



Australian Security Intelligence Organisation Amendment Act 2020

No. 134, 2020

**An Act to amend the *Australian Security
Intelligence Organisation Act 1979*, and for related
purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Australian Security Intelligence Organisation Amendment Act 2020

No. 134, 2020

An Act to amend the *Australian Security Intelligence Organisation Act 1979*, and for related purposes

[Assented to 17 December 2020]

The Parliament of Australia enacts:

1 Short title

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

No. 134, 2020 *Australian Security Intelligence Organisation Amendment Act 2020* 1

2 Commencement

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

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.	17 December 2020
2. Schedule 1, Parts 1 to 3	The earlier of: (a) a single day to be fixed by Proclamation; and (b) 7 September 2020.	7 September 2020 (paragraph (b) applies)
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.	Never commenced
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)	

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
	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.	7 September 2020 (paragraph (b) applies)

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to compulsory questioning powers

Part 1—Amendments

Australian Security Intelligence Organisation Act 1979

1 Section 4

Insert:

computer means all or part of:

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

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

Repeal the paragraph, substitute:

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

3 Section 4 (definition of *terrorism offence*)

Repeal the definition.

4 Section 22 (definition of *computer*)

Repeal the definition.

5 Subsection 25A(2) (note)

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

6 Subsection 34(1A)

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

7 Section 34A (first occurring) (heading)

Repeal the heading, substitute:

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

8 Section 34AA (heading)

Repeal the heading, substitute:

34AAC Evidentiary certificates

9 Section 34AAA (heading)

Repeal the heading, substitute:

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

9A Subparagraph 34AAA(1)(a)(ix)

Omit “section 34ZB”, substitute “subsection 34CC(5)”.

10 Division 3 of Part III

Repeal the Division, substitute:

Division 3—Compulsory questioning powers

Subdivision A—General provisions

34A Definitions

In this Division:

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

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

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

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

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

- (a) for a proceeding under the *Proceeds of Crime Act 2002*—the person is a suspect (within the meaning of that Act) for the proceeding; or
- (b) for a proceeding under a law of a State or Territory—the person is in a corresponding category for that law.

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

communication device means:

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

complaints agency means an Ombudsman, agency or body:

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

confiscation proceeding means a proceeding under:

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

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

criminal proceeding means:

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

dangerous item means:

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

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

disclose, for questioning material or derivative material, includes:

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

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

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

imminent:

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

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

lawyer means a person who:

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

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

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

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

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

police officer means any of the following:

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

post-charge:

- (a) a use or disclosure of questioning material or derivative material is a **post-charge** use or disclosure if the use or disclosure happens at a time when:
 - (i) the subject for the material has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (b) material is **post-charge** questioning material if the material becomes questioning material at a time when:
 - (i) the subject for the material has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (c) questioning under a questioning warrant is **post-charge** questioning if the questioning commences at a time when:
 - (i) the subject of the warrant has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent; or
- (d) a questioning warrant is a **post-charge** questioning warrant if the warrant is issued at a time when:
 - (i) the subject of the warrant has been charged with a related offence and that charge is still to be resolved; or
 - (ii) such a charge is imminent.

post-confiscation application:

- (a) a use or disclosure of questioning material or derivative material is a ***post-confiscation application*** use or disclosure if the use or disclosure happens at a time when:
 - (i) a related confiscation proceeding has commenced against the subject for the material and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
- (b) material is ***post-confiscation application*** questioning material if the material becomes questioning material at a time when:
 - (i) a related confiscation proceeding has commenced against the subject for the material and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
- (c) questioning under a questioning warrant is ***post-confiscation application*** questioning if the questioning commences at a time when:
 - (i) a related confiscation proceeding has commenced against the subject of the warrant and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent; or
- (d) a questioning warrant is a ***post-confiscation application*** questioning warrant if the warrant is issued at a time when:
 - (i) a related confiscation proceeding has commenced against the subject of the warrant and that proceeding is still to be resolved; or
 - (ii) such a proceeding is imminent.

pre-charge:

- (a) a use or disclosure of questioning material or derivative material is a ***pre-charge*** use or disclosure if the use or disclosure happens at a time when:
 - (i) the subject for the material has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved; or
- (b) material is ***pre-charge*** questioning material if the material becomes questioning material at a time when:

- (i) the subject for the material has not been charged with a related offence, and such a charge is not imminent; or
- (ii) all such charges have been resolved; or
- (c) questioning under a questioning warrant is **pre-charge** questioning if the questioning commences at a time when:
 - (i) the subject of the warrant has not been charged with a related offence, and such a charge is not imminent; or
 - (ii) all such charges have been resolved.

pre-confiscation application:

- (a) a use or disclosure of questioning material or derivative material is a **pre-confiscation application** use or disclosure if the use or disclosure happens at a time when:
 - (i) a related confiscation proceeding has not commenced against the subject for the material, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved; or
- (b) material is **pre-confiscation application** questioning material if the material becomes questioning material at a time when:
 - (i) a related confiscation proceeding has not commenced against the subject for the material, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved; or
- (c) questioning under a questioning warrant is **pre-confiscation application** questioning if the questioning commences at a time when:
 - (i) a related confiscation proceeding has not commenced against the subject of the warrant, and such a proceeding is not imminent; or
 - (ii) all such proceedings have been resolved.

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

proceeds of crime authority means:

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

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

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

prosecutor, of the subject of a questioning warrant, means an individual:

- (a) who is a prosecuting authority or is employed or engaged by a prosecuting authority; and
- (b) who:
- (i) makes, or is involved in the making of, a decision whether to prosecute the subject for a related offence; or
 - (ii) is one of the individuals engaging in such a prosecution of the subject.

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

questioning warrant means:

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

record has the same meaning as in Division 2.

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

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

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

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

subject:

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

superior court means:

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

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

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

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

34AA Meaning of *minor's representative*

- (1) A person is a ***minor's representative*** for the subject of a minor questioning warrant if the person is:
 - (a) a parent of the subject; or
 - (b) a guardian of the subject; or
 - (c) another person who meets the requirements in subsection (2).
- (2) A person meets the requirements of this subsection if the person:
 - (a) is able to represent the subject's interests; and
 - (b) is, as far as practicable in the circumstances, acceptable to the subject and, if applicable, to the prescribed authority; and

- (c) is not one of the following:
 - (i) a police officer;
 - (ii) the Director-General;
 - (iii) an ASIO employee or an ASIO affiliate;
 - (iv) a person approved under section 24.

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

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

- (1) ***Questioning material*** is:
 - (a) any information given by a person while before a prescribed authority for questioning under a questioning warrant; or
 - (b) a record or other thing produced by a person while before a prescribed authority for questioning under a questioning warrant; or
 - (c) any information that might enable a person, who has appeared before a prescribed authority for questioning under a questioning warrant, to be identified; or
 - (d) the fact that a person has appeared, or is required to appear, before a prescribed authority for questioning under a questioning warrant.

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

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

- (3) The ***subject*** is:
 - (a) for questioning material—the person referred to in paragraph (1)(a), (b), (c) or (d); or
 - (b) for derivative material—the person who is the subject for the questioning material from which the derivative material was obtained.

34AC Meaning of *resolved*

- (1) A charge for an offence is *resolved* in relation to a person at the later of the following times:
- (a) when:
 - (i) the charge is withdrawn; or
 - (ii) the charge is dismissed; or
 - (iii) the person is not committed on the charge following a committal hearing; or
 - (iv) the person is acquitted of the offence; or
 - (v) the person is sentenced for the offence; or
 - (vi) the person is dealt with by being the subject of a court order made as a consequence of a finding of guilt; or
 - (vii) the charge is otherwise finally dealt with;
 - (b) if an appeal relating to the charge is not lodged within the period for lodging such an appeal—when that period ends;
 - (c) if an appeal relating to the charge is lodged—when the appeal lapses or is finally determined.

Despite paragraph (b), if an appeal relating to the charge is lodged after that period ends, the charge ceases to be *resolved* until that appeal lapses or is finally determined.

- (2) A confiscation proceeding is *resolved* in relation to a person at the later of the following times:
- (a) when the proceeding is discontinued;
 - (b) if an appeal relating to the proceeding is not lodged within the period for lodging such an appeal—when that period ends;
 - (c) if an appeal relating to the proceeding is lodged—when the appeal lapses or is finally determined.

Despite paragraph (b), if an appeal relating to the proceeding is lodged after that period ends, the proceeding ceases to be *resolved* until that appeal lapses or is finally determined.

34AD Prescribed authorities

Appointment of prescribed authority

- (1) The Attorney-General may, in writing, appoint as a prescribed authority:
 - (a) a person who:
 - (i) has served as a judge in one or more superior courts for a period of at least 5 years; and
 - (ii) no longer holds a commission as a judge of a superior court; or
 - (b) a person who:
 - (i) holds an appointment to the Administrative Appeals Tribunal as President or Deputy President; and
 - (ii) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory; and
 - (iii) has been enrolled for at least 5 years; or
 - (c) a person who:
 - (i) is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory; and
 - (ii) has engaged in practice as a legal practitioner for at least 10 years; and
 - (iii) holds a practising certificate granted under a law of a State or Territory; and
 - (iv) is a Queen's Counsel or a Senior Counsel.
- (2) A person is not eligible for appointment under subsection (1) if the person is:
 - (a) an ASIO employee or an ASIO affiliate; or
 - (b) the Director-General; or
 - (c) an AGS lawyer (within the meaning of the *Judiciary Act 1903*); or
 - (d) an IGIS official; or
 - (e) a person referred to in subsection 6(1) of the *Australian Federal Police Act 1979*; or
 - (f) a staff member of a law enforcement agency (other than the Australian Federal Police); or
 - (g) a staff member of an intelligence or security agency.

- (3) The Attorney-General must not appoint a person to whom paragraph (1)(c) applies unless the Attorney-General is satisfied that the person has the knowledge or experience necessary to properly perform the duties of a prescribed authority.
- (4) The Attorney-General must not appoint a person unless:
 - (a) the person has, in writing, consented to being appointed; and
 - (b) the consent is in force.
- (5) Before appointing a person as a prescribed authority, the Attorney-General must have regard to:
 - (a) whether the person engages in any paid or unpaid work that conflicts, or could conflict, with the proper performance of the person's duties as a prescribed authority; and
 - (b) whether the person has any interests, pecuniary or otherwise, that conflict, or could conflict, with the proper performance of the person's duties as a prescribed authority.

Duty to disclose interests

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

Termination of appointment

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

Definitions

- (10) In this section:

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

unpaid work means work that is not paid work.

34AE Status of prescribed authorities

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

34AF Written statement of procedures

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

Consultation

- (2) The Director-General must consult the following about the preparation of the statement:
- (a) the Inspector-General of Intelligence and Security;

(b) the Commissioner of the Australian Federal Police.

Approval by Attorney-General

- (3) The Director-General must give the statement to the Attorney-General for approval.
- (4) The Attorney-General must approve or refuse to approve the statement.

Approved statement is a legislative instrument

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

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

Briefing of Parliamentary Joint Committee on Intelligence and Security

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

34AG Humane treatment of subject of questioning warrant

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

Subdivision B—Questioning warrants

34B Request for questioning warrant

Request for warrant

- (1) The Director-General may request the Attorney-General to issue, in relation to a person:
 - (a) an adult questioning warrant; or
 - (b) a minor 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) To avoid doubt, this section operates in relation to a request for the issue of a questioning warrant in relation to a person, even if a request (a *previous request*) for the issue of a questioning warrant has previously been made under this section in relation to the person.

Requirements for requests

- (4) A request under subsection (1) must include:
 - (a) a statement of the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued; and
 - (b) a statement of the particulars and outcomes of any previous requests for the issue of a questioning warrant in relation to the person; and
 - (c) if one or more warrants were issued as a result of the previous requests—a statement of:
 - (i) the period for which the person was questioned under each of those warrants; and
 - (ii) whether the person was apprehended in connection with any of those warrants; and

- (d) whether the request is for a warrant that includes an immediate appearance requirement; and
- (e) if the request is for a warrant that includes an immediate appearance requirement—whether the request is also for a questioning warrant that authorises the apprehension of the person; and
- (f) if the request is for a minor questioning warrant—all information known to the Director-General, at the time of the making of the request, about the matters mentioned in subsection 34BB(3).

Additional requirements for oral requests

- (5) 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, cause the Inspector-General of Intelligence and Security to be notified that the request will be or has been made.
- (6) 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 matters mentioned in subsection (4); and
 - (b) as soon as practicable, and no later than 48 hours after the request is made, provide the written record to:
 - (i) the Attorney-General; and
 - (ii) the Inspector-General of Intelligence and Security.

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

- (1) If the Director-General requests the Attorney-General to do so, the Attorney-General may issue a warrant in relation to a person under this section if the Attorney-General is satisfied that:
 - (a) the person is at least 18 years old; and

- (b) there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to an adult questioning matter; and
 - (c) having regard to other methods (if any) of collecting the intelligence that are likely to be as effective, it is reasonable in all the circumstances for the warrant to be issued; and
 - (d) if the warrant is a post-charge, or post-confiscation application, questioning warrant—it is necessary, for the purposes of collecting the intelligence, for the warrant to be issued even though:
 - (i) the person has been charged or the confiscation proceeding has commenced; or
 - (ii) that charge or proceeding is imminent; and
 - (e) there is in force under section 34AF a written statement of procedures to be followed in the exercise of authority under a questioning warrant.
- (2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
- (a) paragraph (1)(d) had not been enacted; or
 - (b) paragraph (1)(d) were, by express provision, confined to dealing with a charge against the person or such a charge that is imminent; or
 - (c) paragraph (1)(d) were, by express provision, confined to dealing with a confiscation proceeding against the person that has commenced or is imminent.

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

- (1) If the Director-General requests the Attorney-General to do so, the Attorney-General may issue a warrant in relation to a person under this section if the Attorney-General is satisfied that:
- (a) the person is at least 14 years old; and
 - (b) there are reasonable grounds for believing that the person has likely engaged in, is likely engaged in, or is likely to engage in activities prejudicial to the protection of, and of the people of, the Commonwealth and the several States and Territories

- from politically motivated violence, whether directed from, or committed within, Australia or not; and
- (c) there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a minor questioning matter; and
 - (d) having regard to other methods (if any) of collecting the intelligence that are likely to be as effective, it is reasonable in all the circumstances for the warrant to be issued; and
 - (e) if the warrant is a post-charge, or post-confiscation application, questioning warrant—it is necessary, for the purposes of collecting the intelligence, for the warrant to be issued even though:
 - (i) the person has been charged or the confiscation proceeding has commenced; or
 - (ii) that charge or proceeding is imminent; and
 - (f) there is in force under section 34AF a written statement of procedures to be followed in the exercise of authority under a questioning warrant.
- (2) In deciding whether to issue the warrant, the Attorney-General must consider the best interests of the person as a primary consideration.
- (3) In considering the best interests of a person for the purposes of subsection (2), the Attorney-General must take into account the following matters:
- (a) the age, maturity, sex and background (including lifestyle, culture and traditions) of the person;
 - (b) the physical and mental health of the person;
 - (c) the benefit to the person of having a meaningful relationship with the person's family and friends;
 - (d) the right of the person to receive an education;
 - (e) the right of the person to practise the person's religion;
 - (f) any other matter the Attorney-General considers relevant.
- (4) The Attorney-General must take into account the matters in subsection (3) only to the extent that:
- (a) the matters are known to the Attorney-General; and
 - (b) the matters are relevant.

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

- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
- (a) paragraph (1)(e) had not been enacted; or
 - (b) paragraph (1)(e) were, by express provision, confined to dealing with a charge against the person or such a charge that is imminent; or
 - (c) paragraph (1)(e) were, by express provision, confined to dealing with a confiscation proceeding against the person that has commenced or is imminent.

34BC Warrant has no effect if person under 14

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

34BD What a questioning warrant authorises

- (1) A questioning warrant must, subject to any restrictions or conditions specified in the warrant:
- (a) require the subject of the warrant to appear before a prescribed authority for questioning under the warrant either:
 - (i) if the warrant includes an immediate appearance requirement—immediately after the subject is given notice of the requirement in accordance with section 34BH; or
 - (ii) at a day and time specified in the warrant; and
 - (b) subject to subsection (2), authorise the Organisation to question the subject of the warrant before a prescribed authority by requesting the subject to:
 - (i) if the warrant is an adult questioning warrant—give information, or produce a record or other thing, that is, or may be, relevant to intelligence that is important in relation to an adult questioning matter; or
 - (ii) if the warrant is a minor questioning warrant—give information, or produce a record or other thing, that is,

or may be, relevant to intelligence that is important in relation to a minor questioning matter; and

- (c) authorise the Organisation to make copies or transcripts of a record produced by the subject while before a prescribed authority for questioning under the warrant.

Additional requirements for minors

- (2) For the purposes of paragraph (1)(b), if the warrant is a minor questioning warrant, the warrant authorises the Organisation to question the subject of the warrant before a prescribed authority:
 - (a) only in the presence of a minor's representative for the subject; and
 - (b) only for continuous periods of 2 hours or less, separated by breaks directed by the prescribed authority.

Note 1: Also, the subject of a minor questioning warrant may be questioned only in the presence of a lawyer for the subject: see subsection 34FA(1).

Note 2: The prescribed authority may set the 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.

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

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

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

Severability

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

- (a) subsection (4) had not been enacted; or
- (b) subsection (4) were, by express provision, confined to dealing with a charge against the subject or such a charge that is imminent; or
- (c) subsection (4) were, by express provision, confined to dealing with a confiscation proceeding against the subject that has commenced or is imminent.

34BE Other things that may be authorised in questioning warrant

Warrant may require immediate appearance

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

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

Warrant may authorise apprehension

- (2) If:
 - (a) a questioning warrant is to include an immediate appearance requirement under subsection (1); and
 - (b) the Attorney-General is satisfied that there are reasonable grounds for believing that, if the subject of the warrant is not apprehended, the subject is likely to:
 - (i) alert a person involved in an activity prejudicial to security that the activity is being investigated; or
 - (ii) not appear before the prescribed authority; or
 - (iii) destroy, damage or alter, or cause another person to destroy, damage or alter, a record or other thing the subject has been or may be requested under the warrant to produce;

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

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

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

- (3) If the Attorney-General is satisfied that it is reasonable and necessary in the circumstances, a questioning warrant may provide that if:
- (a) a police officer conducts a search of the subject of the warrant under section 34CC; and
 - (b) a record or other thing is found during the search that the officer reasonably believes is relevant to the collection of intelligence that is important in relation to:
 - (i) if the warrant is an adult questioning warrant—an adult questioning matter; or
 - (ii) if the warrant is a minor questioning warrant—a minor questioning matter;
- the officer is authorised to seize the record or other thing.

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

Warrant may request production of records or things

- (4) A questioning warrant may request the subject of the warrant to produce, before a prescribed authority:
- (a) a specified record or other thing; or
 - (b) a specified class of record or other thing;
- if the Attorney-General is satisfied that the record or thing, or class of record or thing, is, or may be, relevant to intelligence that is important in relation to:
- (c) if the warrant is an adult questioning warrant—an adult questioning matter; or
 - (d) if the warrant is a minor questioning warrant—a minor questioning matter.

Warrant may require immediate further appearance etc.

- (5) If:
- (a) a questioning warrant is in force; and
 - (b) the subject of the warrant has appeared before a prescribed authority for questioning under the warrant; and

(c) the subject has not been questioned under the warrant for longer than the permitted questioning period or, if applicable, the extra permitted questioning period; and

(d) the Attorney-General is satisfied that it is reasonable and necessary in the circumstances;

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

(e) require the subject's further appearance before a prescribed authority for questioning under the warrant; and

(f) include an immediate appearance requirement under subsection (1) in relation to the further appearance.

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

(6) If:

(a) a questioning warrant is to include the requirements mentioned in paragraphs (5)(e) and (f); and

(b) the Attorney-General is satisfied that there are reasonable grounds for believing that, if the subject of the warrant is not apprehended:

(i) the subject is likely to alert a person involved in an activity prejudicial to security that the activity is being investigated; or

(ii) the subject is likely to not comply with the requirements mentioned in paragraphs (5)(e) and (f); or

(iii) the subject is likely to destroy, damage or alter, or cause another person to destroy, damage or alter, a record or other thing the subject has been or may be requested under the warrant to produce;

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

34BF Requirements for questioning warrant

(1) A questioning warrant may be issued:

(a) by means of a written document signed by the Attorney-General; or

- (b) if the Attorney-General is satisfied that there are reasonable grounds on which to believe that the delay caused by issuing a written warrant may be prejudicial to security—orally in person, or by telephone or other means of communication.

Requirements for written warrants

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

Requirements for oral warrants

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

Duration of warrant

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

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
 - (iv) whether the request is to vary the warrant to include an immediate appearance requirement; and
 - (v) whether the request is to vary the warrant to authorise the apprehension of the subject of the warrant; and
 - (vi) any other matter the Director-General considers relevant; and
 - (b) as soon as practicable, and no later than 48 hours after the request is made, provide the written record to:

- (i) the Attorney-General; and
- (ii) the Inspector-General of Intelligence and Security.

Issue of variation

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

Limits on variation

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

Warrant may be varied more than once

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

Written variations and records not legislative instruments

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

34BH Notification requirements in relation to questioning warrant

- (1) This section applies if the Attorney-General issues a questioning warrant.
- (2) The Director-General must cause the subject of the warrant to be given written notice of:
 - (a) the warrant; and

- (b) the place where the subject is required to appear before a prescribed authority for questioning under the warrant; and
 - (c) either:
 - (i) if the warrant includes an immediate appearance requirement—the fact that the subject must appear before the prescribed authority for questioning under the warrant immediately after the subject is given notice of the requirement under this section; or
 - (ii) otherwise—the day and time when the subject is required to appear before the prescribed authority for questioning under the warrant; and
 - (d) the fact that the subject is able to contact a lawyer in accordance with section 34F; and
 - (e) if the warrant is a minor questioning warrant—the fact that:
 - (i) the subject may request that a minor’s representative for the subject be present during the questioning; and
 - (ii) the subject may be questioned only in the presence of a minor’s representative for the subject; and
 - (f) the subject’s obligations under sections 34GD and 34GF; and
 - (g) 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; and
 - (h) the fact that the subject may seek from a federal court a remedy relating to the warrant or the treatment of the subject in connection with the warrant.
- (3) If the warrant is varied before the subject is given notice of the warrant in accordance with this section, the Director-General must cause the subject to be given written notice of:
- (a) the warrant as varied; and
 - (b) the matters mentioned in paragraphs (2)(b) to (h).

- (4) If:
- (a) the warrant is varied after the subject is given notice of the warrant in accordance with this section; and
 - (b) the variation may affect the subject's obligations under the warrant or the information provided in the notice;
- the Director-General must, as soon as practicable, cause the subject to be given written notice of:
- (c) the variation; and
 - (d) the effect of the variation on the subject's obligations under the warrant.

Note: For example, if the warrant is varied to include an immediate appearance requirement, the Director-General must cause the subject to be given written notice of the fact that the subject must appear before the prescribed authority immediately after the notice is given.

- (5) If the warrant is revoked after the subject is given notice of the warrant in accordance with this section, the Director-General must, as soon as practicable, cause the subject to be given written notice of:
- (a) the revocation; and
 - (b) the fact that the subject is no longer required to appear before a prescribed authority for questioning under the warrant; and
 - (c) the effect of section 34GF; and
 - (d) the subject's right to contact a lawyer in relation to the warrant at any time.

Subdivision C—Apprehension and search powers etc.

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

Apprehension where authorised by warrant

- (1) If a questioning warrant authorises the apprehension of the subject of the warrant, a police officer may apprehend the subject in order to immediately bring the subject before a prescribed authority for questioning under the warrant.

Note 1: The Attorney-General may only issue a questioning warrant that authorises the apprehension of the subject of the warrant if:

- (a) the warrant includes an immediate appearance requirement; and

(b) the Attorney-General is satisfied of certain matters.
See subsection 34BE(2).

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

Apprehension where certain representations made

- (2) If:
- (a) a questioning warrant includes an immediate appearance requirement; and
 - (b) the warrant does not authorise the apprehension of the subject of the warrant; and
 - (c) at the time the subject is given notice of the requirement in accordance with section 34BH, the subject makes a representation that the subject intends to:
 - (i) alert a person involved in an activity prejudicial to security that the activity is being investigated; or
 - (ii) not appear before the prescribed authority; or
 - (iii) destroy, damage or alter, or cause another person to destroy, damage or alter, a record or other thing the subject has been or may be requested in accordance with the warrant to produce;

a police officer may apprehend the subject in order to immediately bring the subject before a prescribed authority for questioning under the warrant.

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

Apprehension where subject fails to appear

- (3) If the subject of a questioning warrant fails to appear before a prescribed authority as required by:
- (a) the warrant; or
 - (b) a direction given by the prescribed authority under subsection 34DE(1);

a police officer may apprehend the subject in order to immediately bring the subject before the prescribed authority for questioning under the warrant.

Schedule 1 Amendments relating to compulsory questioning powers

Part 1 Amendments

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

Definitions

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

34CA Entering premises to apprehend subject

If:

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

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

34CB Communications while apprehended

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

34CC Power to conduct search of apprehended subject of questioning warrant

- (1) This section applies if:
 - (a) a questioning warrant is in force; and

- (b) the subject of the warrant is apprehended under this Division in connection with the warrant.

Power to conduct search

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

Records or other things found during search

- (4) If:
 - (a) a record or other thing is found during a search of the subject of a questioning warrant under this section; and
 - (b) the record or other thing is:
 - (i) a seizable item; or
 - (ii) a communication device;the record or other thing may be seized under this subsection by the police officer conducting the search.
- (5) If:
 - (a) a record or other thing is found during a search of the subject of a questioning warrant under this section; and
 - (b) the police officer conducting the search reasonably believes that the record or other thing is relevant to the collection of intelligence that is important in relation to:
 - (i) if the warrant is an adult questioning warrant—an adult questioning matter; or
 - (ii) if the warrant is a minor questioning warrant—a minor questioning matter; and
 - (c) the warrant authorises the seizure of such a record or other thing;the record or other thing may be seized under this subsection by the officer.

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

34CD Use of force in apprehending or searching subject

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

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

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

Powers of the Organisation

- (1) In addition to the things that the Organisation is authorised to do that are specified in a questioning warrant, the Organisation is also authorised:
- (a) to remove and retain any record or other thing produced by the subject of the warrant while before a prescribed authority for questioning under the warrant, or to retain any record or other thing seized under subsection 34CC(5), for the purposes of:
 - (i) inspecting or examining the record or thing; and
 - (ii) in the case of a record—making copies or transcripts of the record; and
 - (b) to do any other thing reasonably incidental to:
 - (i) the things mentioned in paragraph (a); or
 - (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;
 - (b) produce a thing in the person's possession for inspection or examination, including anything worn or carried by the person that can be conveniently removed by the person;

- (c) undergo an ordinary search or a frisk search, if the officer suspects on reasonable grounds that it is prudent to conduct an ordinary search or a frisk search of the person in order to ascertain whether the person is carrying a dangerous item or a communication device.
- (3) An ordinary search or a frisk search under paragraph (2)(c) must, if practicable, be conducted by a police officer of the same sex as the person.
- (4) A police officer may, for the purposes of subsection (2), request the person to remove a thing in the person's possession, including anything worn or carried by the person that can be conveniently removed by the person.

Certain items may be retained

- (5) A police officer may request the person to give a dangerous item or a communication device to the officer for safekeeping while the questioning is being conducted.
- (6) A dangerous item given to a police officer under subsection (5) may be retained by the officer for such time as is reasonable.
- (7) A communication device given to a police officer under subsection (5) by the subject may be retained by the officer:
 - (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.
- (8) A communication device given to a police officer under subsection (5) by a person other than the subject must be returned to the person if:
 - (a) the person requests the officer to return the device; and
 - (b) at the time of the request, the person has left the questioning place.

Person may be requested to answer questions about certain things

- (9) If a thing is:
- (a) in the possession or control of a person while the person undergoes a screening procedure in accordance with paragraph (2)(a); or
 - (b) produced by a person for inspection or examination in accordance with paragraph (2)(b); or
 - (c) removed by a person in accordance with subsection (4); or
 - (d) given by a person to a police officer for safekeeping in accordance with subsection (5);
- a police officer may request the person to answer reasonable questions about the thing.

Power to refuse entry

- (10) A police officer may refuse a person (other than an IGIS official) entry to a questioning place if:
- (a) a police officer makes a request of the person under this section; and
 - (b) the person does not comply with the request.

Note:

If:

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

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

Exceptions

- (11) This section does not apply in relation to:
- (a) a communication device that is in the possession of, or being used lawfully by:
 - (i) an ASIO employee; or
 - (ii) an ASIO affiliate; or
 - (iii) an IGIS official; or
 - (iv) a police officer; or
 - (b) a dangerous item that is in the lawful possession of a police officer.

34DA Prohibition on possessing certain things during questioning

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

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

- (2) The person must not possess either of the following while the subject is appearing for questioning:
- (a) a communication device;
 - (b) a dangerous item.
- (3) However, this section does not apply in relation to:
- (a) a communication device that is in the possession of:
 - (i) an ASIO employee; or
 - (ii) an ASIO affiliate; or
 - (iii) an IGIS official; or
 - (iv) a police officer; or
 - (b) a dangerous item that is in the lawful possession of a police officer; or
 - (c) a communication device or a dangerous item that is in the possession of the subject, if:
 - (i) the device or item is seized under section 34CC, or retained under section 34CE or 34D; and
 - (ii) the device or item is returned to the subject for the purpose of complying with a request made by the Organisation in accordance with the warrant; and
 - (iii) the possession is solely for that purpose.

34DB Questioning under a questioning warrant

- (1) The questioning of a person under a questioning warrant may be:
- (a) pre-charge questioning or post-charge questioning; or
 - (b) pre-confiscation application questioning or post-confiscation application questioning.
- (2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:

- (a) paragraph (1)(a) were, by express provision, confined to pre-charge questioning; or
- (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;
- (k) the fact that the subject may seek from a federal court a remedy relating to the warrant or the treatment of the subject in connection with the warrant.

Note: 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.

- (2) To avoid doubt, subsection (1) does not apply to a prescribed authority if the subject has previously appeared before another prescribed authority for questioning under the warrant.
- (3) The prescribed authority must also:
 - (a) inform the subject of the reason for the presence of each person who is present at any time during the questioning; and
 - (b) at least once in every 24 hour period during which questioning of the subject under the warrant occurs, inform the subject of the fact that the subject may seek from a federal court a remedy relating to the warrant or the treatment of the subject in connection with the warrant.

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

- (4) Despite paragraph (3)(a):
 - (a) the prescribed authority must not name any person except with the consent of the person to be named; and
 - (b) the obligation to inform the subject about the reason for a particular person's presence need only be complied with once (even if that particular person subsequently returns to the questioning).

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

- (1) This section applies if the subject of a minor questioning warrant appears before a prescribed authority for questioning under the warrant.
- (2) In addition to the requirements of section 34DC, the prescribed authority must, as soon as practicable:
 - (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).

34DE Directions while subject is before prescribed authority for questioning

- (1) At any time when the subject of a questioning warrant is appearing before a prescribed authority for questioning under the warrant, the prescribed authority may, either orally or in writing, give any of the following directions:
- (a) a direction in accordance with subsection 34GF(6) permitting the subject to disclose specified information to a specified person;
 - (b) a direction permitting the subject to contact an identified person (including a person identified by reference to the fact that the person has a particular legal or familial relationship with the subject) or any person, and to disclose information other than specified information while in contact with that person;
 - (c) a direction under paragraph 34FB(2)(a), 34FC(2)(a) or (3)(b) that a specified lawyer must be present during the questioning;
 - (d) a direction to defer questioning of the subject under the warrant;
 - (e) a direction for the subject's further appearance before the prescribed authority for questioning under the warrant, or for the subject to be excused or released from further attendance at questioning.

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

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

- (i) has been informed under section 34DM of a concern of the Inspector-General of Intelligence and Security; and
 - (ii) is satisfied that giving the direction is necessary to address the concern satisfactorily; or
 - (b) the direction has been approved, in writing, by the Attorney-General.
- (3) If, at any time when the subject of a questioning warrant is appearing before a prescribed authority for questioning under the warrant:
- (a) a record or other thing is in the possession or control of a police officer because of the operation of section 34CC, 34CE or 34D; and
 - (b) a person exercising authority under the warrant requests that the record or thing be returned to the subject for the purpose of enabling the subject to comply with a request (the *warrant request*) made by the Organisation in accordance with the warrant;
- the prescribed authority must give a direction that the record or thing be given to the subject for only such time as the prescribed authority considers reasonable to enable the subject to comply with the warrant request.
- (4) If a prescribed authority gives a direction under subsection (1) or (3), the prescribed authority may vary or revoke the direction.

34DF Directions in relation to confidentiality

Prohibition or limitation on use or disclosure

- (1) A prescribed authority must, in writing, give a direction that questioning material:
- (a) must not be used or disclosed; or
 - (b) may only be used by, or disclosed to, specified persons in specified ways or on specified conditions;
- if the prescribed authority is satisfied that the failure to give such a direction:
- (c) might prejudice a person's safety; or

- (d) would reasonably be expected to prejudice the fair trial of the subject for the material, if the subject has been charged with a related offence or such a charge is imminent.
- (2) A prescribed authority may give a direction under subsection (1) in relation to questioning material at any time when the subject for the material has not been excused or released from further attendance at questioning.
- (3) A direction given under subsection (1) by a prescribed authority in relation to questioning material may be varied or revoked, in writing, by:
 - (a) the prescribed authority; or
 - (b) if the subject for the material has been excused or released from further attendance at questioning—the Director-General.
- (4) However, the direction cannot be varied or revoked if the prescribed authority or the Director-General (as the case requires) is satisfied that the variation or revocation:
 - (a) might prejudice a person's safety; or
 - (b) would reasonably be expected to prejudice the fair trial of the subject for the material, if the subject has been charged with a related offence or such a charge is imminent.

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

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

- (6) If:
-

- (a) the Director-General makes questioning material available to a court under subsection (5); and
 - (b) the court, after examining the questioning material, is satisfied that the interests of justice so require;
- the court may make the questioning material available to the person charged with the offence concerned or to a lawyer representing the person.

34DG Direction that persons under 14 not be questioned

If:

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

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

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

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

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

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

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

34DI Complaints while appearing before prescribed authority for questioning

If:

- (a) the subject of a questioning warrant is appearing before a prescribed authority for questioning under the warrant; and
- (b) the subject informs the prescribed authority that the subject wants:
 - (i) to make a complaint of a kind referred to in paragraph 34DC(1)(i); or
 - (ii) to give information of the kind referred to in paragraph 34DC(1)(j); and
- (c) the subject requests facilities to make the complaint or give the information; and
- (d) the prescribed authority gives a direction under paragraph 34DE(1)(d) deferring questioning of the subject under the warrant;

a person exercising authority under the warrant must give the subject facilities for making the complaint or giving the information.

34DJ Permitted questioning time

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

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

Time for questioning

- (2) The subject of a questioning warrant must not be questioned under the warrant by a person exercising authority under the warrant for longer than the permitted questioning period.
- (3) For the purposes of subsection (2), the ***permitted questioning period*** is:
 - (a) 8 hours; or

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

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

Extension of time for questioning

- (4) If:
 - (a) the subject has been questioned under the warrant for a total of less than 8 hours; and
 - (b) the prescribed authority before whom the subject is being questioned is satisfied of the matters in subsection (7);the prescribed authority may, just before the end of the 8 hours, extend the permitted questioning period to 16 hours.
- (5) If:
 - (a) the subject has been questioned under the warrant for a total of more than 8 hours and less than 16 hours; and
 - (b) the prescribed authority before whom the subject is being questioned is satisfied of the matters in subsection (7);the prescribed authority may, just before the end of the 16 hours, extend the permitted questioning period to 24 hours.
- (6) A person exercising authority under a questioning warrant may request the prescribed authority to extend the permitted questioning period. The request may be made in the absence of:
 - (a) the subject of the warrant; and
 - (b) a lawyer for the subject; and
 - (c) if the warrant is a minor questioning warrant—a minor’s representative for the subject; and
 - (d) any person the subject is permitted to contact.
- (7) The prescribed authority may extend the permitted questioning period only if the prescribed authority is satisfied that:
 - (a) the questioning of the subject was conducted properly and without delay; and
 - (b) there are reasonable grounds for believing that the extension will substantially assist the collection of intelligence that is important in relation to:

- (i) if the warrant is an adult questioning warrant—an adult questioning matter; or
 - (ii) if the warrant is a minor questioning warrant—a minor questioning matter.
- (8) The prescribed authority may revoke the extension of the permitted questioning period. Revocation of the extension does not affect the legality of anything done in relation to the subject under the warrant before the revocation.

34DK Extra permitted questioning time if interpreter present

- (1) This section applies if, in accordance with section 34DN or 34DO, an interpreter is present at any time while the subject of a questioning warrant is appearing before a prescribed authority for questioning under the warrant.
- (2) The subject must not be questioned under the warrant by a person exercising authority under the warrant for longer than the extra permitted questioning period.
- (3) For the purposes of subsection (2), the *extra permitted questioning period* is:
 - (a) 24 hours; or
 - (b) if a prescribed authority before whom the subject is being questioned has extended the period in accordance with subsection (4) or (5)—that longer period.

Extension of extra time for questioning

- (4) If:
 - (a) the subject has been questioned under the warrant for a total of less than 24 hours; and
 - (b) the prescribed authority before whom the subject is being questioned is satisfied of the matters in subsection (7);the prescribed authority may, just before the end of the 24 hours, extend the extra permitted questioning period to 32 hours.
- (5) If:
 - (a) the subject has been questioned under the warrant for a total of more than 24 hours and less than 32 hours; and

- (b) the prescribed authority before whom the subject is being questioned is satisfied of the matters in subsection (7); the prescribed authority may, just before the end of the 32 hours, extend the extra permitted questioning period to 40 hours.
- (6) A person exercising authority under a questioning warrant may request the prescribed authority to extend the extra permitted questioning period. The request may be made in the absence of:
 - (a) the subject of the warrant; and
 - (b) a lawyer for the subject; and
 - (c) if the warrant is a minor questioning warrant—a minor’s representative for the subject; and
 - (d) any person the subject is permitted to contact.
- (7) The prescribed authority may extend the extra permitted questioning period only if the prescribed authority is satisfied that:
 - (a) the questioning of the subject was conducted properly and without delay; and
 - (b) there are reasonable grounds for believing that the extension will substantially assist the collection of intelligence that is important in relation to:
 - (i) if the warrant is an adult questioning warrant—an adult questioning matter; or
 - (ii) if the warrant is a minor questioning warrant—a minor questioning matter.
- (8) The prescribed authority may revoke the extension of the extra permitted questioning period. Revocation of the extension does not affect the legality of anything done in relation to the subject under the warrant before the revocation.

34DL Time that is not questioning time

For the purposes of working out the time that the subject of a questioning warrant has been questioned under the warrant, disregard the following times:

- (a) the time taken by a prescribed authority to inform the subject of the matters referred to in section 34DC and, if applicable, section 34DD;

- (b) any time during which a prescribed authority has deferred questioning of the subject under the warrant to allow:
 - (i) the change of a thing in equipment being used to record the questioning of the subject; or
 - (ii) the subject to make a complaint of the kind referred to in paragraph 34DC(1)(i); or
 - (iii) the subject to give information of the kind referred to in paragraph 34DC(1)(j); or
 - (iv) the subject to contact a lawyer or another person as provided by this Division; or
 - (v) a lawyer to be present in accordance with a direction given under paragraph 34FB(2)(a) or 34FC(2)(a) or (3)(b); or
 - (vi) the subject to receive medical attention; or
 - (vii) the subject to engage in religious practices in accordance with the subject's religion; or
 - (viii) the subject to rest or recuperate;
- (c) any time during which a prescribed authority has suspended questioning of the subject under the warrant as mentioned in paragraph 34DM(4)(a);
- (d) any other time determined by a prescribed authority before whom the subject appears for questioning.

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

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

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

- (2) When the subject is appearing before a prescribed authority for questioning under the warrant, the Inspector-General:
 - (a) may inform the prescribed authority of the Inspector-General's concern; and

- (b) must, as soon as practicable after informing the prescribed authority, inform the Director-General of the concern.
- (3) The prescribed authority must consider the Inspector-General's concern.
- (4) The prescribed authority may give a direction suspending:
 - (a) questioning of the subject under the warrant; or
 - (b) the exercise of another power under this Division that is specified in the direction;until the prescribed authority is satisfied that the Inspector-General's concern has been satisfactorily addressed.

34DN Interpreter provided at request of prescribed authority

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

34DO Interpreter provided at request of subject

- (1) This section applies if the subject of a questioning warrant appearing before a prescribed authority under the warrant requests the presence of an interpreter.

- (2) The prescribed authority must determine that an interpreter is to be present unless the prescribed authority believes on reasonable grounds that the subject:
 - (a) has an adequate knowledge of the English language to communicate with reasonable fluency in that language; or
 - (b) is physically able to communicate with reasonable fluency in that language.
- (3) A person exercising authority under the warrant must arrange for the presence of an interpreter if the prescribed authority makes a determination under subsection (2).
- (4) If questioning under the warrant has not commenced and the prescribed authority makes a determination under subsection (2):
 - (a) the prescribed authority must defer informing the subject under section 34DC and, if applicable, section 34DD until an interpreter is present; and
 - (b) a person exercising authority under the warrant must defer the questioning until an interpreter is present.
- (5) If questioning under the warrant commences before the subject requests the presence of an interpreter and the prescribed authority makes a determination under subsection (2):
 - (a) a person exercising authority under the warrant must defer any further questioning until an interpreter is present; and
 - (b) when an interpreter is present, the prescribed authority must again inform the subject of anything of which the subject was previously informed under section 34DC or 34DD.

34DP Video recording of procedures

- (1) The Director-General must ensure that video recordings are made of the following:
 - (a) the appearance of the subject of a questioning warrant before a prescribed authority for questioning under the warrant;
 - (b) any other matter or thing in relation to the warrant that the prescribed authority directs is to be video recorded.
- (2) The Director-General must ensure that, if practicable, video recordings are made of any complaint made by the subject of a

questioning warrant when the subject is not appearing before a prescribed authority for questioning under the warrant.

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

34E Obtaining derivative material

- (1) An entity mentioned in subsection (3), that may lawfully use or disclose questioning material, may lawfully use or disclose the material for the purpose of obtaining derivative material if the use or disclosure is:
 - (a) a pre-charge use or disclosure of the material; or
 - (b) a post-charge use or disclosure of pre-charge questioning material; or
 - (c) a post-charge use or disclosure of post-charge questioning material; or
 - (d) a pre-confiscation application use or disclosure of the material; or
 - (e) a post-confiscation application use or disclosure of pre-confiscation application questioning material; or
 - (f) a post-confiscation application use or disclosure of post-confiscation application questioning material.
- (2) Subsection (1) has effect subject to:
 - (a) any direction given under subsection 34DF(1); and
 - (b) paragraph 34EA(1)(b), in the case of a disclosure to a prosecutor of the subject for the material.

Subsection (1) does not, by implication, limit the use or disclosure of the questioning material for any other purpose.
- (3) The entities are as follows:
 - (a) the Director-General;
 - (b) an entrusted person;
 - (c) a person or body investigating whether the subject for the material committed an offence against a law of the Commonwealth or of a State or Territory;
 - (d) a prosecutor of the subject for the material;
 - (e) a prosecuting authority;

- (f) a proceeds of crime authority;
 - (g) any other person or body lawfully in possession of the questioning material.
- (4) Without limiting its effect apart from this subsection, this Act also has the effect it would have if:
- (a) one or more of paragraphs (1)(b), (c), (e) and (f) had not been enacted; or
 - (b) subsection (3) were, by express provision, confined to persons or bodies other than either or both of the following:
 - (i) prosecutors of the subject for the material;
 - (ii) proceeds of crime authorities.

34EA Disclosing questioning material to prosecutors of the subject

- (1) A person or body, that may lawfully disclose questioning material, may lawfully disclose the material to a prosecutor of the subject for the material if the disclosure is:
- (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of:
 - (i) pre-charge questioning material; or
 - (ii) post-charge questioning material;under an order made under subsection 34EC(1).
- (2) Subsection (1) has effect subject to any direction given under subsection 34DF(1), in the case of a pre-charge disclosure of the material.
- Note: In the case of a post-charge disclosure, the court may have regard to any direction given under subsection 34DF(1) in deciding whether to make an order under subsection 34EC(1).
- (3) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b), or either of its subparagraphs, had not been enacted.

34EB Disclosing derivative material to prosecutors of the subject

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

- (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of derivative material obtained from pre-charge questioning material (whether from a pre-charge use of that questioning material or otherwise); or
 - (c) a post-charge disclosure of derivative material obtained from post-charge questioning material, and the disclosure is under an order made under subsection 34EC(1).
- (2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (1)(b) or (c), or both, had not been enacted.

34EC Court's powers to order disclosure and to ensure a fair trial

Court may order that material may be disclosed

- (1) A court may, on application or on its own initiative, order that questioning material or derivative material may be disclosed to prosecutors of the subject for the material if the court is satisfied that the disclosure is required:
- (a) in the interests of justice; and
 - (b) despite any direction given under subsection 34DF(1).
- The order may specify the prosecutors (by any means), and the uses to which the prosecutors may put the material.
- (2) Subsection (1) applies to:
- (a) if the subject has been charged with a related offence before a federal court or a court of a State or Territory—that court; or
 - (b) otherwise—a federal court (other than the Family Court of Australia) or a court of a State or Territory.

Court's powers to ensure the subject's fair trial

- (3) This Subdivision does not, by implication, restrict a court's power to make any orders necessary to ensure that the fair trial of a subject for questioning material or derivative material is not prejudiced by the possession or use of the material by a prosecutor of the subject.
- (4) However, a person's trial for:

- (a) an offence against a law of the Commonwealth or of a Territory; or
 - (b) an offence against a law of a State that has a federal aspect (within the meaning of the *Australian Crime Commission Act 2002*);
- is not unfair merely because the person has been the subject of a questioning warrant. This applies whether the person became the subject:
- (c) before being charged with the offence and before such a charge was imminent; or
 - (d) after being charged with the offence or after such a charge was imminent.
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if subsection (4), or paragraph (4)(d), had not been enacted.

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

- (1) A person or body, that may lawfully disclose questioning material of a kind covered by paragraph 34AB(1)(c) or (d), may lawfully disclose the material to a prosecutor of the subject for the material.
- (2) A person or body, that may lawfully disclose questioning material or derivative material, may lawfully disclose the material to a prosecutor of the subject for the material if the subject is suspected of, or has been charged with:
 - (a) an offence against this Division in relation to the relevant questioning warrant; or
 - (b) an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) in relation to the relevant questioning warrant.
- (3) Subsection (1) or (2) has effect subject to any direction given under subsection 34DF(1).
- (4) Subsection (1) or (2) applies whether the disclosure is:
 - (a) a pre-charge disclosure of the material; or
 - (b) a post-charge disclosure of:

- (i) pre-charge questioning material; or
 - (ii) derivative material obtained from pre-charge questioning material (whether from a pre-charge use of the questioning material or otherwise); or
 - (c) a post-charge disclosure of:
 - (i) post-charge questioning material; or
 - (ii) derivative material obtained from post-charge questioning material;
- and whether or not an order has been made under subsection 34EC(1).
- (5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if paragraph (4)(b) or (c), or both, had not been enacted.

34EE Other matters about prosecutors and subjects

- (1) If:
- (a) a person lawfully possesses questioning material or derivative material; and
 - (b) the person is a prosecutor of the subject for the material;
- the person may use that material for purposes that include:
- (c) making a decision whether to prosecute the subject; and
 - (d) prosecuting the subject.
- This use of the questioning material is subject to subsection 34GD(6) and any direction given under subsection 34DF(1).
- (2) If material is lawfully in the possession of a prosecutor of the subject for the material, the fact that the material is questioning material or derivative material does not prevent it from being admissible in evidence against the subject in a criminal proceeding.
- Note: The material may be inadmissible for other reasons (for example, because of subsection 34GD(6)).
- (3) This Subdivision does not, by implication, restrict the use of questioning material or derivative material by, or the disclosure of that material to:
- (a) a prosecuting authority; or

- (b) an individual employed or engaged by a prosecuting authority;
who is not a prosecutor of the subject for the material.
- (4) This section has effect subject to any other law of the Commonwealth, or a law of a State or a Territory.

34EF Proceeds of crime authorities and questioning under a questioning warrant

- (1) A person or body, that may lawfully disclose questioning material or derivative material, may lawfully disclose the material to a proceeds of crime authority if the disclosure is:
 - (a) a pre-confiscation application disclosure of the material; or
 - (b) a post-confiscation application disclosure of:
 - (i) pre-confiscation application questioning material; or
 - (ii) derivative material obtained from pre-confiscation application questioning material (whether from a pre-confiscation application use of the questioning material or otherwise); or
 - (c) a post-confiscation application disclosure of:
 - (i) post-confiscation application questioning material; or
 - (ii) derivative material obtained from post-confiscation application questioning material.
- (2) Subsection (1) has effect subject to any direction given under subsection 34DF(1).
- (3) If material is lawfully in the possession of a proceeds of crime authority, the fact that the material is questioning material or derivative material does not prevent it from being admissible in evidence against the subject for the material in a confiscation proceeding.

Note: The material may be inadmissible for other reasons (for example, because of subsection 34GD(6)).
- (4) Subsection (3) of this section and subsection 34GD(6) do not, by implication, restrict a court's power to make any orders necessary to prevent prejudice to the proper administration of justice.

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

Subdivision F——Lawyers and minor’s representatives

34F Person specified in warrant may contact lawyer or minor’s representative

Right to contact lawyer or minor’s representative

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

Limit on contacting lawyers

- (2) If:
- (a) the subject of a questioning warrant is appearing before a prescribed authority for questioning under the warrant; and
 - (b) a lawyer for the subject is present during the questioning;
- the prescribed authority may direct that the subject be prevented from contacting another lawyer if:
- (c) the lawyer for the subject is not a person (an ***appointed lawyer***) specified in a direction given under paragraph 34FB(2)(a) or 34FC(2)(a) or (3)(b); or
 - (d) the lawyer for the subject is an appointed lawyer and the prescribed authority is satisfied that the subject has had reasonable opportunity to contact another lawyer.
- (3) If:
- (a) the subject of an adult questioning warrant is appearing before a prescribed authority for questioning under the warrant; and
 - (b) a lawyer for the subject is not present during the questioning;

the prescribed authority may direct that the subject be prevented from contacting a lawyer if the prescribed authority is satisfied that the subject has had reasonable opportunity to contact a lawyer.

Limit on choice of lawyer

- (4) A prescribed authority may direct that the subject of a questioning warrant be prevented from contacting a particular lawyer if the prescribed authority is satisfied, on the basis of circumstances relating to the lawyer, that, if the subject is permitted to contact the lawyer:
 - (a) a person involved in an activity prejudicial to security may be alerted that the activity is being investigated; or
 - (b) a record or other thing that the subject has been or may be requested, in accordance with the warrant, to produce may be destroyed, damaged or altered.
- (5) To avoid doubt, subsection (4) does not prevent the subject from choosing another lawyer to contact, but the subject may be prevented from contacting that other lawyer under another application of that subsection.

Effect of section

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

34FA Questioning in absence of lawyer for subject

- (1) The subject of a minor questioning warrant must not be questioned under the warrant in the absence of a lawyer for the subject.
- (2) The subject of an adult questioning warrant may be questioned under the warrant in the absence of a lawyer for the subject if:
 - (a) the subject voluntarily chooses to be questioned in the absence of a lawyer; or
 - (b) a prescribed authority gives a direction under paragraph 34FB(3)(b) or subparagraph 34FF(7)(c)(iii) in relation to the subject.
- (3) This section does not permit questioning of the subject of a questioning warrant by a person exercising authority under the warrant at a time when a person exercising authority under the

warrant is required by another section of this Division not to question the subject.

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

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

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

If warrant includes immediate appearance requirement

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

If warrant does not include immediate appearance requirement

- (3) If the warrant does not include an immediate appearance requirement, the prescribed authority must, either orally or in writing:
 - (a) both:

- (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 a lawyer for the subject to be present during the questioning; and
 - (ii) give a direction that a person exercising authority under the warrant give the subject facilities for contacting a lawyer of choice; or
- (b) give a direction that the subject may be questioned in the absence of a lawyer for the subject, if:
- (i) the prescribed authority is satisfied that such time as is reasonable to enable a lawyer for the subject to be present during the questioning has passed; and
 - (ii) a lawyer for the subject is not present during the questioning.

When lawyer of choice is present

- (4) If:
- (a) a direction under paragraph (2)(a) is in force in relation to the appointed lawyer for the subject of an adult questioning warrant; and
 - (b) both the appointed lawyer and a lawyer of choice are present during the questioning;
- the prescribed authority must, either orally or in writing:
- (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 appointed lawyer to brief the lawyer of choice; and
 - (ii) the lawyer of choice to provide advice to the subject; and
 - (d) revoke the direction under paragraph (2)(a).

If subject chooses to be questioned in absence of lawyer

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

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

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

If warrant includes immediate appearance requirement

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

If warrant does not include immediate appearance requirement

- (3) If the warrant does not include an immediate appearance requirement, the prescribed authority must, either orally or in writing:
- (a) both:
 - (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 a lawyer for the subject to be present during the questioning; and
 - (ii) give a direction that a person exercising authority under the warrant give the subject facilities for contacting a lawyer; or
 - (b) if the prescribed authority is satisfied that such time as is reasonable to enable a lawyer for the subject to be present during the questioning has passed—give a direction that:

- (i) a specified person (the **appointed lawyer**) be appointed as the lawyer for the subject; and
- (ii) the appointed lawyer be present during the questioning; and
- (iii) the subject be questioned in the presence of the appointed lawyer.

When lawyer of choice is present

- (4) If:
 - (a) a direction under paragraph (2)(a) or (3)(b) is in force in relation to the appointed lawyer for the subject of a minor questioning warrant; and
 - (b) both the appointed lawyer and a lawyer of choice are present during the questioning;the prescribed authority must, either orally or in writing:
 - (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 appointed lawyer to brief the lawyer of choice; and
 - (ii) the lawyer of choice to provide advice to the subject; and
 - (d) revoke the direction under paragraph (2)(a) or (3)(b) (as the case requires).

34FD Directions in relation to minor's representatives

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

If warrant includes immediate appearance requirement

- (2) If:
 - (a) the warrant includes an immediate appearance requirement; and

- (b) a lawyer for the subject is present during the questioning; the prescribed authority must, either orally or in writing:
- (c) give a direction that the subject may be questioned under the warrant in the absence of a non-lawyer representative; and
- (d) if the subject requests that a non-lawyer representative be present during the questioning—give a direction that the subject must be permitted to contact a non-lawyer representative.

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

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

If warrant does not include immediate appearance requirement

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

34FE Lawyer may request copy of warrant

- (1) This section applies in relation to a lawyer who is acting for the subject of a questioning warrant in connection with the warrant.
- (2) Subject to subsection (4), a person exercising authority under the warrant must, if requested to do so by the lawyer, give the lawyer:
 - (a) if the warrant is issued in writing—a copy of the warrant; or
 - (b) if the warrant is issued orally—a copy of the written record of the warrant made in accordance with subsection 34BF(3).
- (3) Subject to subsection (4), if the warrant is varied, a person exercising authority under the warrant must, if requested to do so by the lawyer, give the lawyer:
 - (a) if the variation is issued in writing—a copy of the variation; or
 - (b) if the variation is issued orally—a copy of the written record of the variation made in accordance with subsection 34BG(7).

- (4) For the purposes of subsections (2) and (3), the Director-General may make such deletions from a document mentioned in subsection (5) as the Director-General considers necessary in order to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.
- (5) The documents covered by this subsection are as follows:
 - (a) a questioning warrant;
 - (b) a written record of a questioning warrant;
 - (c) a variation of a questioning warrant;
 - (d) a written record of a variation of a questioning warrant.
- (6) Subsections (2) and (3) do not:
 - (a) require more than one person to give the lawyer a copy of the warrant, the written record of the warrant, the variation or the written record of the variation (as the case requires); or
 - (b) entitle the lawyer to be given a copy of, or see, a document other than the warrant, the written record of the warrant, the variation or the written record of the variation (as the case requires).

34FF Involvement of lawyers

- (1) This section applies if:
 - (a) the subject of a questioning warrant is appearing before a prescribed authority for questioning under the warrant; and
 - (b) a lawyer for the subject is present during the questioning.

Breaks in questioning

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

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

- (3) The lawyer must not intervene in the questioning of the subject or address the prescribed authority before whom the subject is being questioned, except:
- (a) to request clarification of an ambiguous question; or
 - (b) to request a break in the questioning of the subject in order to provide advice to the subject.

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

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

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

Removal of lawyer for disrupting questioning

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

- (7) If the prescribed authority directs the removal of the lawyer:
- (a) the prescribed authority must also direct that the subject may contact another lawyer; and
 - (b) if the subject chooses to contact another lawyer, the prescribed authority must give a direction under paragraph 34DE(1)(d) deferring questioning of the subject for such time as the prescribed authority considers reasonable to enable a lawyer for the subject to be present; and
 - (c) if:
 - (i) the time mentioned in paragraph (b) has passed and a lawyer for the subject is not present; or
 - (ii) the subject chooses not to contact another lawyer;the prescribed authority must:

- (iii) if the warrant is an adult questioning warrant—give a direction that the subject may be questioned in the absence of a lawyer for the subject; and
- (iv) if the warrant is minor questioning warrant—give a direction under paragraph 34FC(2)(a) or (3)(b) (as the case requires).

If lawyer is also a minor’s representative for the subject

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

34FG Conduct of minor’s representatives

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

Subdivision G—Offences

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

- (1) If:
 - (a) the Director-General has requested the Attorney-General to issue a questioning warrant in relation to a person; and
 - (b) the Director-General believes on reasonable grounds that:
 - (i) the person may leave Australia; and
 - (ii) the person's leaving would be likely to impact on the person's ability to comply with the questioning warrant;

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

- (2) The person must, as soon as practicable after being notified in accordance with subsection (1), deliver to an enforcement officer:
- (a) all Australian travel documents that:
 - (i) have been issued to the person; and
 - (ii) are in the person's possession or control; and
 - (b) all passports or other travel documents that:
 - (i) have been issued to the person by or on behalf of the government of a foreign country; and
 - (ii) are in the person's possession or control.
- (3) A person commits an offence if:
- (a) the person is notified in accordance with subsection (1); and
 - (b) the person fails to comply with subsection (2).

Penalty: Imprisonment for 5 years.

- (4) The Director-General must cause any document delivered under subsection (2) to be returned to the person to whom it was issued as soon as practicable after:
- (a) if the Attorney-General refuses to issue a questioning warrant in relation to the person—that refusal; or
 - (b) if a questioning warrant is issued in relation to the person—the end of the period specified in the warrant as the period during which the warrant is to be in force;
- but the Director-General may cause the document to be returned to that person earlier.
- (5) Subsection (4) does not require:
- (a) the return of a document during the period specified in another warrant, issued in relation to the person under this Division, as the period during which the other warrant is to be in force; or
 - (b) the return of a document that has been cancelled.
- (6) If a questioning warrant is issued in relation to the person, a person approved under section 24 in relation to the warrant may, after a document of the first-mentioned person is delivered under

subsection (2) of this section and before it is returned under subsection (4) of this section:

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

(7) In this section:

enforcement officer means any of the following:

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

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

- (1) A person commits an offence if:
- (a) the person has been notified of:
 - (i) the making of a request by the Director-General for a questioning warrant in relation to the person; and
 - (ii) the effect of this subsection in connection with that request; and
 - (b) the person leaves Australia; and
 - (c) the leaving occurs after the person has been notified as mentioned in paragraph (a), and before:
 - (i) if the Attorney-General refuses to issue a questioning warrant in relation to the person—that refusal; or
 - (ii) if a questioning warrant is issued in relation to the person—the end of the period specified in the warrant as the period during which the warrant is to be in force; and
 - (d) the person does not have written permission from the Director-General to leave Australia at the time the person leaves Australia.

Penalty: Imprisonment for 5 years.

- (2) The Director-General may give written permission for a person in relation to whom a questioning warrant is requested to leave

Australia at a specified time. The permission may be given either unconditionally or subject to specified conditions.

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

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

34GB Surrender of travel documents by subject of questioning warrant

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

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

- (2) As soon as practicable after the subject is notified in accordance with subsection (1), the subject must deliver to a person exercising authority under the warrant:
- (a) all Australian travel documents that:
 - (i) have been issued to the subject; and
 - (ii) are in the subject's possession or control; and
 - (b) all passports or other travel documents that:
 - (i) have been issued to the subject by or on behalf of the government of a foreign country; and
 - (ii) are in the subject's possession or control.
- (3) The subject of a questioning warrant commits an offence if:
- (a) the subject is notified in accordance with subsection (1); and
 - (b) the subject fails to comply with subsection (2).

Penalty: Imprisonment for 5 years.

- (4) The Director-General must cause any document delivered under subsection (2) to be returned to the subject as soon as practicable after the end of the period specified in the warrant as the period during which the warrant is to be in force, but may cause the document to be returned to the subject earlier.
- (5) Subsection (4) does not require:
 - (a) the return of a document during the period specified in another warrant, issued in relation to the subject under this Division, as the period during which the other warrant is to be in force; or
 - (b) the return of a document that has been cancelled.
- (6) After the subject of a questioning warrant delivers a document under subsection (2) and before the document is returned under subsection (4), a person approved under section 24 in relation to the warrant may:
 - (a) inspect or examine the document; and
 - (b) make copies or transcripts of it.

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

- (1) The subject of a questioning warrant commits an offence if:
 - (a) the subject is notified of:
 - (i) the issue of the warrant; and
 - (ii) the effect of this subsection; and
 - (b) the subject leaves Australia; and
 - (c) the leaving occurs:
 - (i) after the subject is notified as mentioned in paragraph (a); and
 - (ii) before the end of the period specified in the warrant as the period during which the warrant is to be in force; and
 - (d) the subject does not have written permission from the Director-General to leave Australia at the time the subject leaves Australia.

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

Penalty: Imprisonment for 5 years.

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

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

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

34GD Giving information and producing things etc.

Failure to appear

- (1) The subject of a questioning warrant commits an offence if the subject fails to appear before a prescribed authority for questioning in accordance with:
- (a) the warrant; or
 - (b) a direction given under subsection 34DE(1).

Penalty: Imprisonment for 5 years.

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

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

Failure to give information etc.

- (3) The subject of a questioning warrant commits an offence if:
- (a) the subject is appearing before a prescribed authority for questioning under the warrant; and
 - (b) the Organisation requests, in accordance with the warrant, the subject to:
 - (i) give any information; or
 - (ii) produce any record or other thing; and

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

Penalty: Imprisonment for 5 years.

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

- (a) does not have the information; or
- (b) does not have possession or control of the record or thing.

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

Self-incrimination etc.

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

- (a) giving information; or
- (b) producing a record or other thing;

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

(6) However:

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

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

- (c) a confiscation proceeding, if the thing was said, or the record or thing was produced, at a time when the proceeding had not commenced and was not imminent; or
- (d) proceedings for an offence against this section; or
- (e) proceedings for an offence against section 34GF; or
- (f) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this section.

(7) If, at general law, the subject of a questioning warrant would otherwise be able to claim the privilege against self-exposure to a penalty (other than an offence) in relation to giving information or

producing a record or other thing in connection with the warrant, the subject is not excused from giving the information or producing the record or thing on that ground.

False or misleading statements

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

Penalty: Imprisonment for 5 years.

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

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

Rendering records or things illegible etc.

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

Penalty: Imprisonment for 5 years.

34GE Offences of contravening safeguards

- (1) A person commits an offence if:
- (a) the person has been approved under section 24 to exercise authority conferred by a questioning warrant; and
 - (b) the person exercises, or purports to exercise, the authority; and

- (c) the exercise, or purported exercise, contravenes a condition or restriction in the warrant on the authority; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

- (2) A person commits an offence if:
- (a) the person is a police officer; and
 - (b) the person engages in conduct in the exercise of, or the purported exercise of, authority conferred by this Division; and
 - (c) the conduct contravenes section 34C; and
 - (d) the person knows of the contravention.

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

Penalty: Imprisonment for 2 years.

- (3) A person commits an offence if:
- (a) a prescribed authority gives a direction under:
 - (i) subsection 34DD(2); or
 - (ii) paragraph 34DE(1)(b), (d) or (e); or
 - (iii) section 34DG; or
 - (iv) subsection 34DM(4); and
 - (b) the person is identified (whether by name, reference to a class that includes the person or some other means) in the direction as a person who is to implement the direction; and
 - (c) the person engages in conduct; and
 - (d) the conduct contravenes the direction; and
 - (e) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

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

- (d) the use or disclosure is not under subsection 34DF(5) or (6) or paragraph 34EA(1)(b).

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 years.

34GF Secrecy relating to warrants and questioning

Before warrant ceases to be in force

- (1) A person (the **discloser**) commits an offence if:
- (a) a questioning warrant is issued; and
 - (b) the discloser discloses information; and
 - (c) either or both of the following apply:
 - (i) the information indicates the fact that the warrant has been issued, or a fact relating to the content of the warrant or to the questioning or 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.

Strict liability

- (3) Strict liability applies to paragraphs (1)(c) and (2)(c) if the discloser is:
 - (a) the subject of the warrant; or

- (b) a lawyer who has at any time been:
- (i) present, as the lawyer for the subject of the warrant, during the questioning of the subject under the warrant; or
 - (ii) contacted for the purpose of the subject obtaining legal advice in connection with the warrant; or
 - (iii) contacted for the purpose of the subject obtaining representation in legal proceedings seeking a remedy relating to the warrant or the treatment of the subject in connection with the warrant.

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

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

Immunity from liability

- (3A) Subsections (1) and (2) do not apply to a person who discloses information if, as a result of the operation of a law of the Commonwealth, the person is not subject to any civil or criminal liability for the conduct.

Note 1: The *Public Interest Disclosure Act 2013* provides that an individual is not subject to any civil or criminal liability for making a public interest disclosure.

Note 2: A defendant bears an evidential burden in relation to the matters in this subsection (see subsection 13.3(3) of the *Criminal Code*).

Extended geographical jurisdiction—category D

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

Definitions

- (5) In this section:

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

- (a) information that the Organisation has or had;

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

permitted disclosure means any of the following:

- (a) a disclosure made by a person in the course of any of the following:
 - (i) exercising a power, or performing a function or duty, under this Act;
 - (ii) doing anything the person is authorised to do by a warrant issued under this Act;
 - (iii) doing anything the person is required or permitted to do by a direction given by a prescribed authority;
 - (iv) exercising a power (including a power to make a complaint or to give information), or performing a function or duty, under Part V of the *Australian Federal Police Act 1979*, the *Ombudsman Act 1976* or a law of a State or Territory appointing or establishing a complaints agency;
- (aa) a disclosure made to or by an IGIS official for the purposes of the IGIS official exercising a power, or performing a function or duty, as an IGIS official;
- (b) a disclosure that is:
 - (i) made in the course of the questioning of the subject of a questioning warrant under the warrant; and
 - (ii) made by a person who is present during the questioning when making the disclosure;
- (c) a disclosure to a lawyer for the purpose of:
 - (i) obtaining legal advice in connection with a questioning warrant; or
 - (ii) obtaining representation in legal proceedings seeking a remedy relating to such a warrant or the treatment of a person in connection with such a warrant;
- (d) a disclosure for the purpose of the initiation, conduct or conclusion (by judgment or settlement) of legal proceedings relating to a remedy relating to a questioning warrant or the treatment of a person in connection with such a warrant;

- (e) a disclosure that is permitted by a prescribed authority to be made;
 - (f) a disclosure to one or more of the following persons, by the subject of a minor questioning warrant, by a parent, guardian or sibling of the subject, or by a minor's representative for the subject, of information described in paragraph (1)(c) or (2)(c) of this section in relation to the warrant:
 - (i) the subject;
 - (ii) a minor's representative for the subject;
 - (iii) a parent, guardian or sibling of the subject;
 - (iv) a prescribed authority;
 - (v) a person exercising authority under the warrant;
 - (vi) an IGIS official;
 - (vii) the Commonwealth Ombudsman;
 - (viii) a complaints agency;
 - (g) a disclosure for the purpose of making an application for assistance under subsection 34JE(1);
 - (h) a disclosure that is permitted by the Director-General to be made;
 - (i) a disclosure that is permitted by the Attorney-General to be made;
 - (j) a disclosure that is prescribed by the regulations.
- (6) For the purposes of paragraph (e) of the definition of ***permitted disclosure*** in subsection (5), a prescribed authority may give a direction, not inconsistent with the regulations (if any), permitting:
- (a) the subject of a questioning warrant; or
 - (b) a lawyer for the subject of a questioning warrant; or
 - (c) a minor's representative mentioned in subsection 34FG(1);
- to disclose specified information to a specified person. The direction may be given either unconditionally or subject to specified conditions.
- Note: The prescribed authority may revoke or amend the direction: see subsection 33(3) of the *Acts Interpretation Act 1901*.
- (7) A prescribed authority may give written permission under subsection (6):
- (a) on the prescribed authority's own initiative; or

(b) on application by, or on behalf of, the person to whom the permission relates.

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

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

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

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

- (10) In deciding whether to give permission to a person under subsection (6), (8) or (9), the prescribed authority, the Director-General or the Attorney-General (as the case requires) must take into account:
- (a) the person's family and employment interests, to the extent that the prescribed authority, the Director-General or the Attorney-General (as the case requires) is aware of those interests; and
 - (b) the public interest; and
 - (c) the risk to security if the permission were given; and
 - (d) any submissions made by the person, the person's lawyer or the Organisation.

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

- (11) If a permission under subsection (6), (8) or (9) is given subject to a condition and the condition is not met, the permission is not in force.
- (12) Regulations made for the purposes of paragraph (j) of the definition of ***permitted disclosure*** in subsection (5) may prescribe a disclosure by reference to one or more of the following:

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

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

Offences apply to original and previously disclosed information

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

Relationship with other laws prohibiting disclosure

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

Subdivision H—Complaints, reporting and records

34H Complaints and information about contravention of procedural statement

- (1) Contravention of the written statement of procedures in force under section 34AF may be the subject of:
 - (a) a complaint to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*; or
 - (b) a complaint to the Ombudsman under the *Ombudsman Act 1976*; or
 - (c) information given 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; or
 - (d) a complaint to a complaints agency in relation to the police force or police service of the State or Territory concerned.
- (2) This section does not limit:

- (a) the subjects of complaint under:
 - (i) the *Inspector-General of Intelligence and Security Act 1986*; or
 - (ii) the *Ombudsman Act 1976*; or
- (b) the subject of information given under Division 2 of Part V of the *Australian Federal Police Act 1979*.

34HA Providing reports to the Attorney-General

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

34HB Providing information to the Inspector-General

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

- (a) for each request for a questioning warrant—a copy of the request;
- (b) for each questioning warrant—a copy of the warrant, or of the written record of the warrant made in accordance with subsection 34BF(3), as the case requires;
- (c) for each request to vary a questioning warrant—a copy of the request;

- (d) for each variation to a questioning warrant—a copy of the variation, or of the written record of the variation made in accordance with subsection 34BG(7), as the case requires;
- (e) a statement containing details of any seizure or apprehension under this Division;
- (f) if the Director-General is informed of a concern of the Inspector-General under section 34DM—a statement describing any action the Director-General has taken as a result;
- (g) a copy of any video recording made under section 34DP.

Note 1: If a request for a questioning warrant is made orally, the Director-General is also required to provide the written record of the request as soon as practicable, and no later than 48 hours after the request is made, to the Inspector-General: see paragraph 34B(6)(b).

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

34HC Destruction of certain records obtained under warrant

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

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

Subdivision I—Miscellaneous

34J Discontinuance of action before cessation of warrant

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

- (a) inform the Attorney-General and the Inspector-General of Intelligence and Security accordingly; and

- (b) take such steps as are necessary to ensure that action under the warrant is discontinued.

34JA Certain functions and powers not affected

- (1) This Division does not affect a function or power of the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986*.
- (2) This Division does not affect a function or power of the Ombudsman under the *Ombudsman Act 1976* in relation to the Australian Federal Police.
- (3) This Division does not affect a function or power of a person under Part V of the *Australian Federal Police Act 1979*.

34JB IGIS official may be present at questioning or apprehension

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

34JC Rules of Court about proceedings connected with warrants

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

34JD Jurisdiction of State and Territory courts excluded

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

34JE Financial assistance

Application for assistance

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

Authorisation of assistance

- (3) The Attorney-General may authorise the Commonwealth to provide the subject with financial assistance, determined by the Attorney-General, in respect of the subject's appearance before a prescribed authority for questioning under the warrant.
- (4) Financial assistance may be given subject to such conditions (if any) as the Attorney-General determines.

Guidelines

- (5) The Attorney-General may, in writing, determine guidelines that are to be applied in authorising the provision of assistance under this section.
- (6) Guidelines under subsection (5) are not legislative instruments.

Limit on assistance

- (7) This section does not apply in relation to:
 - (a) any complaint the subject makes that is of the kind mentioned in paragraph 34DC(1)(i); or
 - (b) any information the subject gives that is of a kind mentioned in paragraph 34DC(1)(j); or
 - (c) any remedy the subject seeks that is of the kind mentioned in paragraph 34DC(1)(k).

34JF Cessation of effect of Division

This Division ceases to have effect on 7 September 2025.

11 Subsection 94(1)

Repeal the subsection, substitute:

- (1) The annual report prepared by the Director-General and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include a statement of:
 - (a) the total number of requests made during the period under Division 3 of Part III to the Attorney-General for the issue of warrants under that Division (including the number of requests made orally); and
 - (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.

12 Paragraph 94(2BC)(b)

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

Part 2—Application and saving provisions

13 Interpretation

In this Part:

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

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

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

14 Saving of warrants and requests under old law

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

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

15 Saving of appointment of prescribed authorities

- (1) This item applies to a person who was, immediately before the commencement day, a prescribed authority under section 34B of the old law.
- (2) The person is taken, after the commencement day, to be a prescribed authority under section 34AD of the new law.
- (3) If:
 - (a) the person is a member of a court; and
 - (b) the person has a function, power or duty as a prescribed authority that is neither judicial nor incidental to a judicial function or power;

the person has the function, power or duty in a personal capacity and not as a court or a member of a court.

16 Saving of regulations

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

17 Requests for warrants made under old law

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

18 Annual reports

- (1) Section 94 of the new law applies in relation to annual reports prepared on or after the commencement of this item.
- (2) For the purposes of section 94 of the new law:
 - (a) a reference to a request made during the period under Division 3 of Part III to the Attorney-General is taken to include a reference to a request made during that period under Division 3 of Part III of the old law to an issuing authority; and
 - (b) a reference to a warrant issued during the period under Division 3 of Part III is taken to include a reference to a warrant issued during that period under Division 3 of Part III of the old law; and

- (c) a reference to the number of times persons were apprehended during the period under Division 3 of Part III is taken to include a reference to the number of hours persons spent in detention under a warrant issued during that period under section 34G of the old law.

Part 3—Consequential amendments

Crimes Act 1914

19 Paragraph 15YU(1)(a)

Repeal the paragraph, substitute:

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

20 Subsection 15YU(1) (note)

Repeal the note, substitute:

- Note 1: For the definitions of *PMV-related questioning warrant* and *questioning warrant*, see subsection (5).
Note 2: For other ancillary offences, see section 11.6 of the *Criminal Code*.

21 At the end of section 15YU

Add:

Definitions

- (5) In this section:

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

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

Criminal Code Act 1995

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

Repeal the subsection (including the note), substitute:

- (4) To avoid doubt, the fact that the person is released from detention under the preventative detention order so that the person may be questioned before a prescribed authority under the warrant does not extend the period for which the preventative detention order remains in force in relation to the person.

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

Foreign Evidence Act 1994

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

Repeal the paragraph, substitute:

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

24 Subsection 3(1)

Insert:

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

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

Inspector-General of Intelligence and Security Act 1986

25 Section 9B

Repeal the section, substitute:

9B Power to enter places relating to questioning warrants

For the purposes of an inspection under section 9A, 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.

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.

Intelligence Services Act 2001

26A After paragraph 29(1)(cd)

Insert:

- (ce) if the Committee resolves to do so—to commence, by 7 September 2023, a review of the operation, effectiveness and implications of Division 3 of Part III of the *Australian Security Intelligence Organisation Act 1979*; and

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

Australian Security Intelligence Organisation Act 1979

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

Repeal the paragraph, substitute:

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

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

Insert:

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

29 Paragraph 34EC(2)(b)

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

Schedule 2—Amendments relating to tracking devices

Australian Security Intelligence Organisation Act 1979

1 Section 22

Insert:

authorising officer means:

- (a) the Director-General; or
- (b) an ASIO employee, or an ASIO affiliate, who holds, or is acting in, a position in the Organisation that is equivalent to or higher than a position occupied by an SES employee.

2 Section 22 (definition of *device*)

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

3 Section 22

Insert:

internal authorisation means an authorisation given under section 26G.

4 Section 22 (definition of *track*)

Repeal the definition, substitute:

track a person or an object means determine or monitor:

- (a) the location of the person or object; or
- (b) the status of the object.

5 Section 22 (definition of *tracking device*)

Repeal the definition, substitute:

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

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

Add “or internal authorisation”.

7 Subsections 26E(1) and (2)

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

8 After Subdivision D of Division 2 of Part III

Insert:

Subdivision DA—Use of tracking devices under internal authorisation**26G Use of tracking devices under internal authorisation***Request for authorisation*

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

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

- (a) entering premises or interfering with the interior of a vehicle without permission;
 - (b) remotely installing a tracking device;
 - (c) installing a tracking device to listen to a person;
 - (d) any other thing that the Organisation would otherwise need a warrant under section 25A to do.
- See section 26K.
- (2) The request must be made in relation to one or both of the following:
- (a) a particular person;
 - (b) an object or a class of object.
- (3) The request may be made:
- (a) in writing; or
 - (b) orally in person, or by telephone or other means of communication.
- (4) A request under subsection (1) must include a statement of:

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

Test for giving of authorisation

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

Authorisation may be subject to restrictions or conditions

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

26H Requirements for internal authorisations

- (1) An internal authorisation may be given:
- (a) in writing; or

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

26J What an internal authorisation authorises

Things that may be authorised—particular person

- (1) If an internal authorisation is given in relation to a particular person, the authorisation may authorise the Organisation to do, without warrant, one or more of the following:

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

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

Things that may be authorised—object or class of object

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

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

26K Certain acts not authorised

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

- (a) the doing of any thing that would involve either or both of the following:

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- (i) entering premises without permission from the owner or occupier of the premises;
 - (ii) interference with the interior of a vehicle without permission of the person having lawful possession or control of the vehicle;
 - (b) the remote installation of a tracking device or enhancement equipment in relation to the device;
 - (c) the installation, use or maintenance of a tracking device, or enhancement equipment in relation to the device, to listen to, record, observe or monitor the words, sounds or signals communicated to or by a person;
 - (d) the doing of any thing by the Organisation if, apart from section 26G, the Organisation could not do the thing without it being authorised by a warrant issued under section 25A.

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

26L Recovery of tracking devices

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

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

26M Exercise of authority under internal authorisations

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

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

26N Variation of internal authorisations

Request for variation

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

Giving of variation

- (5) The authorising officer may vary the authorisation only if the authorising officer is satisfied that there are reasonable grounds for believing that the authorisation, as varied, will substantially assist the collection of intelligence in respect of the security matter.

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- (6) If the variation extends, or further extends, the period during which the authorisation is in force, the total period during which the authorisation is in force must not exceed 90 days.
 - (7) An internal authorisation may be varied more than once under this section.

Requirements for variations

- (8) A variation under this section may be given:
 - (a) in writing; or
 - (b) orally in person, or by telephone or other means of communication.
- (9) If the variation is given orally, a written record of the variation must be made within 48 hours after the variation is given.

Written variations and records not legislative instruments

- (10) The following are not legislative instruments:
 - (a) a variation under this section;
 - (b) a written record referred to in subsection (9).

26P Discontinuance of action before expiration of internal authorisation

- (1) Subject to subsections (3) and (4), if an authorising officer is satisfied that the grounds on which an internal authorisation was given have ceased to exist, the authorising officer must, as soon as practicable, take such steps as are necessary to ensure that action under the internal authorisation is discontinued.
- (2) For the purposes of subsection (1), ***action under an internal authorisation*** does not include the recovery of a tracking device or any enhancement equipment in relation to the device.
- (3) If:
 - (a) an internal authorisation was given in relation to more than one of the matters mentioned in subsection 26G(2); and
 - (b) the grounds on which the internal authorisation was given continue to exist for at least one of those matters;

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

- (4) Subsection (1) does not apply to an authorising officer if another authorising officer has already taken, or started to take, such steps as are necessary to ensure that action under the internal authorisation is discontinued.

26Q Register of internal authorisations

- (1) The Director-General must establish and maintain a register of requests for internal authorisations.
- (2) The register may be kept by electronic means.
- (3) The register must include, for each request for an internal authorisation:
- (a) the name of the person who made the request; and
 - (b) the matter that is important in relation to security in respect of which the authorisation was requested; and
 - (c) the day on which the authorisation was given or refused; and
 - (d) the name of the authorising officer who gave or refused to give the authorisation; and
 - (e) if the authorisation was given:
 - (i) the day on which the authorisation ceased to be in force; and
 - (ii) whether action under the authorisation was discontinued in accordance with section 26P, and, if so, the day on which the action was discontinued; and
 - (f) the location at which any record relating to the request (including the request) is kept by the Organisation.

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

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

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

- (1) The Director-General may request the Attorney-General to issue a warrant under this section in respect of one or more tracking devices (the **relevant devices**), or enhancement equipment in relation to the device or devices (the **relevant equipment**), if:
 - (a) the relevant devices, or relevant equipment, were:
 - (i) installed in or on an object by the Organisation; or
 - (ii) used by the Organisation; or
 - (iii) maintained by the Organisation; and
 - (b) the installation, use or maintenance was not under:
 - (i) a surveillance device warrant; or
 - (ii) a warrant issued under section 27A; or
 - (iii) an identified person warrant; and
 - (c) recovery of the device or devices or equipment may involve either or both of the following:
 - (i) entering premises without permission from the owner or occupier of the premises;
 - (ii) interference with the interior of a vehicle without permission of the person having lawful possession or control of the vehicle.

Issue of warrant

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

Requirements for warrant

- (4) A warrant issued under this section must:
- (a) be signed by the Attorney-General; and
 - (b) specify:
 - (i) details of the relevant devices or relevant equipment; and
 - (ii) the day the warrant is issued; and
 - (iii) the period during which the warrant is in force, which must not be more than 90 days; and
 - (iv) any restrictions or conditions that the Attorney-General considers appropriate in the circumstances; and
 - (c) authorise the use of any force against persons and things that is necessary and reasonable to do the things authorised by the warrant; and
 - (d) state whether entry to premises is authorised to be made at any time of the day or night or during stated hours of the day or night.
- (5) Subparagraph (4)(b)(iii) does not prevent the issuing of further warrants in relation to the same devices or equipment.

Authorisation in warrant

- (6) A warrant issued under this section in respect of relevant devices or relevant equipment authorises the Organisation to:
- (a) recover the devices or equipment; and
 - (b) do any of the following:
 - (i) use the devices or equipment solely for the purposes of locating the devices or equipment;
 - (ii) enter any premises where the devices or equipment are reasonably believed to be, for the purpose of recovering the devices or equipment;
 - (iii) enter any other premises for the purpose of gaining entry to or exiting the premises referred to in subparagraph (ii);
 - (iv) enter into or onto, or alter, an object for the purpose of recovering the devices or equipment;

- (v) replace an object with an equivalent object for the purpose of recovering the devices or equipment;
- (vi) break open any thing for the purpose of recovering the devices or equipment;
- (vii) if the devices or equipment are installed in or on an object—temporarily remove the object from any place where it is situated for the purpose of recovering the devices or equipment and returning the object to that place;
- (viii) use a nominal amount of electricity from any source to power the devices or equipment;
- (ix) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (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

16 At the end of section 33

Add:

- (4) Nothing in this Division makes the use, installation, maintenance or recovery by the Organisation of a surveillance device lawful if the use, installation, maintenance or recovery would be prohibited under an applicable law of the Commonwealth, a State or a Territory (including the common law), unless the Organisation does so:
- (a) in accordance with a warrant issued under section 26, 27A or 27C; or
- (b) in accordance with an authorisation given under section 26G;
or
- (c) in accordance with subsection 26B(5) or (6), section 26C, 26D or 26E, or subsection 27A(3A) or (3B) or 27F(5).

17 After section 34A (first occurring)

Insert:

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

- (1) If an internal authorisation is given, the Director-General must:

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- (a) give the Attorney-General a written report that meets the requirements of subsection (2); and
 - (b) do so within 3 months of the day on which the internal authorisation ceases to be in force.
- (2) The report must state whether the authorisation was executed, and, if so:
- (a) give details of the extent to which any thing done in accordance with the authorisation has assisted the Organisation in carrying out its functions; and
 - (b) give details of the matter (the *security matter*) that is important in relation to security in respect of which the authorisation is given; and
 - (c) state the name, if known, of any person whose location was determined by the use of a tracking device in accordance with the authorisation; and
 - (d) state the period during which a tracking device was used in accordance with the authorisation; and
 - (e) give details of:
 - (i) any object in or on which a tracking device was installed in accordance with the authorisation; and
 - (ii) the premises where the object was located when the device was installed; and
 - (f) give details of the compliance with the restrictions or conditions (if any) to which the authorisation was subject; and
 - (g) state whether the authorisation was varied, and, if so:
 - (i) the number of variations; and
 - (ii) the reasons for each variation.

18 After paragraph 34AA(3)(c)

Insert:

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

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

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

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

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

21 After subsection 94(2BC)

Insert:

- (2BD) A report under subsection (1) must also include a statement of:
- (a) the total number of requests made under subsection 26G(1) during the period; and
 - (b) the total number of authorisations given under section 26G during the period.
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*[Minister’s second reading speech made in—
House of Representatives on 13 May 2020
Senate on 10 December 2020]*

(73/20)
