25 (ii) the appointed lawyer be present during the questioning;
26 and
27 (iii) the subject be questioned in the presence of the
28 appointed lawyer; and
29 (b) give a direction that a person exercising authority under the
30 warrant give the subject facilities for contacting a lawyer (a
31 ***lawyer of choice***) other than the appointed lawyer.

1 *If warrant does not include immediate appearance requirement*

- 2 (3) If the warrant does not include an immediate appearance
3 requirement, the prescribed authority must, either orally or in
4 writing:
5 (a) both:
6 (i) give a direction under paragraph 34DE(1)(d) deferring
7 questioning of the subject for such time as the
8 prescribed authority considers reasonable to enable a
9 lawyer for the subject to be present during the
10 questioning; and
11 (ii) give a direction that a person exercising authority under
12 the warrant give the subject facilities for contacting a
13 lawyer; or
14 (b) if the prescribed authority is satisfied that such time as is
15 reasonable to enable a lawyer for the subject to be present
16 during the questioning has passed—give a direction that:
17 (i) a specified person (the *appointed lawyer*) be appointed
18 as the lawyer for the subject; and
19 (ii) the appointed lawyer be present during the questioning;
20 and
21 (iii) the subject be questioned in the presence of the
22 appointed lawyer.

23 *When lawyer of choice is present*

- 24 (4) If:
25 (a) a direction under paragraph (2)(a) or (3)(b) is in force in
26 relation to the appointed lawyer for the subject of a minor
27 questioning warrant; and
28 (b) both the appointed lawyer and a lawyer of choice are present
29 during the questioning;
30 the prescribed authority must, either orally or in writing:
31 (c) give a direction under paragraph 34DE(1)(d) deferring
32 questioning of the subject for such time as the prescribed
33 authority considers reasonable to enable:
34 (i) the appointed lawyer to brief the lawyer of choice; and
35 (ii) the lawyer of choice to provide advice to the subject;
36 and

1 (d) revoke the direction under paragraph (2)(a) or (3)(b) (as the
2 case requires).

3 **34FD Directions in relation to minor’s representatives**

- 4 (1) This section applies if:
- 5 (a) the subject of a minor questioning warrant is appearing
6 before a prescribed authority for questioning under the
7 warrant; and
 - 8 (b) a minor’s representative (a *non-lawyer representative*) for
9 the subject, who is not also a lawyer for the subject, is not
10 present.

11 *If warrant includes immediate appearance requirement*

- 12 (2) If:
- 13 (a) the warrant includes an immediate appearance requirement;
14 and
 - 15 (b) a lawyer for the subject is present during the questioning;
16 the prescribed authority must, either orally or in writing:
 - 17 (c) give a direction that the subject may be questioned under the
18 warrant in the absence of a non-lawyer representative; and
 - 19 (d) if the subject requests that a non-lawyer representative be
20 present during the questioning—give a direction that the
21 subject must be permitted to contact a non-lawyer
22 representative.

23 Note 1: The subject of a minor questioning warrant may only be questioned if
24 a lawyer for the subject is present: see subsection 34FA(1).

25 Note 2: In the absence of a non-lawyer representative, the lawyer for the
26 subject is also the minor’s representative for the subject.

27 *If warrant does not include immediate appearance requirement*

- 28 (3) If:
- 29 (a) the warrant does not include an immediate appearance
30 requirement; and
 - 31 (b) the subject requests that a non-lawyer representative be
32 present during the questioning;
33 the prescribed authority must, either orally or in writing:

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- (c) give a direction under paragraph 34DE(1)(d) deferring questioning of the subject for such time as the prescribed authority considers reasonable to enable:
 - (i) the subject to contact a non-lawyer representative; and
 - (ii) a non-lawyer representative to be present during the questioning; or
- (d) give a direction that the subject may be questioned under the warrant in the absence of a non-lawyer representative, if:
 - (i) the prescribed authority is satisfied that such time as is reasonable to enable a non-lawyer representative to be present during the questioning has passed; and
 - (ii) a lawyer for the subject is present during the questioning.

Note: In the absence of a non-lawyer representative, the lawyer for the subject is also the minor's representative for the subject.

- (4) If:
 - (a) the warrant does not include an immediate appearance requirement; and
 - (b) the subject voluntarily chooses not to request that a non-lawyer representative be present during the questioning; and
 - (c) a lawyer for the subject is present during the questioning; the prescribed authority must, either orally or in writing, give a direction that the subject may be questioned under the warrant in the absence of a non-lawyer representative.

Note: In the absence of a non-lawyer representative, the lawyer for the subject is also the minor's representative for the subject.

When non-lawyer representative is present

- (5) A direction under paragraph (2)(c) or (3)(d) or subsection (4) in relation to the subject of a minor questioning warrant ceases to have effect if:
 - (a) the subject contacts a non-lawyer representative; and
 - (b) the non-lawyer representative is present during the questioning.

1 **34FE Lawyer may request copy of warrant**

- 2 (1) This section applies in relation to a lawyer who is acting for the
3 subject of a questioning warrant in connection with the warrant.
- 4 (2) Subject to subsection (4), a person exercising authority under the
5 warrant must, if requested to do so by the lawyer, give the lawyer:
6 (a) if the warrant is issued in writing—a copy of the warrant; or
7 (b) if the warrant is issued orally—a copy of the written record
8 of the warrant made in accordance with subsection 34BF(3).
- 9 (3) Subject to subsection (4), if the warrant is varied, a person
10 exercising authority under the warrant must, if requested to do so
11 by the lawyer, give the lawyer:
12 (a) if the variation is issued in writing—a copy of the variation;
13 or
14 (b) if the variation is issued orally—a copy of the written record
15 of the variation made in accordance with subsection
16 34BG(7).
- 17 (4) For the purposes of subsections (2) and (3), the Director-General
18 may make such deletions from a document mentioned in
19 subsection (5) as the Director-General considers necessary in order
20 to avoid prejudice to security, the defence of the Commonwealth,
21 the conduct of the Commonwealth’s international affairs or the
22 privacy of individuals.
- 23 (5) The documents covered by this subsection are as follows:
24 (a) a questioning warrant;
25 (b) a written record of a questioning warrant;
26 (c) a variation of a questioning warrant;
27 (d) a written record of a variation of a questioning warrant.
- 28 (6) Subsections (2) and (3) do not:
29 (a) require more than one person to give the lawyer a copy of the
30 warrant, the written record of the warrant, the variation or the
31 written record of the variation (as the case requires); or
32 (b) entitle the lawyer to be given a copy of, or see, a document
33 other than the warrant, the written record of the warrant, the
34 variation or the written record of the variation (as the case
35 requires).

1 **34FF Involvement of lawyers**

2 (1) This section applies if:

- 3 (a) the subject of a questioning warrant is appearing before a
4 prescribed authority for questioning under the warrant; and
5 (b) a lawyer for the subject is present during the questioning.

6 *Breaks in questioning*

7 (2) The prescribed authority must provide a reasonable opportunity for
8 the lawyer to advise the subject during breaks in the questioning.

9 Note: The prescribed authority may set breaks between periods of
10 questioning by giving directions under paragraph 34DE(1)(e) for the
11 subject's further appearance before the prescribed authority for
12 questioning. Paragraphs 34DL(b) to (d) also contain examples of
13 procedural breaks in questioning.

14 (3) The lawyer must not intervene in the questioning of the subject or
15 address the prescribed authority before whom the subject is being
16 questioned, except:

- 17 (a) to request clarification of an ambiguous question; or
18 (b) to request a break in the questioning of the subject in order to
19 provide advice to the subject.

20 (4) During a break in the questioning of the subject, the lawyer may
21 request the prescribed authority for an opportunity to address the
22 prescribed authority on a matter.

23 Note: The prescribed authority may set breaks between periods of
24 questioning by giving directions under paragraph 34DE(1)(e) for the
25 subject's further appearance before the prescribed authority for
26 questioning. Paragraphs 34DL(b) to (d) also contain examples of
27 procedural breaks in questioning.

28 (5) The prescribed authority must approve or refuse a request under
29 subsection (3) or (4).

30 *Removal of lawyer for disrupting questioning*

31 (6) If the prescribed authority considers the lawyer's conduct is unduly
32 disrupting the questioning of the subject, the prescribed authority
33 may direct a person exercising authority under the warrant to
34 remove the lawyer from the place where the questioning is
35 occurring.

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- 1 (7) If the prescribed authority directs the removal of the lawyer:
2 (a) the prescribed authority must also direct that the subject may
3 contact another lawyer; and
4 (b) if the subject chooses to contact another lawyer, the
5 prescribed authority must give a direction under paragraph
6 34DE(1)(d) deferring questioning of the subject for such time
7 as the prescribed authority considers reasonable to enable a
8 lawyer for the subject to be present; and
9 (c) if:
10 (i) the time mentioned in paragraph (b) has passed and a
11 lawyer for the subject is not present; or
12 (ii) the subject chooses not to contact another lawyer;
13 the prescribed authority must:
14 (iii) if the warrant is an adult questioning warrant—give a
15 direction that the subject may be questioned in the
16 absence of a lawyer for the subject; and
17 (iv) if the warrant is minor questioning warrant—give a
18 direction under paragraph 34FC(2)(a) or (3)(b) (as the
19 case requires).

20 *If lawyer is also a minor's representative for the subject*

- 21 (8) If section 34FG also applies to the lawyer in another capacity in
22 relation to the subject, this section does not apply to conduct of the
23 lawyer in that other capacity.

24 **34FG Conduct of minor's representatives**

- 25 (1) This section applies in relation to a minor's representative for the
26 subject of a minor questioning warrant who either:
27 (a) is, or has been, contacted by the subject as permitted by the
28 warrant or a direction given by a prescribed authority; or
29 (b) is, or has been, present when the subject was before a
30 prescribed authority for questioning under the warrant.
- 31 (2) If a prescribed authority considers that the minor's representative's
32 conduct is unduly disrupting questioning of the subject, the
33 prescribed authority may, subject to subsection (3), direct a person
34 exercising authority under the warrant to remove the minor's
35 representative from the place where the questioning is occurring.

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- (3) If the prescribed authority directs the removal of the minor’s representative:
 - (a) the prescribed authority must inform the subject that:
 - (i) the subject may request that another minor’s representative (a *replacement representative*) for the subject be present during the questioning; and
 - (ii) the subject may contact a replacement representative to request that the replacement representative be present during the questioning; and
 - (b) the prescribed authority must direct that:
 - (i) the subject may contact a replacement representative to request that the replacement representative be present during the questioning; and
 - (ii) a person exercising authority under the warrant must give the subject facilities for contacting a replacement representative.

- (4) If:
 - (a) the prescribed authority informs the subject under subsection (3); and
 - (b) a lawyer for the subject is present during the questioning; and
 - (c) the subject requests that a replacement representative (other than the lawyer) be present during the questioning;the prescribed authority must:
 - (d) if the warrant includes an immediate appearance requirement—give a direction that the subject may be questioned under the warrant in the absence of the replacement representative; and
 - (e) if the warrant does not include an immediate appearance requirement—do either or both of the following:
 - (i) give a direction under paragraph 34DE(1)(d) deferring questioning of the subject for such time as the prescribed authority considers reasonable to enable the replacement representative to be present during the questioning;
 - (ii) if the prescribed authority is satisfied that such time as is reasonable to enable the replacement representative to be present during the questioning has passed—give a direction that the subject may be questioned under the

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warrant in the absence of the replacement representative.

Note: If a prescribed authority gives a direction under this subsection that the subject of a minor questioning warrant be questioned in the absence of a replacement representative, the lawyer for the subject is also the minor’s representative for the subject until the replacement representative is present.

- (5) If:
- (a) the prescribed authority informs the subject under subsection (3); and
 - (b) a lawyer for the subject is present during the questioning; and
 - (c) the subject voluntarily chooses not to request that a replacement representative (other than the lawyer) be present during the questioning;
- the prescribed authority must give a direction that the subject may be questioned under the warrant in the absence of the replacement representative.

Note: If a prescribed authority gives a direction under this subsection that the subject of a minor questioning warrant be questioned in the absence of a replacement representative, the lawyer for the subject is also the minor’s representative for the subject.

34FH 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 questioning warrant in relation to the person; or
- (b) the treatment of the person in connection with such a warrant.

34FI Law relating to legal professional privilege not affected

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

1 **Subdivision G—Offences**

2 **34G Surrender of travel documents by person in relation to whom**
3 **questioning warrant is sought**

4 (1) If:

5 (a) the Director-General has requested the Attorney-General to
6 issue a questioning warrant in relation to a person; and

7 (b) the Director-General believes on reasonable grounds that:

8 (i) the person may leave Australia; and

9 (ii) the person's leaving would be likely to impact on the
10 person's ability to comply with the questioning warrant;

11 the Director-General may cause the person to be notified of the
12 request and of the effect of subsection (2).

13 (2) The person must, as soon as practicable after being notified in
14 accordance with subsection (1), deliver to an enforcement officer:

15 (a) all Australian travel documents that:

16 (i) have been issued to the person; and

17 (ii) are in the person's possession or control; and

18 (b) all passports or other travel documents that:

19 (i) have been issued to the person by or on behalf of the
20 government of a foreign country; and

21 (ii) are in the person's possession or control.

22 (3) A person commits an offence if:

23 (a) the person is notified in accordance with subsection (1); and

24 (b) the person fails to comply with subsection (2).

25 Penalty: Imprisonment for 5 years.

26 (4) The Director-General must cause any document delivered under
27 subsection (2) to be returned to the person to whom it was issued
28 as soon as practicable after:

29 (a) if the Attorney-General refuses to issue a questioning warrant
30 in relation to the person—that refusal; or

31 (b) if a questioning warrant is issued in relation to the person—
32 the end of the period specified in the warrant as the period
33 during which the warrant is to be in force;

1 but the Director-General may cause the document to be returned to
2 that person earlier.

3 (5) Subsection (4) does not require:

- 4 (a) the return of a document during the period specified in
5 another warrant, issued in relation to the person under this
6 Division, as the period during which the other warrant is to
7 be in force; or
8 (b) the return of a document that has been cancelled.

9 (6) If a questioning warrant is issued in relation to the person, a person
10 approved under section 24 in relation to the warrant may, after a
11 document of the first-mentioned person is delivered under
12 subsection (2) of this section and before it is returned under
13 subsection (4) of this section:

- 14 (a) inspect or examine the document; and
15 (b) make copies or transcripts of it.

16 (7) In this section:

17 *enforcement officer* means any of the following:

- 18 (a) a member of the Australian Federal Police (within the
19 meaning of the *Australian Federal Police Act 1979*);
20 (b) an officer of the police force of a State or Territory;
21 (c) an officer of Customs (within the meaning of the *Customs*
22 *Act 1901*).

23 **34GA Person in relation to whom questioning warrant is requested**
24 **must not leave Australia without permission**

25 (1) A person commits an offence if:

- 26 (a) the person has been notified of:
27 (i) the making of a request by the Director-General for a
28 questioning warrant in relation to the person; and
29 (ii) the effect of this subsection in connection with that
30 request; and
31 (b) the person leaves Australia; and
32 (c) the leaving occurs after the person has been notified as
33 mentioned in paragraph (a), and before:
34 (i) if the Attorney-General refuses to issue a questioning
35 warrant in relation to the person—that refusal; or

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- 1 (ii) if a questioning warrant is issued in relation to the
2 person—the end of the period specified in the warrant
3 as the period during which the warrant is to be in force;
4 and
5 (d) the person does not have written permission from the
6 Director-General to leave Australia at the time the person
7 leaves Australia.

8 Penalty: Imprisonment for 5 years.

- 9 (2) The Director-General may give written permission for a person in
10 relation to whom a questioning warrant is requested to leave
11 Australia at a specified time. The permission may be given either
12 unconditionally or subject to specified conditions.

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

- 15 (3) If a permission under subsection (2) is given subject to a condition
16 and the condition is not met, the permission is not in force.

17 **34GB Surrender of travel documents by subject of questioning**
18 **warrant**

- 19 (1) If:
20 (a) a questioning warrant is issued; and
21 (b) the Director-General believes on reasonable grounds that:
22 (i) the subject of the warrant may leave Australia; and
23 (ii) the subject's leaving would be likely to impact on the
24 subject's ability to comply with the warrant;
25 the Director-General may cause the subject to be notified of the
26 issue of the warrant and of the effect of subsection (2).

27 Note: A notice of the issue of a questioning warrant under this subsection
28 may be given under section 34BH or otherwise.

- 29 (2) As soon as practicable after the subject is notified in accordance
30 with subsection (1), the subject must deliver to a person exercising
31 authority under the warrant:
32 (a) all Australian travel documents that:
33 (i) have been issued to the subject; and
34 (ii) are in the subject's possession or control; and
35 (b) all passports or other travel documents that:

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- 1 (i) have been issued to the subject by or on behalf of the
2 government of a foreign country; and
3 (ii) are in the subject's possession or control.
- 4 (3) The subject of a questioning warrant commits an offence if:
5 (a) the subject is notified in accordance with subsection (1); and
6 (b) the subject fails to comply with subsection (2).
- 7 Penalty: Imprisonment for 5 years.
- 8 (4) The Director-General must cause any document delivered under
9 subsection (2) to be returned to the subject as soon as practicable
10 after the end of the period specified in the warrant as the period
11 during which the warrant is to be in force, but may cause the
12 document to be returned to the subject earlier.
- 13 (5) Subsection (4) does not require:
14 (a) the return of a document during the period specified in
15 another warrant, issued in relation to the subject under this
16 Division, as the period during which the other warrant is to
17 be in force; or
18 (b) the return of a document that has been cancelled.
- 19 (6) After the subject of a questioning warrant delivers a document
20 under subsection (2) and before the document is returned under
21 subsection (4), a person approved under section 24 in relation to
22 the warrant may:
23 (a) inspect or examine the document; and
24 (b) make copies or transcripts of it.

25 **34GC Subject of questioning warrant must not leave Australia**
26 **without permission**

- 27 (1) The subject of a questioning warrant commits an offence if:
28 (a) the subject is notified of:
29 (i) the issue of the warrant; and
30 (ii) the effect of this subsection; and
31 (b) the subject leaves Australia; and
32 (c) the leaving occurs:
33 (i) after the subject is notified as mentioned in
34 paragraph (a); and

1 (ii) before the end of the period specified in the warrant as
2 the period during which the warrant is to be in force;
3 and

4 (d) the subject does not have written permission from the
5 Director-General to leave Australia at the time the subject
6 leaves Australia.

7 Note: A notice of the issue of a questioning warrant under
8 subparagraph (a)(i) may be given under section 34BH or otherwise.

9 Penalty: Imprisonment for 5 years.

10 (2) The Director-General may give written permission for the subject
11 of a questioning warrant to leave Australia at a specified time. The
12 permission may be given either unconditionally or subject to
13 specified conditions.

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

16 (3) If a permission under subsection (2) is given subject to a condition
17 and the condition is not met, the permission is not in force.

18 **34GD Giving information and producing things etc.**

19 *Failure to appear*

20 (1) The subject of a questioning warrant commits an offence if the
21 subject fails to appear before a prescribed authority for questioning
22 in accordance with:

- 23 (a) the warrant; or
24 (b) a direction given under subsection 34DE(1).

25 Penalty: Imprisonment for 5 years.

26 (2) For the purposes of subsection (1), the subject of a questioning
27 warrant is taken to fail to appear before a prescribed authority for
28 questioning if, under subsection 34D(10), the subject is refused
29 entry to the place where the questioning is to occur.

30 Note: Subsection 34D(10) provides for a police officer to refuse entry to a
31 person if the person does not comply with a request made by the
32 officer under section 34D.

1 *Failure to give information etc.*

2 (3) The subject of a questioning warrant commits an offence if:

3 (a) the subject is appearing before a prescribed authority for
4 questioning under the warrant; and

5 (b) the Organisation requests, in accordance with the warrant, the
6 subject to:

7 (i) give any information; or

8 (ii) produce any record or other thing; and

9 (c) the subject fails to comply with the request.

10 Penalty: Imprisonment for 5 years.

11 (4) Subsection (3) does not apply if the subject:

12 (a) does not have the information; or

13 (b) does not have possession or control of the record or thing.

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

16 *Self-incrimination etc.*

17 (5) The subject of a questioning warrant is not excused from:

18 (a) giving information; or

19 (b) producing a record or other thing;

20 that the Organisation requests, in accordance with the warrant, the
21 subject to give or produce, on the ground that the information, or
22 production of the record or thing, might tend to incriminate the
23 subject in relation to an offence.

24 (6) However:

25 (a) anything said by the subject, while appearing before a
26 prescribed authority for questioning under the warrant, to
27 comply with the request; and

28 (b) the production of a record or other thing by the subject, while
29 appearing before a prescribed authority for questioning under
30 the warrant, to comply with the request;

31 are not admissible in evidence against the subject in a criminal
32 proceeding, other than:

33 (c) a confiscation proceeding, if the thing was said, or the record
34 or thing was produced, at a time when the proceeding had not
35 commenced and was not imminent; or

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- 1 (d) proceedings for an offence against this section; or
2 (e) proceedings for an offence against section 34GF; or
3 (f) proceedings for an offence against section 137.1 or 137.2 of
4 the *Criminal Code* that relates to this section.

5 (7) If, at general law, the subject of a questioning warrant would
6 otherwise be able to claim the privilege against self-exposure to a
7 penalty (other than an offence) in relation to giving information or
8 producing a record or other thing in connection with the warrant,
9 the subject is not excused from giving the information or producing
10 the record or thing on that ground.

11 *False or misleading statements*

- 12 (8) The subject of a questioning warrant commits an offence if:
13 (a) the subject is appearing before a prescribed authority for
14 questioning under the warrant; and
15 (b) the Organisation requests, in accordance with the warrant, the
16 subject to give information; and
17 (c) the subject makes a statement that is, to the subject's
18 knowledge, false or misleading; and
19 (d) the statement is made in purported compliance with the
20 request.

21 Penalty: Imprisonment for 5 years.

- 22 (9) Subsection (8) does not apply if the statement is not false or
23 misleading in a material particular.

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

26 *Rendering records or things illegible etc.*

- 27 (10) The subject of a questioning warrant commits an offence if:
28 (a) the subject is requested, in connection with a questioning
29 warrant, to produce a record or other thing; and
30 (b) the subject engages in conduct; and
31 (c) as a result of the conduct, the record or thing is unable to be
32 produced, or to be produced in wholly legible or usable form.

33 Penalty: Imprisonment for 5 years.

1 **34GE Offences of contravening safeguards**

2 (1) A person commits an offence if:

- 3 (a) the person has been approved under section 24 to exercise
4 authority conferred by a questioning warrant; and
5 (b) the person exercises, or purports to exercise, the authority;
6 and
7 (c) the exercise, or purported exercise, contravenes a condition
8 or restriction in the warrant on the authority; and
9 (d) the person knows of the contravention.

10 Penalty: Imprisonment for 2 years.

11 (2) A person commits an offence if:

- 12 (a) the person is a police officer; and
13 (b) the person engages in conduct in the exercise of, or the
14 purported exercise of, authority conferred by this Division;
15 and
16 (c) the conduct contravenes section 34C; and
17 (d) the person knows of the contravention.

18 Note: If a police officer engaged in the conduct in the exercise of a power
19 otherwise than under this Division, paragraph (b) would not apply and
20 the officer would not commit an offence against this subsection.

21 Penalty: Imprisonment for 2 years.

22 (3) A person commits an offence if:

- 23 (a) a prescribed authority gives a direction under:
24 (i) subsection 34DD(2); or
25 (ii) paragraph 34DE(1)(b), (d) or (e); or
26 (iii) section 34DG; or
27 (iv) subsection 34DM(4); and
28 (b) the person is identified (whether by name, reference to a class
29 that includes the person or some other means) in the direction
30 as a person who is to implement the direction; and
31 (c) the person engages in conduct; and
32 (d) the conduct contravenes the direction; and
33 (e) the person knows of the contravention.

34 Penalty: Imprisonment for 2 years.

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- 1 (4) A person commits an offence if:
2 (a) the person uses or discloses questioning material (whether or
3 not the person is the first to do so); and
4 (b) the use or disclosure contravenes a direction given under
5 subsection 34DF(1) about the questioning material; and
6 (c) the person knows of the contravention; and
7 (d) the use or disclosure is not under subsection 34DF(5) or (6)
8 or paragraph 34EA(1)(b).

9 Penalty: Imprisonment for 2 years.

- 10 (5) A person commits an offence if:
11 (a) the person engages in conduct; and
12 (b) the conduct contravenes:
13 (i) subsection 34AG(2); or
14 (ii) paragraph 34CB(2)(c); or
15 (iii) section 34DI; or
16 (iv) paragraph 34DN(3)(b); or
17 (v) paragraph 34DO(4)(b) or (5)(a); and
18 (c) the person knows of the contravention.

19 Penalty: Imprisonment for 2 years.

- 20 (6) A person commits an offence if:
21 (a) the person has been approved under section 24 to exercise
22 authority conferred by a questioning warrant; and
23 (b) the person exercises, or purports to exercise, the authority by
24 questioning the subject of the warrant; and
25 (c) the questioning contravenes section 34DJ or 34DK; and
26 (d) the person knows of the contravention.

27 Penalty: Imprisonment for 2 years.

28 **34GF Secrecy relating to warrants and questioning**

29 *Before warrant ceases to be in force*

- 30 (1) A person (the *discloser*) commits an offence if:
31 (a) a questioning warrant is issued; and
32 (b) the discloser discloses information; and

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- (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 apprehension 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 by a prescribed authority 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 warrant ceases to be in force

- (2) A person (the **discloser**) commits an offence if:
 - (a) a questioning warrant is issued; 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 by a prescribed authority 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.

1 *Strict liability*

- 2 (3) Strict liability applies to paragraphs (1)(c) and (2)(c) if the
3 discloser is:
- 4 (a) the subject of the warrant; or
 - 5 (b) a lawyer who has at any time been:
 - 6 (i) present, as the lawyer for the subject of the warrant,
7 during the questioning of the subject under the warrant;
8 or
 - 9 (ii) contacted for the purpose of the subject obtaining legal
10 advice in connection with the warrant; or
 - 11 (iii) contacted for the purpose of the subject obtaining
12 representation in legal proceedings seeking a remedy
13 relating to the warrant or the treatment of the subject in
14 connection with the warrant.

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

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

19 *Extended geographical jurisdiction—category D*

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

23 *Definitions*

- 24 (5) In this section:

25 ***operational information*** means information indicating one or more
26 of the following:

- 27 (a) information that the Organisation has or had;
- 28 (b) a source of information (other than the subject of the warrant
29 mentioned in subsection (1) or (2)) that the Organisation has
30 or had;
- 31 (c) an operational capability, method or plan of the Organisation.

32 ***permitted disclosure*** means any of the following:

- 33 (a) a disclosure made by a person in the course of any of the
34 following:

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- 1 (i) exercising a power, or performing a function or duty,
2 under this Act;
- 3 (ii) doing anything the person is authorised to do by a
4 warrant issued under this Act;
- 5 (iii) doing anything the person is required or permitted to do
6 by a direction given by a prescribed authority;
- 7 (iv) exercising a power (including a power to make a
8 complaint or to give information), or performing a
9 function or duty, under the *Inspector-General of*
10 *Intelligence and Security Act 1986*, the *Ombudsman Act*
11 *1976* or Part V of the *Australian Federal Police Act*
12 *1979*;
- 13 (v) exercising a power (including a power to make a
14 complaint), or performing a function or duty, under a
15 law of a State or Territory appointing or establishing a
16 complaints agency;
- 17 (b) a disclosure that is:
- 18 (i) made in the course of the questioning of the subject of a
19 questioning warrant under the warrant; and
- 20 (ii) made by a person who is present during the questioning
21 when making the disclosure;
- 22 (c) a disclosure to a lawyer for the purpose of:
- 23 (i) obtaining legal advice in connection with a questioning
24 warrant; or
- 25 (ii) obtaining representation in legal proceedings seeking a
26 remedy relating to such a warrant or the treatment of a
27 person in connection with such a warrant;
- 28 (d) a disclosure for the purpose of the initiation, conduct or
29 conclusion (by judgment or settlement) of legal proceedings
30 relating to a remedy relating to a questioning warrant or the
31 treatment of a person in connection with such a warrant;
- 32 (e) a disclosure that is permitted by a prescribed authority to be
33 made;
- 34 (f) a disclosure to one or more of the following by the subject of
35 a minor questioning warrant, or by a minor's representative
36 for the subject, of information described in paragraph (1)(c)
37 or (2)(c) of this section in relation to the warrant:
- 38 (i) the subject;
- 39 (ii) a minor's representative for the subject;

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- 1 (iii) a sibling of the subject;
2 (iv) a prescribed authority;
3 (v) a person exercising authority under the warrant;
4 (vi) the Inspector-General of Intelligence and Security;
5 (vii) the Commonwealth Ombudsman;
6 (viii) a complaints agency;
7 (g) a disclosure for the purpose of making an application for
8 assistance under subsection 34JE(1);
9 (h) a disclosure that is permitted by the Director-General to be
10 made;
11 (i) a disclosure that is permitted by the Attorney-General to be
12 made;
13 (j) a disclosure that is prescribed by the regulations.

- 14 (6) For the purposes of paragraph (e) of the definition of *permitted*
15 *disclosure* in subsection (5), a prescribed authority may give a
16 direction, not inconsistent with the regulations (if any), permitting:
17 (a) the subject of a questioning warrant; or
18 (b) a lawyer for the subject of a questioning warrant; or
19 (c) a minor's representative mentioned in subsection 34FG(1);
20 to disclose specified information to a specified person. The
21 direction may be given either unconditionally or subject to
22 specified conditions.

23 Note: The prescribed authority may revoke or amend the direction: see
24 subsection 33(3) of the *Acts Interpretation Act 1901*.

- 25 (7) A prescribed authority may give written permission under
26 subsection (6):
27 (a) on the prescribed authority's own initiative; or
28 (b) on application by, or on behalf of, the person to whom the
29 permission relates.

- 30 (8) For the purposes of paragraph (h) of the definition of *permitted*
31 *disclosure* in subsection (5), the Director-General may give written
32 permission for a disclosure. The permission may be given either
33 unconditionally or subject to specified conditions.

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

1 (9) For the purposes of paragraph (i) of the definition of *permitted*
2 *disclosure* in subsection (5), the Attorney-General may, after
3 obtaining advice from the Director-General, give written
4 permission for a disclosure. The permission may be given either
5 unconditionally or subject to specified conditions.

6 Note: The Attorney-General may, after obtaining advice from the
7 Director-General, revoke or amend the permission: see
8 subsection 33(3) of the *Acts Interpretation Act 1901*.

9 (10) In deciding whether to give permission to a person under
10 subsection (6), (8) or (9), the prescribed authority, the
11 Director-General or the Attorney-General (as the case requires)
12 must take into account:

- 13 (a) the person's family and employment interests, to the extent
14 that the prescribed authority, the Director-General or the
15 Attorney-General (as the case requires) is aware of those
16 interests; and
17 (b) the public interest; and
18 (c) the risk to security if the permission were given; and
19 (d) any submissions made by the person, the person's lawyer or
20 the Organisation.

21 This subsection does not limit the matters that may be taken into
22 account.

23 (11) If a permission under subsection (6), (8) or (9) is given subject to a
24 condition and the condition is not met, the permission is not in
25 force.

26 (12) Regulations made for the purposes of paragraph (j) of the
27 definition of *permitted disclosure* in subsection (5) may prescribe a
28 disclosure by reference to one or more of the following:

- 29 (a) the person making the disclosure;
30 (b) the person to whom the disclosure is made;
31 (c) the circumstances in which the disclosure is made;
32 (d) the purpose of the disclosure;
33 (e) the nature of information disclosed;
34 (f) an opinion of a specified person about the possible or likely
35 effect of the disclosure.

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

1 *Offences apply to original and previously disclosed information*

- 2 (13) To avoid doubt, subsections (1) and (2) apply whether or not the
3 discloser has the information that the discloser discloses as a result
4 of a disclosure by another person.

5 *Relationship with other laws prohibiting disclosure*

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

8 **Subdivision H—Complaints, reporting and records**

9 **34H Complaints and information about contravention of procedural**
10 **statement**

- 11 (1) Contravention of the written statement of procedures in force under
12 section 34AF may be the subject of:
- 13 (a) a complaint to the Inspector-General of Intelligence and
14 Security under the *Inspector-General of Intelligence and*
15 *Security Act 1986*; or
 - 16 (b) a complaint to the Ombudsman under the *Ombudsman Act*
17 *1976*; or
 - 18 (c) information given under Division 2 of Part V of the
19 *Australian Federal Police Act 1979* to a person referred to in
20 subsection 40SA(1) of that Act; or
 - 21 (d) a complaint to a complaints agency in relation to the police
22 force or police service of the State or Territory concerned.
- 23 (2) This section does not limit:
- 24 (a) the subjects of complaint under:
 - 25 (i) the *Inspector-General of Intelligence and Security Act*
26 *1986*; or
 - 27 (ii) the *Ombudsman Act 1976*; or
 - 28 (b) the subject of information given under Division 2 of Part V
29 of the *Australian Federal Police Act 1979*.

30 **34HA Providing reports to the Attorney-General**

- 31 (1) The Director-General must, for each questioning warrant, give the
32 Attorney-General a written report that includes:

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- 1 (a) details of the extent to which the action taken under the
2 warrant has assisted the Organisation in carrying out its
3 functions; and
4 (b) if the subject of the warrant was apprehended—details of the
5 apprehension, including whether any force was used in
6 apprehending the subject; and
7 (c) if a record or other thing found during a search of the subject
8 was seized—details of the seizure; and
9 (d) if an order was made under subsection 34AAD(2) in relation
10 to accessing data that was held in, or accessible from, a
11 computer or data storage device that was seized under
12 subsection 34CC(4) or (5)—details of the extent to which
13 compliance with the order has assisted the Organisation in
14 carrying out its functions.
- 15 (2) The Director-General must give the report within 3 months of the
16 day on which the warrant ceases to be in force.

17 **34HB Providing information to the Inspector-General**

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

- 20 (a) for each request for a questioning warrant—a copy of the
21 request;
22 (b) for each questioning warrant—a copy of the warrant, or of
23 the written record of the warrant made in accordance with
24 subsection 34BF(3), as the case requires;
25 (c) for each request to vary a questioning warrant—a copy of the
26 request;
27 (d) for each variation to a questioning warrant—a copy of the
28 variation, or of the written record of the variation made in
29 accordance with subsection 34BG(7), as the case requires;
30 (e) a statement containing details of any seizure or apprehension
31 under this Division;
32 (f) if the Director-General is informed of a concern of the
33 Inspector-General under section 34DM—a statement
34 describing any action the Director-General has taken as a
35 result;
36 (g) a copy of any video recording made under section 34DP.

37 Note 1: If a request for a questioning warrant is made orally, the
38 Director-General is also required to provide the written record of the

1 request as soon as practicable, and no later than 48 hours after the
2 request is made, to the Inspector-General: see paragraph 34B(6)(b).

3 Note 2: If a request to vary a questioning warrant is made orally, the
4 Director-General is also required to provide the written record of the
5 request as soon as practicable, and no later than 48 hours after the
6 request is made, to the Inspector-General: see paragraph 34BG(5)(b).

7 **34HC Destruction of certain records obtained under warrant**

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

- 10 (a) the record or copy was made because of a questioning
11 warrant; and
12 (b) the record or copy is in the possession or custody, or under
13 the control, of the Organisation; and
14 (c) the Director-General is satisfied that the record or copy is not
15 required for the purposes of the performance of functions or
16 exercise of powers under this Act.

17 **Subdivision I—Miscellaneous**

18 **34J Discontinuance of action before cessation of warrant**

19 If, before a questioning warrant ceases to be in force, the
20 Director-General is satisfied that the grounds on which the warrant
21 was issued have ceased to exist, the Director-General must:

- 22 (a) inform the Attorney-General and the Inspector-General of
23 Intelligence and Security accordingly; and
24 (b) take such steps as are necessary to ensure that action under
25 the warrant is discontinued.

26 **34JA Certain functions and powers not affected**

- 27 (1) This Division does not affect a function or power of the
28 Inspector-General of Intelligence and Security under the
29 *Inspector-General of Intelligence and Security Act 1986*.
- 30 (2) This Division does not affect a function or power of the
31 Ombudsman under the *Ombudsman Act 1976* in relation to the
32 Australian Federal Police.

1 (3) This Division does not affect a function or power of a person under
2 Part V of the *Australian Federal Police Act 1979*.

3 **34JB IGIS official may be present at questioning or apprehension**

4 To avoid doubt, for the purposes of exercising a power or
5 performing a function or duty as an IGIS official, an IGIS official
6 may be present at the questioning or apprehension of a person
7 under this Division.

8 **34JC Rules of Court about proceedings connected with warrants**

9 Rules of Court of the High Court or the Federal Court of Australia
10 may make special provision in relation to proceedings for a remedy
11 relating to a questioning warrant or the treatment of a person in
12 connection with such a warrant.

13 **34JD Jurisdiction of State and Territory courts excluded**

- 14 (1) A court of a State or Territory does not have jurisdiction in
15 proceedings for a remedy if:
16 (a) the remedy relates to a questioning warrant or the treatment
17 of a person in connection with such a warrant; and
18 (b) the proceedings are commenced while the warrant is in force.
- 19 (2) This section has effect despite any other law of the Commonwealth
20 (whether passed or made before or after the commencement of this
21 section).

22 **34JE Financial assistance**

23 *Application for assistance*

- 24 (1) An application for financial assistance may be made to the
25 Attorney-General in respect of the subject of a questioning
26 warrant's appearance before a prescribed authority for questioning
27 under the warrant.
- 28 (2) An application under subsection (1) may be made by, or on behalf
29 of, the subject.

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- (b) the total number of warrants issued during the period under that Division (including the number of warrants issued orally); and
- (c) the number of times persons were apprehended during the period under that Division; and
- (d) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the period under that Division and the total of all those hours for all those persons; and
- (e) the number of times each prescribed authority had persons appear for questioning before the prescribed authority under warrants issued during the period under that Division.

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12 Paragraph 94(2BC)(b)

Omit “subsection 34AAA(2)”, substitute “subsection 34AAD(2)”.

1 Part 2—Application and saving provisions

2 13 Interpretation

3 In this Part:

4 *commencement day* means the day on which Part 1 of this Schedule
5 commences.

6 *new law* means the *Australian Security Intelligence Organisation Act*
7 *1979*, as amended by Part 1 of this Schedule.

8 *old law* means the *Australian Security Intelligence Organisation Act*
9 *1979*, and any instruments made under that Act (including a statement
10 made under section 34C of that Act), as in force immediately before the
11 commencement day.

12 14 Saving of warrants and requests under old law

13 Despite the repeal of Division 3 of Part III of the old law by Part 1 of
14 this Schedule, that Division continues to apply, as if that repeal had not
15 happened, in relation to:

- 16 (a) a request under section 34D or 34F of the old law that was
17 made, but not finally determined, before the commencement
18 day; and
19 (b) a warrant that was in force under section 34E or 34G of the
20 old law immediately before the commencement day.

21 15 Saving of appointment of prescribed authorities

- 22 (1) This item applies to a person who was, immediately before the
23 commencement day, a prescribed authority under section 34B of the old
24 law.
- 25 (2) The person is taken, after the commencement day, to be a prescribed
26 authority under section 34AD of the new law.
- 27 (3) If:
- 28 (a) the person is a member of a court; and
29 (b) the person has a function, power or duty as a prescribed
30 authority that is neither judicial nor incidental to a judicial
31 function or power;
- 32 the person has the function, power or duty in a personal capacity and
33 not as a court or a member of a court.

1 **16 Saving of regulations**

- 2 (1) Regulations made for the purposes of subsection 34ZS(6) of the old law
3 that were in force immediately before the commencement day have
4 effect, on and after that day, as if they had been made for the purposes
5 of subsection 34GF(6) of the new law.
- 6 (2) Regulations made for the purposes of section 34ZT of the old law that
7 were in force immediately before the commencement day have effect,
8 on and after that day, as if they had been made for the purposes of
9 section 34FH of the new law.

10 **17 Requests for warrants made under old law**

- 11 (1) For the purposes of subsections 34B(3) and (4) of the new law, a
12 request made under section 34D or 34F of the old law in relation to a
13 person is taken to be a previous request for a questioning warrant made
14 under section 34B of the new law in relation to the person.
- 15 (2) For the purposes of subparagraph 34B(4)(c)(ii) of the new law, a
16 reference to whether a person was apprehended is taken to include a
17 reference to whether the person was detained and, if so, the period for
18 which the person was detained.

19 **18 Annual reports**

- 20 (1) Section 94 of the new law applies in relation to annual reports prepared
21 on or after the commencement of this item.
- 22 (2) For the purposes of section 94 of the new law:
- 23 (a) a reference to a request made during the period under
24 Division 3 of Part III to the Attorney-General is taken to
25 include a reference to a request made during that period
26 under Division 3 of Part III of the old law to an issuing
27 authority; and
- 28 (b) a reference to a warrant issued during the period under
29 Division 3 of Part III is taken to include a reference to a
30 warrant issued during that period under Division 3 of Part III
31 of the old law; and
- 32 (c) a reference to the number of times persons were apprehended
33 during the period under Division 3 of Part III is taken to
34 include a reference to the number of hours persons spent in

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detention under a warrant issued during that period under
section 34G of the old law.

1 **Part 3—Consequential amendments**

2 *Crimes Act 1914*

3 **19 Paragraph 15YU(1)(a)**

4 Repeal the paragraph, substitute:

- 5 (a) an offence against subsection 34GD(8) of the *Australian*
6 *Security Intelligence Organisation Act 1979*, if the
7 questioning warrant to which the offence relates is a
8 PMV-related questioning warrant; or

9 **20 Subsection 15YU(1) (note)**

10 Repeal the note, substitute:

11 Note 1: For the definitions of *PMV-related questioning warrant* and
12 *questioning warrant*, see subsection (5).

13 Note 2: For other ancillary offences, see section 11.6 of the *Criminal Code*.

14 **21 At the end of section 15YU**

15 Add:

16 *Definitions*

17 (5) In this section:

18 *PMV-related questioning warrant* means a questioning warrant
19 that is issued in relation to politically motivated violence (within
20 the meaning of the *Australian Security Intelligence Organisation*
21 *Act 1979*).

22 *questioning warrant* has the same meaning as in Division 3 of
23 Part III of the *Australian Security Intelligence Organisation Act*
24 *1979*.

25 *Criminal Code Act 1995*

26 **22 Subsection 105.25(4) of the *Criminal Code***

27 Repeal the subsection (including the note), substitute:

- 28 (4) To avoid doubt, the fact that the person is released from detention
29 under the preventative detention order so that the person may be

1 questioned before a prescribed authority under the warrant does not
2 extend the period for which the preventative detention order
3 remains in force in relation to the person.

4 Note: See paragraph 105.26(7)(a).

5 ***Foreign Evidence Act 1994***

6 **23 Subsection 3(1) (paragraph (a) of the definition of** 7 ***designated offence*)**

8 Repeal the paragraph, substitute:

- 9 (a) an offence against subsection 34GD(8) of the *Australian*
10 *Security Intelligence Organisation Act 1979*, if the
11 questioning warrant to which the offence relates is a
12 PMV-related questioning warrant; or

13 **24 Subsection 3(1)**

14 Insert:

15 ***PMV-related questioning warrant*** means a questioning warrant
16 that is issued in relation to politically motivated violence (within
17 the meaning of the *Australian Security Intelligence Organisation*
18 *Act 1979*).

19 ***questioning warrant*** has the same meaning as in Division 3 of
20 Part III of the *Australian Security Intelligence Organisation Act*
21 *1979*.

22 ***Inspector-General of Intelligence and Security Act 1986***

23 **25 Section 9B**

24 Repeal the section, substitute:

25 **9B Power to enter places relating to questioning warrants**

26 For the purposes of an inspection under section 9A, the
27 Inspector-General may, after notifying the Director-General of
28 Security:

- 29 (a) enter any place where a person is being questioned or
30 apprehended in relation to a warrant issued under Division 3

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of Part III of the *Australian Security Intelligence
Organisation Act 1979*; and
(b) do so at any reasonable time.

26 Section 19A

Repeal the section, substitute:

19A Power to enter places relating to questioning warrants

For the purposes of an inquiry under this Act, the
Inspector-General may, after notifying the Director-General of
Security:

- (a) enter any place where a person is being questioned or
apprehended in relation to a warrant issued under Division 3
of Part III of the *Australian Security Intelligence
Organisation Act 1979*; and
- (b) do so at any reasonable time.

1 **Part 4—Amendments contingent on the**
2 **commencement of the Federal Circuit and**
3 **Family Court of Australia (Consequential**
4 **Amendments and Transitional Provisions)**
5 **Act 2020**

6 *Australian Security Intelligence Organisation Act 1979*

7 **27 Section 34A (paragraph (c) of the definition of *superior***
8 ***court*)**

9 Repeal the paragraph, substitute:

10 (c) the Federal Circuit and Family Court of Australia
11 (Division 1); or

12 **28 Section 34A (after paragraph (d) of the definition of**
13 ***superior court*)**

14 Insert:

15 (da) a State Family Court (being a court to which section 41 of the
16 *Family Law Act 1975* applies); or

17 **29 Paragraph 34EC(2)(b)**

18 Omit “(other than the Family Court of Australia)”, substitute “(other
19 than the Federal Circuit and Family Court of Australia (Division 1))”.

1 **Schedule 2—Amendments relating to tracking**
2 **devices**
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4 *Australian Security Intelligence Organisation Act 1979*

5 **1 Section 22**

6 Insert:

7 *authorising officer* means:

8 (a) the Director-General; or

9 (b) an ASIO employee, or an ASIO affiliate, who holds, or is
10 acting in, a position in the Organisation that is equivalent to
11 or higher than a position occupied by an SES employee.

12 **2 Section 22 (definition of *device*)**

13 Omit “and equipment”, substitute “, equipment and any other thing
14 (whether tangible or intangible)”.

15 **3 Section 22**

16 Insert:

17 *internal authorisation* means an authorisation given under section
18 26G.

19 **4 Section 22 (definition of *track*)**

20 Repeal the definition, substitute:

21 *track* a person or an object means determine or monitor:

22 (a) the location of the person or object; or

23 (b) the status of the object.

24 **5 Section 22 (definition of *tracking device*)**

25 Repeal the definition, substitute:

26 *tracking device* means any device capable of being used (whether
27 alone or in conjunction with any other device) to track a person or
28 an object.

1 **6 Section 26E (at the end of the heading)**

2 Add “or internal authorisation”.

3 **7 Subsections 26E(1) and (2)**

4 After “without warrant”, insert “or internal authorisation”.

5 **8 After Subdivision D of Division 2 of Part III**

6 Insert:

7 **Subdivision DA—Use of tracking devices under internal**
8 **authorisation**

9 **26G Use of tracking devices under internal authorisation**

10 *Request for authorisation*

- 11 (1) An ASIO employee or ASIO affiliate (the *applicant*) may request
12 an authorising officer to give an authorisation under this section in
13 respect of a matter (the *security matter*) that is important in
14 relation to security.

15 Note: An authorisation given under this section cannot authorise certain
16 things, including the following:

- 17 (a) entering premises or interfering with the interior of a vehicle
18 without permission;
19 (b) remotely installing a tracking device;
20 (c) installing a tracking device to listen to a person;
21 (d) any other thing that the Organisation would otherwise need a
22 warrant under section 25A to do.

23 See section 26K.

- 24 (2) The request must be made in relation to one or both of the
25 following:

- 26 (a) a particular person;
27 (b) an object or a class of object.

- 28 (3) The request may be made:

- 29 (a) in writing; or
30 (b) orally in person, or by telephone or other means of
31 communication.

- 32 (4) A request under subsection (1) must include a statement of:

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- 1 (a) the facts and other grounds on which the applicant considers
2 it necessary that the authorisation should be given; and
3 (b) the extent to which the applicant considers that the
4 authorisation will substantially assist the collection of
5 intelligence in respect of the security matter; and
6 (c) the period for which the applicant considers the authorisation
7 should remain in force, which must not exceed 90 days.
- 8 (5) If the request is made orally, a written record of the request that
9 meets the requirements of subsection (4) must be made within 48
10 hours after the request is made.

11 *Test for giving of authorisation*

- 12 (6) The authorising officer may give the authorisation only if the
13 authorising officer is satisfied that there are reasonable grounds for
14 believing that:
- 15 (a) if the authorisation is requested in relation to a particular
16 person—the use by the Organisation of a tracking device in
17 relation to the person will, or is likely to, substantially assist
18 the collection of intelligence in respect of the security matter;
19 and
20 (b) if the authorisation is requested in relation to an object or
21 class of object—the use by the Organisation of a tracking
22 device in or on that object, or an object of that class, will, or
23 is likely to, substantially assist the collection of intelligence
24 in respect of the security matter.
- 25 (7) To avoid doubt, the identity of the person referred to in
26 paragraph (6)(a) need not be known.

27 *Authorisation may be subject to restrictions or conditions*

- 28 (8) The authorisation is subject to any restrictions or conditions
29 specified in it.

30 **26H Requirements for internal authorisations**

- 31 (1) An internal authorisation may be given:
32 (a) in writing; or
33 (b) orally in person, or by telephone or other means of
34 communication.

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- 1 (2) The authorisation must specify:
- 2 (a) the matter (the *security matter*) that is important in relation to
- 3 security in respect of which the authorisation is given; and
- 4 (b) the day and time the authorisation is given; and
- 5 (c) if the authorisation is given in relation to a particular
- 6 person—the name of the person (if known) or the fact that
- 7 the person’s identity is unknown; and
- 8 (d) if the authorisation is given in relation to an object or a class
- 9 of object—the object or class of object; and
- 10 (e) the restrictions or conditions (if any) to which the
- 11 authorisation is subject.
- 12 (3) The authorisation must also specify the period for which the
- 13 authorisation is to remain in force, being a period that:
- 14 (a) the authorising officer considers reasonable and necessary in
- 15 the circumstances; and
- 16 (b) does not exceed 90 days;
- 17 but the authorising officer may revoke the authorisation before the
- 18 period has expired.
- 19 (4) Subsection (3) does not prevent the giving of further internal
- 20 authorisations in relation to the same security matter.
- 21 (5) If an internal authorisation is given orally, a written record of the
- 22 authorisation that meets the requirements of subsections (2) and (3)
- 23 must be made within 48 hours after the authorisation is given.
- 24 (6) The following are not legislative instruments:
- 25 (a) an authorisation under this section;
- 26 (b) a written record referred to in subsection (5).

27 **26J What an internal authorisation authorises**

28 *Things that may be authorised—particular person*

- 29 (1) If an internal authorisation is given in relation to a particular
- 30 person, the authorisation may authorise the Organisation to do,
- 31 without warrant, one or more of the following:
- 32 (a) install, use or maintain one or more tracking devices to track
- 33 the person;

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- 1 (b) install, use or maintain one or more tracking devices in or on
2 any object used or worn, or likely to be used or worn, by the
3 person;
4 (c) install, use or maintain enhancement equipment in relation to
5 the device or devices referred to in paragraph (a) or (b);
6 (d) enter into or onto, or alter, the object referred to in
7 paragraph (b);
8 (e) any thing reasonably necessary to conceal the fact that any
9 thing has been done in accordance with the authorisation;
10 (f) any other thing reasonably incidental to any of the above.

11 Note: However, an internal authorisation cannot authorise the doing of
12 certain things: see section 26K.

13 *Things that may be authorised—object or class of object*

- 14 (2) If an internal authorisation is given in relation to an object or a
15 class of object, the authorisation may authorise the Organisation to
16 do, without warrant, one or more of the following:
17 (a) install, use or maintain one or more tracking devices in or on
18 the specified object, or an object of the specified class;
19 (b) install, use or maintain enhancement equipment in relation to
20 the device or devices;
21 (c) enter into or onto, or alter, the specified object, or an object
22 of the specified class;
23 (d) any thing reasonably necessary to conceal the fact that any
24 thing has been done in accordance with the authorisation;
25 (e) any other thing reasonably incidental to any of the above.

26 Note: However, an internal authorisation cannot authorise the doing of
27 certain things: see section 26K.

28 **26K Certain acts not authorised**

29 Neither an internal authorisation nor section 26L authorises any of
30 the following:

- 31 (a) the doing of any thing that would involve either or both of
32 the following:
33 (i) entering premises without permission from the owner or
34 occupier of the premises;

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- 1 (ii) interference with the interior of a vehicle without
2 permission of the person having lawful possession or
3 control of the vehicle;
- 4 (b) the remote installation of a tracking device or enhancement
5 equipment in relation to the device;
- 6 (c) the installation, use or maintenance of a tracking device, or
7 enhancement equipment in relation to the device, to listen to,
8 record, observe or monitor the words, sounds or signals
9 communicated to or by a person;
- 10 (d) the doing of any thing by the Organisation if, apart from
11 section 26G, the Organisation could not do the thing without
12 it being authorised by a warrant issued under section 25A.

13 Note: Section 26L deals with the recovery of tracking devices.

14 **26L Recovery of tracking devices**

- 15 (1) If a tracking device is installed, used or maintained under an
16 internal authorisation, the Organisation is also authorised to do any
17 of the following:
- 18 (a) recover the tracking device or any enhancement equipment in
19 relation to the device;
- 20 (b) any thing reasonably necessary to conceal the fact that any
21 thing has been done under this subsection;
- 22 (c) any other thing reasonably incidental to any of the above;
- 23 at the following time:
- 24 (d) at any time while the authorisation is in force or within 28
25 days after it ceases to be in force;
- 26 (e) if the device or equipment is not recovered at a time
27 mentioned in paragraph (d)—at the earliest time, after the 28
28 days mentioned in that paragraph, at which it is reasonably
29 practicable to do the things concerned.
- 30 (2) If, for the purposes of subsection (1), a tracking device or
31 enhancement equipment in relation to the device is not recovered
32 while the authorisation is in force, the Organisation is also
33 authorised to use the device or equipment solely for the purposes
34 of the location and recovery of the device or equipment.

35 Note: However, subsections (1) and (2) do not authorise the doing of a thing
36 that would involve a thing specified in section 26K.

1 **26M Exercise of authority under internal authorisations**

2 The authority conferred by an internal authorisation or by section
3 26L may be exercised on behalf of the Organisation by:

- 4 (a) an ASIO employee; or
5 (b) an ASIO affiliate.

6 **26N Variation of internal authorisations**

7 *Request for variation*

- 8 (1) An ASIO employee or ASIO affiliate (the *applicant*) may request
9 an authorising officer to vary an internal authorisation.
- 10 (2) The request may be made:
11 (a) in writing; or
12 (b) orally in person, or by telephone or other means of
13 communication.
- 14 (3) A request under subsection (1) must include a statement of:
15 (a) the facts and other grounds on which the applicant considers
16 it necessary that the authorisation should be varied; and
17 (b) the extent to which the applicant considers that the
18 authorisation, as varied, will substantially assist the collection
19 of intelligence in respect of the matter (the *security matter*)
20 that is important in relation to security in respect of which the
21 authorisation is given.
- 22 (4) If the request is made orally, a written record of the request that
23 meets the requirements of subsection (3) must be made within 48
24 hours after the request is made.

25 *Giving of variation*

- 26 (5) The authorising officer may vary the authorisation only if the
27 authorising officer is satisfied that there are reasonable grounds for
28 believing that the authorisation, as varied, will substantially assist
29 the collection of intelligence in respect of the security matter.
- 30 (6) If the variation extends, or further extends, the period during which
31 the authorisation is in force, the total period during which the
32 authorisation is in force must not exceed 90 days.

1 (7) An internal authorisation may be varied more than once under this
2 section.

3 *Requirements for variations*

4 (8) A variation under this section may be given:

5 (a) in writing; or

6 (b) orally in person, or by telephone or other means of
7 communication.

8 (9) If the variation is given orally, a written record of the variation
9 must be made within 48 hours after the variation is given.

10 *Written variations and records not legislative instruments*

11 (10) The following are not legislative instruments:

12 (a) a variation under this section;

13 (b) a written record referred to in subsection (9).

14 **26P Discontinuance of action before expiration of internal**
15 **authorisation**

16 (1) Subject to subsections (3) and (4), if an authorising officer is
17 satisfied that the grounds on which an internal authorisation was
18 given have ceased to exist, the authorising officer must, as soon as
19 practicable, take such steps as are necessary to ensure that action
20 under the internal authorisation is discontinued.

21 (2) For the purposes of subsection (1), ***action under an internal***
22 ***authorisation*** does not include the recovery of a tracking device or
23 any enhancement equipment in relation to the device.

24 (3) If:

25 (a) an internal authorisation was given in relation to more than
26 one of the matters mentioned in subsection 26G(2); and

27 (b) the grounds on which the internal authorisation was given
28 continue to exist for at least one of those matters;

29 subsection (1) applies only in relation to the matters for which the
30 grounds have ceased to exist.

31 (4) Subsection (1) does not apply to an authorising officer if another
32 authorising officer has already taken, or started to take, such steps

1 as are necessary to ensure that action under the internal
2 authorisation is discontinued.

3 **26Q Register of internal authorisations**

4 (1) The Director-General must establish and maintain a register of
5 requests for internal authorisations.

6 (2) The register may be kept by electronic means.

7 (3) The register must include, for each request for an internal
8 authorisation:

9 (a) the name of the person who made the request; and

10 (b) the matter that is important in relation to security in respect
11 of which the authorisation was requested; and

12 (c) the day on which the authorisation was given or refused; and

13 (d) the name of the authorising officer who gave or refused to
14 give the authorisation; and

15 (e) if the authorisation was given:

16 (i) the day on which the authorisation ceased to be in force;
17 and

18 (ii) whether action under the authorisation was discontinued
19 in accordance with section 26P, and, if so, the day on
20 which the action was discontinued; and

21 (f) the location at which any record relating to the request
22 (including the request) is kept by the Organisation.

23 Note: For the purposes of paragraph (f), the location may be a physical
24 location or an electronic location.

25 (4) The register is not a legislative instrument.

26 **26R Issue of warrants for recovery of tracking devices**

27 *Request for warrant*

28 (1) The Director-General may request the Attorney-General to issue a
29 warrant under this section in respect of one or more tracking
30 devices (the *relevant devices*), or enhancement equipment in
31 relation to the device or devices (the *relevant equipment*), if:

32 (a) the relevant devices, or relevant equipment, were:

33 (i) installed in or on an object by the Organisation; or

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- 1 (ii) used by the Organisation; or
2 (iii) maintained by the Organisation; and
3 (b) the installation, use or maintenance was not under:
4 (i) a surveillance device warrant; or
5 (ii) a warrant issued under section 27A; or
6 (iii) an identified person warrant; and
7 (c) recovery of the device or devices or equipment may involve
8 either or both of the following:
9 (i) entering premises without permission from the owner or
10 occupier of the premises;
11 (ii) interference with the interior of a vehicle without
12 permission of the person having lawful possession or
13 control of the vehicle.

14 *Issue of warrant*

- 15 (2) The Attorney-General may issue a warrant in respect of the
16 relevant devices or relevant equipment if the Attorney-General is
17 satisfied that failure to recover the relevant devices or relevant
18 equipment would be prejudicial to security.
- 19 (3) In determining whether the warrant should be issued, the
20 Attorney-General must have regard to the risk that information
21 relating to the operations, capabilities or technologies of, or
22 methods or sources used by, the Organisation will be
23 communicated or made available to the public without the
24 authority of the Commonwealth if the warrant is not issued.

25 *Requirements for warrant*

- 26 (4) A warrant issued under this section must:
27 (a) be signed by the Attorney-General; and
28 (b) specify:
29 (i) details of the relevant devices or relevant equipment;
30 and
31 (ii) the day the warrant is issued; and
32 (iii) the period during which the warrant is in force, which
33 must not be more than 90 days; and
34 (iv) any restrictions or conditions that the Attorney-General
35 considers appropriate in the circumstances; and

-
- 1 (c) authorise the use of any force against persons and things that
2 is necessary and reasonable to do the things authorised by the
3 warrant; and
4 (d) state whether entry to premises is authorised to be made at
5 any time of the day or night or during stated hours of the day
6 or night.

- 7 (5) Subparagraph (4)(b)(iii) does not prevent the issuing of further
8 warrants in relation to the same devices or equipment.

9 *Authorisation in warrant*

- 10 (6) A warrant issued under this section in respect of relevant devices
11 or relevant equipment authorises the Organisation to:
12 (a) recover the devices or equipment; and
13 (b) do any of the following:
14 (i) use the devices or equipment solely for the purposes of
15 locating the devices or equipment;
16 (ii) enter any premises where the devices or equipment are
17 reasonably believed to be, for the purpose of recovering
18 the devices or equipment;
19 (iii) enter any other premises for the purpose of gaining
20 entry to or exiting the premises referred to in
21 subparagraph (ii);
22 (iv) enter into or onto, or alter, an object for the purpose of
23 recovering the devices or equipment;
24 (v) replace an object with an equivalent object for the
25 purpose of recovering the devices or equipment;
26 (vi) break open any thing for the purpose of recovering the
27 devices or equipment;
28 (vii) if the devices or equipment are installed in or on an
29 object—temporarily remove the object from any place
30 where it is situated for the purpose of recovering the
31 devices or equipment and returning the object to that
32 place;
33 (viii) use a nominal amount of electricity from any source to
34 power the devices or equipment;
35 (ix) any thing reasonably necessary to conceal the fact that
36 any thing has been done under the warrant;

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- (x) use any force against persons and things that is necessary and reasonable to do any of the above;
- (xi) any other thing reasonably incidental to any of the above.

9 Subdivision H of Division 2 of Part III (at the end of the heading)

Add “and authorisations”.

10 Paragraph 29(1)(a)

Omit “26, 27”, substitute “26, 26R, 27”.

11 Paragraph 29A(3)(a)

After “section 25”, insert “or 26R”.

12 Subsection 30(2)

Repeal the subsection, substitute:

- (2) For the purposes of paragraph (1)(b), *action under a warrant*:
 - (a) if the warrant is issued under section 26R—includes the recovery of a tracking device or any enhancement equipment in relation to the device; or
 - (b) otherwise:
 - (i) includes action under an authorisation given under an identified person warrant; but
 - (ii) does not include the recovery of a surveillance device or any enhancement equipment in relation to the device.

13 Subsection 33(3)

Omit “or maintaining”, substitute “, maintaining or recovering”.

14 Paragraph 33(3)(a)

Omit “section 26, 27A or 27C”, substitute “section 26, 26R, 27A or 27C”.

15 After paragraph 33(3)(a)

Insert:

- (aa) in accordance with an authorisation given under section 26G;
or

1 **16 At the end of section 33**

2 Add:

- 3 (4) Nothing in this Division makes the use, installation, maintenance
4 or recovery by the Organisation of a surveillance device unlawful
5 if the use, installation, maintenance or recovery would not
6 otherwise be unlawful under any other applicable law of the
7 Commonwealth, a State or a Territory (including the common
8 law).

9 **17 After section 34A (first occurring)**

10 Insert:

11 **34AAB Director-General to report to Attorney-General—internal**
12 **authorisations to use tracking devices**

- 13 (1) If an internal authorisation is given, the Director-General must:
14 (a) give the Attorney-General a written report that meets the
15 requirements of subsection (2); and
16 (b) do so within 3 months of the day on which the internal
17 authorisation ceases to be in force.
- 18 (2) The report must state whether the authorisation was executed, and,
19 if so:
20 (a) give details of the extent to which any thing done in
21 accordance with the authorisation has assisted the
22 Organisation in carrying out its functions; and
23 (b) give details of the matter (the *security matter*) that is
24 important in relation to security in respect of which the
25 authorisation is given; and
26 (c) state the name, if known, of any person whose location was
27 determined by the use of a tracking device in accordance
28 with the authorisation; and
29 (d) state the period during which a tracking device was used in
30 accordance with the authorisation; and
31 (e) give details of:
32 (i) any object in or on which a tracking device was
33 installed in accordance with the authorisation; and
34 (ii) the premises where the object was located when the
35 device was installed; and

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- 1 (f) give details of the compliance with the restrictions or
2 conditions (if any) to which the authorisation was subject;
3 and
4 (g) state whether the authorisation was varied, and, if so:
5 (i) the number of variations; and
6 (ii) the reasons for each variation.

7 **18 After paragraph 34AA(3)(c)**

8 Insert:

- 9 (ca) if the authorising provision is section 26G—the matters
10 required to be specified under subsection 26H(2);
11 (cb) if the warrant is issued under section 26R—the matters
12 required to be specified under subsection 26R(4) for the
13 warrant;

14 **19 Subsection 34AA(5) (definition of *relevant authorising***
15 ***provision*)**

16 Omit “26D or 26E”, substitute “26D, 26E or 26G”.

17 **20 Subsection 34AA(5) (definition of *relevant warrant*)**

18 Omit “26, 27A”, substitute “26, 26R, 27A”.

19 **21 After subsection 94(2BC)**

20 Insert:

- 21 (2BD) A report under subsection (1) must also include a statement of:
22 (a) the total number of requests made under subsection 26G(1)
23 during the period; and
24 (b) the total number of authorisations given under section 26G
25 during the period.
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