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Australian Security Intelligence Organisation Act 1979



- C2013C00437

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Australian Security Intelligence Organisation Act 1979

No. 113, 1979 as amended

Compilation start date: 29 June 2013

Includes amendments up to: Act No. 103, 2013

About this compilation

The compiled Act

This is a compilation of the *Australian Security Intelligence Organisation Act 1979* as amended and in force on 29 June 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 26 July 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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An Act relating to the Australian Security Intelligence Organisation

–Preliminary

title

This Act may be cited as the *Australian Security Intelligence Organisation Act 1979*.

enactment

This Act shall come into operation on a date to be fixed by Proclamation.

The *Australian Security Intelligence Organisation Act 1956* and the *Australian Security Intelligence Organisation Act 1976* are repealed.

definitions

In this Act, unless the contrary intention appears:

activities prejudicial to security includes any activities concerning which Australia has responsibilities to a foreign country as referred to in paragraph (b) of the definition of ***security*** in this section.

acts of foreign interference means activities relating to Australia that are carried on by or on behalf of, are directed or subsidised by or are undertaken in active collaboration with, a foreign power, being activities that:

- (a) are clandestine or deceptive and:
 - (i) are carried on for intelligence purposes;
 - (ii) are carried on for the purpose of affecting political or governmental processes
- or

- (iii) are otherwise detrimental to the interests of Australia; or
- (b) involve a threat to any person.

ASIS has the meaning given by the *Intelligence Services Act 2001*.

attacks on Australia's defence system means activities that are intended to, and are likely to, obstruct, hinder or interfere with the performance by the Defence Force of its functions or with the carrying out of other activities by or for the Commonwealth for the purposes of the defence or safety of the Commonwealth.

Australia, when used in a geographical sense, includes the external Territories.

authority of a State:

- (a) in Part IV—has the meaning given by subsection 35(1); and
- (b) otherwise—includes:
 - (i) a Department of State of a State, or a Department of the Public Service of a State; and
 - (ii) a body, whether incorporated or not, established for public purposes by or under a law of a State; and
 - (iii) a body corporate in which a State or a body referred to in subparagraph (ii) has a controlling interest.

authority of the Commonwealth includes:

- (a) a Department of State or an Agency within the meaning of the *Public Service Act 1999*;
- (aa) a Department within the meaning of the *Parliamentary Service Act 1999*;
- (b) the Defence Force;
- (c) a body, whether incorporated or not, established for public purposes by or under a law of the Commonwealth or of a Territory;
- (d) the holder of an office established for public purposes by or under a law of the Commonwealth or of a Territory;

- (e) a prescribed body established in relation to public purposes that are of concern to the Commonwealth and any State or States; and
- (f) a body corporate in which the Commonwealth or a body referred to in paragraph (c) has a controlling interest.

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

carrier has the same meaning as in the *Telecommunications Act 1997*.

certified copy, in relation to a warrant or an instrument revoking a warrant, means a copy of the warrant or instrument that has been certified in writing by the Director-General or a Deputy Director-General to be a true copy of the warrant or instrument.

Committee on Intelligence and Security means the Parliamentary Joint Committee or Intelligence and Security established under the *Intelligence Services Act 2001*.

data storage device means a thing (for example, a disk or file server) containing (whether temporarily or permanently), or designed to contain (whether temporarily or permanently), data for use by a computer.

Defence Department means the Department of State that deals with defence and that is administered by the Minister administering section 1 of the *Defence Act 1903*.

Defence Minister means the Minister administering section 1 of the *Defence Act 1903*.

Deputy Director-General means an officer of the Organisation who holds office as Deputy Director-General of Security.

DIGO has the meaning given by the *Intelligence Services Act 2001*.

Director-General means the Director-General of Security holding office under this Act.

DSD has the meaning given by the *Intelligence Services Act 2001*.

Foreign Affairs Minister means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

foreign intelligence means intelligence about the capabilities, intentions or activities of people or organisations outside Australia.

foreign power means:

- (a) a foreign government;
- (b) an entity that is directed or controlled by a foreign government or governments; or
- (c) a foreign political organisation.

frisk search means:

- (a) a search of a person conducted by quickly running the hands over the person's outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

intelligence or security agency means any of the following:

- (a) the Australian Secret Intelligence Service;
- (b) the Office of National Assessments;
- (c) that part of the Defence Department known as the Defence Imagery and Geospatial Organisation;
- (d) that part of the Defence Department known as the Defence Intelligence Organisation;
- (e) that part of the Defence Department known as the Defence Signals Directorate.

Judge means a Judge of a court created by the Parliament.

law enforcement agency means an authority of the Commonwealth, or an authority of a State, that has functions relating to law enforcement.

ordinary search means a search of a person or of articles on his or her person that may include:

- (a) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
- (b) an examination of those items.

Organisation means the Australian Security Intelligence Organisation.

permanent resident means a person:

- (a) in the case of a natural person:
 - (i) who is not an Australian citizen;
 - (ii) whose normal place of residence is situated in Australia;
 - (iii) whose presence in Australia is not subject to any limitation as to time imposed by law; and
 - (iv) who is not an unlawful non-citizen within the meaning of the *Migration Act 1958*; or
- (b) in the case of a body corporate:
 - (i) which is incorporated under a law in force in a State or Territory; and
 - (ii) the activities of which are not controlled (whether directly or indirectly) by a foreign power.

politically motivated violence means:

- (a) acts or threats of violence or unlawful harm that are intended or likely to achieve a political objective, whether in Australia or elsewhere, including acts or threats carried on for the purpose of influencing the policy or acts of a government, whether in Australia or elsewhere; or
- (b) acts that:
 - (i) involve violence or are intended or are likely to involve or lead to violence (whether by the persons who carry on those acts or by other persons); and

- (ii) are directed to overthrowing or destroying, or assisting in the overthrow or destruction of, the government or the constitutional system of government of the Commonwealth or of a State or Territory; or
- (ba) acts that are terrorism offences; or
- (c) acts that are offences punishable under the *Crimes (Foreign Incursions and Recruitment) Act 1978*, the *Crimes (Hostages) Act 1989* or Division 1 of Part 2, Part 3, of the *Crimes (Ships and Fixed Platforms) Act 1992* or under Division 1 or 4 of Part 2 of the *Crimes (Aviation) Act 1991*; or
- (d) acts that:
 - (i) are offences punishable under the *Crimes (Internationally Protected Persons) Act 1976*; or
 - (ii) threaten or endanger any person or class of persons specified by the Minister for the purposes of this subparagraph by notice in writing given to the Director-General.

promotion of communal violence means activities that are directed to promoting violence between different groups of persons in the Australian community so as to endanger the peace, order or good government of the Commonwealth.

security means:

- (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from:
 - (i) espionage;
 - (ii) sabotage;
 - (iii) politically motivated violence;
 - (iv) promotion of communal violence;
 - (v) attacks on Australia's defence system; or
 - (vi) acts of foreign interference;
- whether directed from, or committed within, Australia or not; and

- (aa) the protection of Australia's territorial and border integrity from serious threats; a
- (b) the carrying out of Australia's responsibilities to any foreign country in relation to matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).

seizable item means anything that could present a danger to a person or that could be used to assist a person to escape from lawful custody.

serious crime means conduct that, if engaged in within, or in connection with, Austral would constitute an offence against the law of the Commonwealth, a State or a Territo punishable by imprisonment for a period exceeding 12 months.

staff member of a body (however described) includes:

- (a) the head (however described) of the body, or another person who holds an office c appointment in relation to the body; and
- (b) a person who is otherwise a member of the staff of the body (whether an employe of the body, a consultant or contractor to the body, or a person who is made available by an authority of the Commonwealth, an authority of a State, or other person, to perform services for the body).

State includes the Australian Capital Territory and the Northern Territory.

strip search means a search of a person or of articles on his or her person that may include:

- (a) requiring the person to remove all of his or her garments; and
- (b) an examination of the person's body (but not of the person's body cavities) and of those garments.

Territory does not include the Australian Capital Territory or the Northern Territory.

terrorism offence means:

- (a) an offence against Subdivision A of Division 72 of the *Criminal Code*; or

(b) an offence against Part 5.3 of the *Criminal Code*.

Note: A person can commit a terrorism offence against Part 5.3 of the *Criminal Code* even if no terrorist act (as defined in that Part) occurs.

violence includes the kidnapping or detention of a person.

cation of the *Criminal Code*

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

on of Act to external Territories

This Act extends to every external Territory.

s of certain notices to be given to Inspector-General

Where the Minister gives a notice in writing to the Director-General for the purposes of subparagraph (d)(ii) of the definition of ***politically motivated violence*** in section 4, the Minister shall give a copy of the notice to the Inspector-General of Intelligence and Security.

—The Organisation and the Director-General

uance of Organisation

The Australian Security Intelligence Organisation, being the Organisation that was continued in existence by the Acts repealed by this Act, is continued in existence.

r-General

- (1) There shall be a Director-General of Security, who shall be appointed by the Governor-General and shall hold office, subject to this Act, on such terms and conditions as the Governor-General determines.
- (2) Before a recommendation is made to the Governor-General for the appointment of a person as Director-General, the Prime Minister shall consult with the Leader of the Opposition in the House of Representatives.

l of Organisation

- (1) The Organisation shall be under the control of the Director-General.
- (2) Subject to subsections (4) and (5), in the performance of the Director-General's functions under this Act, the Director-General is subject to the directions of the Minister.
- (3) If the Director-General requests that a direction of the Minister be put in writing, the Minister shall comply with the request.
- (4) The Minister is not empowered to override the opinion of the Director-General concerning the nature of the advice that should be given by the Organisation.

- (5) The Minister is not empowered to override the opinion of the Director-General:
- (a) on the question whether the collection of intelligence by the Organisation concerning a particular individual would, or would not, be justified by reason of its relevance to security; or
 - (b) on the question whether a communication of intelligence concerning a particular individual would be for a purpose relevant to security;
- except by a direction contained in an instrument in writing that sets out the Minister's reasons for overriding the opinion of the Director-General.
- (6) The Minister shall, as soon as practicable after giving a direction in writing to the Director-General, cause a copy of the direction to be given to the Inspector-General of Intelligence and Security and, if the direction relates to a question referred to in subsection (5), to the Prime Minister.
- (7) Where intelligence is collected or communicated pursuant to a direction referred to in subsection (5), the Director-General shall cause a record in writing to be kept of the intelligence so collected or communicated.

Guidelines

- (1) The Minister may, from time to time, by written notice given to the Director-General, give to the Director-General guidelines to be observed:
- (a) in the performance by the Organisation of its functions or the exercise of its powers or
 - (b) in the exercise by the Director-General of his or her powers under sections 85 and 86.
- (2) The Minister shall, as soon as practicable after the commencement of this section, by notice in writing given to the Director-General, give to the Director-General guideline to be observed in relation to the performance of that part of the Organisation's functions

that relates to politically motivated violence, and may, from time to time, vary or replace guidelines so given.

- (3) Subject to subsection (4), the Minister shall cause a copy of any guidelines given under subsection (1) or (2) to be laid before each House of the Parliament within 15 sitting days of that House after the guidelines were given.
- (4) Where the laying of a copy of guidelines before the Parliament in accordance with subsection (3) would result in the disclosure of information that would, in the opinion of the Minister, be contrary to the public interest by reason that it would prejudice security of the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals, the Minister may cause a copy of the guidelines to be laid before each House of the Parliament with such deletions as the Minister thinks necessary to avoid that result or decline to cause a copy to be laid before each House of the Parliament.
- (5) The Minister shall, in accordance with arrangements made between the Minister and the Leader of the Opposition in the House of Representatives, make available to the Leader of the Opposition a copy of any guidelines given under subsection (1) or (2), but it is the duty of the Leader of the Opposition to treat as secret any part of those guidelines that has not been laid before a House of the Parliament.
- (6) The Minister shall, as soon as practicable after guidelines under subsection (1) or (2) are given to the Director-General, give a copy of the guidelines to the Inspector-General of Intelligence and Security and, unless the Minister considers it inappropriate to do so, to the Committee on Intelligence and Security.

Office of Director-General

- (1) Subject to sections 12 and 13, the Director-General holds office for such period, not exceeding 7 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.

Remuneration and allowances of Director-General

- (1) The Director-General shall be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination of that remuneration by the Tribunal is in operation, he or she shall be paid such remuneration as is prescribed.
- (2) The Director-General shall be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973* and to section 14.

Leave of absence

- (1) The Director-General has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Director-General leave of absence, other than recreation leave, on such terms and conditions as to remuneration or otherwise as the Minister determines.

Resignation

The Director-General may resign from office by writing signed by the Director-General and delivered to the Governor-General.

Termination of appointment

- (1) The Governor-General may terminate the appointment of the Director-General by reason of physical or mental incapacity, misbehaviour or failure to comply with a provision of this Act.
- (2) If the Director-General:
 - (a) is absent from duty, except with leave of absence, for 14 consecutive days or for 20 days in any 12 months; or

- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit;
- the Governor-General shall terminate his or her appointment.

5 Director-General

- (1) The Minister may appoint a person to act as Director-General:
 - (a) during a vacancy in the office of Director-General; or
 - (b) during any period, or during all periods, when the Director-General is absent from duty or from Australia or is, for any reason, unable to perform the functions of his or her office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) Before a recommendation is made to the Minister for the appointment of a person, under subsection (1), to act as Director-General, the Prime Minister shall consult with the Leader of the Opposition in the House of Representatives, unless it is impracticable to do so.
- (3) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (4) The Minister may:
 - (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Director-General; and
 - (b) at any time terminate such an appointment.
- (5) Where a person is acting as Director-General in accordance with paragraph (1)(b) and the office of Director-General becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a

period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

- (6) The appointment of a person to act as Director-General ceases to have effect if the person resigns the appointment by writing signed by the person and delivered to the Minister.
- (7) While a person is acting as Director-General, he or she has, and may exercise, all the powers and shall perform all the functions of the Director-General.

Appointment of a Judge as Director-General

- (1) The appointment of a Judge as Director-General, or service of a Judge as Director-General, does not affect the tenure of his or her office as a Judge or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of his or her office as a Judge and, for all purposes, his or her service as Director-General shall be taken to be service as the holder of his or her office as a Judge.
- (2) Subject to subsection (3), if the Director-General is a Judge, he or she shall be paid salary at such rate (if any), and an annual allowance at such rate (if any), as are fixed from time to time by the Parliament.
- (3) If the Director-General is a Judge, he or she is not, while he or she receives salary or annual allowance as a Judge, entitled to salary or annual allowance, as the case may be, under this Act, except to the extent (if any) that the salary or annual allowance that would be payable to him or her under this Act apart from this subsection exceeds the salary or annual allowance payable to him or her as a Judge.

Delegation

- (1) The Director-General may, either generally or as otherwise provided by the instrument of delegation, by writing signed by the Director-General, delegate to an officer of the

Organisation all or any of the powers of the Director-General that relate to the management of the staff of the Organisation or the financial management of the Organisation.

- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act and the regulations, be deemed to have been exercised by the Director-General.
- (3) A delegation under this section does not prevent the exercise of a power by the Director-General.

I—Functions and powers of Organisation

1—General

ions of Organisation

- (1) The functions of the Organisation are:
 - (a) to obtain, correlate and evaluate intelligence relevant to security;
 - (b) for purposes relevant to security, to communicate any such intelligence to such persons, and in such manner, as are appropriate to those purposes;
 - (c) to advise Ministers and authorities of the Commonwealth in respect of matters relating to security, in so far as those matters are relevant to their functions and responsibilities.
 - (ca) to furnish security assessments to a State or an authority of a State in accordance with paragraph 40(1)(b);
 - (d) to advise Ministers, authorities of the Commonwealth and such other persons as the Minister, by notice in writing given to the Director-General, determines on matters relating to protective security; and
 - (e) to obtain within Australia foreign intelligence pursuant to section 27A or 27B of this Act or section 11A, 11B or 11C of the *Telecommunications (Interception and Access) Act 1979*, and to communicate any such intelligence in accordance with this Act or the *Telecommunications (Interception and Access) Act 1979*; and
 - (f) to co-operate with and assist bodies referred to in section 19A in accordance with that section.
- (2) It is not a function of the Organisation to carry out or enforce measures for security within an authority of the Commonwealth.

es for advice and other services

- (1) The Director-General may determine in writing that fees are payable by persons for the giving of advice or the provision of services by the Organisation to the persons at their request.
- (2) Unless the Director-General determines otherwise, the Organisation may refuse to give the advice, or provide the service, to a person until the fee is paid in whole or part. If the whole or part of the fee is not paid before the advice is given or the service is provided the amount concerned is a debt due to the Commonwealth and may be recovered by the Commonwealth in a court of competent jurisdiction.
- (3) The amount of the fee must not exceed the reasonable costs to the Organisation of giving the advice or providing the service.
- (4) The Director-General may, on application in writing by a person who is or will be required to pay a fee, if the Director-General considers it appropriate in the circumstances:
 - (a) not require the person to pay any of the fee; or
 - (b) require the person to pay only a specified part of the fee.

not concerned with lawful dissent etc.

This Act shall not limit the right of persons to engage in lawful advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as prejudicial to security, and the functions of the Organisation shall be construed accordingly.

unication of intelligence etc.*Who may communicate intelligence*

- (1) The communication of intelligence on behalf of the Organisation shall be made only by the Director-General or by a person acting within the limits of authority conferred on

the person by the Director-General.

Offence for unauthorised communication of information

(2) If a person makes a communication of any information or matter that has come to the knowledge or into the possession of the person by reason of his or her being, or having been, an officer or employee of the Organisation or his or her having entered into any contract, agreement or arrangement with the Organisation, being information or matter that was acquired or prepared by or on behalf of the Organisation in connection with its functions or relates to the performance by the Organisation of its functions, other than communication made:

- (a) to the Director-General or an officer or employee of the Organisation:
 - (i) by an officer or employee of the Organisation—in the course of the duties of the officer or employee; or
 - (ii) by a person who has entered into any such contract, agreement or arrangement—in accordance with the contract, agreement or arrangement;
 - (b) by a person acting within the limits of authority conferred on the person by the Director-General; or
 - (c) with the approval of the Director-General or of an officer of the Organisation having the authority of the Director-General to give such an approval;
- the first-mentioned person is guilty of an offence.

Penalty: Imprisonment for 2 years.

Communicating information to appropriate authorities of the Commonwealth or a State

- (3) A person referred to in subsection (1) may communicate information to a person referred to in subsection (4) if:
- (a) the information has come into the possession of the Organisation in the course of performing the Organisation's functions under section 17; and
 - (b) either:

- (i) the information relates, or appears to relate, to the commission, or intended commission, of a serious crime; or
- (ii) the Director-General, or a person authorised for the purpose by the Director-General, is satisfied that the national interest requires the communication; and
- (c) the information relates, or appears to relate, to the performance of the functions, responsibilities or duties of the person referred to in subsection (4).

Note: There are additional restrictions, in the *Telecommunications (Interception and Access) Act 19* on communicating telecommunications information.

- (4) The persons to whom information may be communicated under subsection (3) are the following:
- (a) a Minister;
 - (b) a staff member of an authority of the Commonwealth;
 - (c) a staff member of an authority of a State.

Communicating information to ASIS, DSD and DIGO

- (4A) A person referred to in subsection (1) may communicate information to a staff member of ASIS, DSD or DIGO if:
- (a) the information has come into the possession of the Organisation in the course of performing the Organisation's functions under section 17; and
 - (b) the information relates, or appears to relate, to the performance of ASIS, DSD or DIGO's functions (as the case requires).

Communicating information in relation to emergency declarations

- (4B) A person referred to in subsection (1) may communicate information, in accordance with Part VIA of the *Privacy Act 1988*, if:
- (a) the information has come into the possession of the Organisation in the course of performing its functions under section 17; and

- (b) an emergency declaration (within the meaning of section 80G of that Act) is in force.

Attorney-General's consent required for prosecution of offence

- (5) A prosecution for an offence against subsection (2) shall be instituted only by or with the consent of the Attorney-General.

**Co-operation with other authorities in connection with performance of
Organisation's functions**

- (1) So far as necessary for, or conducive to, the performance of the Organisation's functions, the Organisation may, subject to any arrangements made or directions given by the Minister, co-operate with:
 - (a) authorities of the Commonwealth;
 - (b) Departments, Police Forces and authorities of the States; and
 - (c) authorities of other countries approved by the Minister as being capable of assisting the Organisation in the performance of its functions.
- (2) A person referred to in subsection 18(1) may, where the Organisation is co-operating with an authority of another country in accordance with paragraph (1)(c), communicate to an officer of that authority information that has come into the possession of the Organisation in the course of performing its functions under section 17, being information that is relevant to the security of that other country and that could not, apart from this subsection, be communicated to that officer.

Note: There are additional restrictions, in the *Telecommunications (Interception and Access) Act 1979*, on communicating telecommunications information.

**operation with intelligence and law enforcement agencies etc. in connection
with performance of their functions**

- (1) The Organisation may co-operate with and assist the following bodies in the performance of their functions:
 - (a) ASIS;
 - (b) DSD;
 - (c) DIGO;
 - (d) a law enforcement agency;
 - (e) an authority of the Commonwealth, or an authority of a State, that is prescribed by the regulations for the purposes of this paragraph.
- (2) However, the Organisation may only do so:
 - (a) subject to any arrangements made or directions given by the Minister; and
 - (b) on request by the head (however described) of the body referred to in subsection (1).
- (3) Without limiting subsection (1), in co-operating with and assisting a body in accordance with this section, the Organisation may make the services of officers and employees, and other resources, of the Organisation available to the body.

Communicating information

- (4) A person referred to in subsection 18(1) may communicate information to a staff member of a body referred to in paragraph (1)(d) or (e) if:
 - (a) the information has come into the possession of the Organisation in the course of performing the Organisation's functions under section 17; and
 - (b) the information is communicated for the purposes of co-operating with or assisting the body under this section.

Note 1: For communication of information to ASIS, DSD and DIGO, see subsection 18(4A).

Note 2: There are additional restrictions, in the *Telecommunications (Interception and Access) Act 1979*, on communicating telecommunications information.

Responsibility of Director-General in relation to functions of Organisation

The Director-General shall take all reasonable steps to ensure that:

- (a) the work of the Organisation is limited to what is necessary for the purposes of the discharge of its functions; and
- (b) the Organisation is kept free from any influences or considerations not relevant to its functions and nothing is done that might lend colour to any suggestion that it is concerned to further or protect the interests of any particular section of the community, or with any matters other than the discharge of its functions.

Leader of Opposition to be kept informed on security matters

The Director-General shall consult regularly with the Leader of the Opposition in the House of Representatives for the purpose of keeping him or her informed on matters relating to security.

2—Special powers

Interpretation

In this Division, unless the contrary intention appears:

carrier means:

- (a) a carrier within the meaning of the *Telecommunications Act 1997*; or
- (b) a carriage service provider within the meaning of that Act.

communicate includes cause to be communicated.

computer means a computer, a computer system or part of a computer system.

data includes information, a computer program or part of a computer program.

examination includes any act or process for the purpose of producing sounds, images or information from a record, and **examine** has a corresponding meaning.

listening device means any instrument, device or equipment capable of being used, whether alone or in conjunction with any other instrument, device or equipment, to record or listen to words, images, sounds or signals.

premises includes any land, place, vehicle, vessel or aircraft.

record when used as a noun, means:

- (a) a document (including any written or printed material); or
- (b) an object (including a sound recording, magnetic tape or disc, microform, photograph or film) by which words, images, sounds or signals are recorded or stored or from which information can be obtained.

signals includes light emissions and electromagnetic emissions.

telecommunications facility means a facility within the meaning of section 7 of the *Telecommunications Act 1997*.

Getting information or documents from operators of aircraft or vessels

- (1) For the purposes of carrying out the Organisation's functions, an authorised officer or employee may:
 - (a) ask an operator of an aircraft or vessel questions relating to the aircraft or vessel, or its cargo, crew, passengers, stores or voyage; or
 - (b) request an operator of an aircraft or vessel to produce documents relating to the aircraft or vessel, or its cargo, crew, passengers, stores or voyage, that are in the possession or under the control of the operator.
- (2) A person who is asked a question or requested to produce a document under subsection (1) must answer the question or produce the document as soon as practicable.

Offence

- (3) A person commits an offence if:
 - (a) the person is an operator of an aircraft or vessel; and
 - (b) the person is asked a question or requested to produce a document under subsection (1); and
 - (c) the person fails to answer the question or produce the document.

Penalty: 60 penalty units.

- (4) Subsection (3) is an offence of strict liability.

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

- (5) It is a defence to a prosecution for an offence against subsection (3) if the person charged had a reasonable excuse for:

- (a) failing to answer the question; or
 - (b) failing to produce the document.
- (6) The Director-General, or a senior officer of the Organisation appointed by the Director-General in writing to be an authorising officer for the purposes of this subsection, may authorise, in writing, an officer or employee of the Organisation, or a class of such officers or employees, for the purposes of this section.
- (7) In this section:

authorised officer or employee means an officer or employee who is authorised under subsection (6) for the purposes of this section.

operator has the meaning given by section 4 of the *Customs Act 1901*.

senior officer of the Organisation means an officer of the Organisation who holds or performs the duties of an office that is:

- (a) equivalent to a position occupied by an SES employee; or
- (b) designated as an office of Coordinator by the Director-General under section 85.

ise of authority under warrants etc.

- (1) The Director-General, or a senior officer of the Organisation appointed by the Director-General in writing to be an authorising officer for the purposes of this subsection, may, by signed writing, approve officers and employees of the Organisation and other people, as people authorised to exercise, on behalf of the Organisation, the authority conferred by relevant warrants or relevant device recovery provisions.
- (2) The authority conferred by a relevant warrant or relevant device recovery provision may be exercised on behalf of the Organisation only by the Director-General or an officer, employee or other person approved under subsection (1).
- (3) In this section:

relevant device recovery provision means subsection 26(6A), 26B(7), 26C(7), 27A(3A) or (3B).

relevant warrant means a warrant issued under section 25, 25A, 26, 26B, 26C, 27, 27AA or 29 or under Division 3.

senior officer of the Organisation means an officer of the Organisation who holds or performs the duties of an office that is:

- (a) equivalent to a position occupied by an SES employee; or
- (b) designated as an office of Coordinator by the Director-General under section 85.

1 warrants

Issue of search warrant

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to records or other things on particular premises (the ***subject premises***) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the ***security matter***) that is important in relation to security.

Authorisation in warrant

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the subject premises, which must also be specified in the warrant.

Things that may be specified in warrant

- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) entering the subject premises;
 - (b) searching the subject premises for the purpose of finding records or other things relevant to the security matter and, for that purpose, opening any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that any such records or other things may be found;
 - (c) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
 - (d) removing and retaining any record or other thing so found, for the purposes of:
 - (i) inspecting or examining it; and
 - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant;
 - (e) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
 - (f) any other thing reasonably incidental to any of the above.

Personal searches may be specified

- (4A) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
- (a) conducting an ordinary search or a frisk search of a person if:
 - (i) the person is at or near the subject premises when the warrant is executed; or
 - (ii) there is reasonable cause to believe that the person has on his or her person records or other things relevant to the security matter;

- (b) inspecting or otherwise examining any records or other things so found, and making copies or transcripts of any such record or other thing that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
- (c) removing and retaining any record or other thing so found, for the purposes of:
 - (i) inspecting or examining it; and
 - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant.

Certain personal searches not authorised

- (4B) Subsection (4A) does not authorise a strip search or a search of a person's body cavities

Time period for retaining records and other things

- (4C) A record or other thing retained as mentioned in paragraph (4)(d) or (4A)(c) may be retained:
- (a) if returning the record or thing would be prejudicial to security—only until returning the record or thing would no longer be prejudicial to security; and
 - (b) otherwise—for only such time as is reasonable.

Other things that may be specified

- (5) The Minister may also specify any of the following things if he or she considers it appropriate in the circumstances:
- (a) where there is reasonable cause to believe that data relevant to the security matter may be accessible by using a computer or other electronic equipment, or a data storage device, brought to or found on the subject premises—using the computer equipment or device for the purpose of obtaining access to any such data and, if necessary to achieve that purpose, adding, deleting or altering other data in the computer, equipment or device;

- (b) using the computer, equipment or device to do any of the following:
 - (i) inspecting and examining any data to which access has been obtained;
 - (ii) converting any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, into documentary form and removing any such document;
 - (iii) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act, to any data storage device and removing the device;
- (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (d) any other thing reasonably incidental to any of the above.

Certain acts not authorised

- (6) Subsection (5) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use by other person of a computer or other electronic equipment, or a data storage device, found on the subject premises, or that causes any loss or damage to other persons lawfully using the computer, equipment or device.

Authorisation of entry measures

- (7) The warrant must:
 - (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
 - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

Statement about warrant coming into force

- (8) The warrant may state that it comes into force on a specified day (after the day of issue or when a specified event happens. The day must not begin nor the event happen more than 28 days after the end of the day on which the warrant is issued.

When warrant comes into force

- (9) If the warrant includes such a statement, it comes into force at the beginning of the specified day or when the specified event happens. Otherwise, it comes into force when it is issued.

Duration of warrant

- (10) The warrant must specify the period during which it is to be in force. The period must not be more than 90 days, although the Minister may revoke the warrant before the period has expired.

Issue of further warrants not prevented

- (11) Subsection (10) does not prevent the issue of any further warrant.

Conduct of ordinary or frisk search under search warrant

An ordinary search or frisk search of a person that is authorised under paragraph 25(4A)

- (a) must, if practicable, be conducted by a person of the same sex as the person being searched.

Computer access warrant*Issue of computer access warrant*

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this

section.

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that there are reasonable grounds for believing that access by the Organisation to data held in a particular computer (the **target computer**) will substantially assist the collection of intelligence in accordance with this Act in respect of a matter (the **security matter**) that is important in relation to security.

Authorisation in warrant

- (3) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to the target computer, which must also be specified in the warrant.

Things that may be authorised in warrant

- (4) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (aa) entering specified premises for the purposes of doing the things mentioned in this subsection;
 - (a) using:
 - (i) a computer; or
 - (ii) a telecommunications facility operated or provided by the Commonwealth or a carrier; or
 - (iii) any other electronic equipment; or
 - (iv) a data storage device;
- for the purpose of obtaining access to data that is relevant to the security matter and is held in the target computer at any time while the warrant is in force and, if

necessary to achieve that purpose, adding, deleting or altering other data in the target computer;

- (b) copying any data to which access has been obtained, that appears to be relevant to the collection of intelligence by the Organisation in accordance with this Act;
- (c) any thing reasonably necessary to conceal the fact that any thing has been done under the warrant;
- (d) any other thing reasonably incidental to any of the above.

Note: As a result of the warrant, an ASIO officer who, by means of a telecommunications facility, obtains access to data stored in the target computer etc. will not commit an offence under Part 10-7 of the *Criminal Code* or equivalent State or Territory laws (provided that the ASIO officer acts within the authority of the warrant).

Certain acts not authorised

- (5) Subsection (4) does not authorise the addition, deletion or alteration of data, or the doing of any thing, that interferes with, interrupts or obstructs the lawful use of the target computer by other persons, or that causes any loss or damage to other persons lawfully using the target computer.

Authorisation of entry measures

- (5A) The warrant must:
 - (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
 - (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

Duration of warrant

- (6) The warrant must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

Issue of further warrants not prevented

- (7) Subsection (6) does not prevent the issue of any further warrant.

Listening devices

- (1) It is unlawful for an officer, employee or agent of the Organisation, for the purposes of the Organisation, to use a listening device for the purpose of listening to or recording words, images, sounds or signals being communicated by another person (in this subsection referred to as the *communicator*) unless:

- (a) the communicator intends, or should reasonably expect, those words, images, sounds or signals to be communicated to the first-mentioned person or to a class or group of persons in which the first-mentioned person is included;
- (b) the first-mentioned person does so with the consent of the communicator; or
- (c) the first-mentioned person does so in accordance with a warrant issued under this Division;

and it is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

- (2) Notwithstanding any law of a State or Territory, an officer, employee or agent of the Organisation, acting on behalf of the Organisation, does not act unlawfully by reason only of using a listening device as referred to in subsection (1) in circumstances in which paragraph (a), (b) or (c) of that subsection is applicable.
- (3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section authorizing the use of a listening device in relation to a particular person, the Minister is satisfied that:
- (a) that person is engaged in, or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and

- (b) the use by the Organisation of a listening device to listen to or record words, images, sounds or signals communicated by or to that person will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;

the Minister may, by warrant signed by the Minister, authorize the Organisation, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purpose of listening to or recording words, images, sounds or signals communicated by or to that person and such a warrant may authorize the Organisation to enter any premises in which that person is, or is likely to be, or any other premises specified in the warrant from which words, images, sounds or signals communicated to or to that person while that person is in those first-mentioned premises can be listened to or recorded with the use of a listening device, for the purpose of installing, maintaining or using a listening device.

- (4) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section authorizing the use of a listening device to listen to or record words, images, sounds or signals communicated from or to particular premises, the Minister is satisfied that:

- (a) those premises are used, likely to be used or frequented by a person engaged in, or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
- (b) the use on behalf of the Organisation of a listening device to listen to or record words, images, sounds or signals communicated by or to persons in those premises will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;

the Minister may, by warrant signed by the Minister, authorize the Organisation, subject to any conditions or restrictions that are specified in the warrant, to use a listening device for the purpose of listening to or recording words, images, sounds or signals communicated by or to any person while the person is in those premises and such a warrant may authorize the Organisation to enter those premises, or any other premises

specified in the warrant from which words, images, sounds or signals communicated to or to any person while the person is in those first-mentioned premises can be listened to or recorded with the use of a listening device, for the purpose of installing, maintaining or using a listening device.

(5) The warrant must:

- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsections (3) and (4); and
- (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

(6) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months, but may be revoked by the Minister at any time before the expiration of the period so specified.

(6A) If a listening device is installed in accordance with the warrant, the Organisation is authorised to do any of the following:

- (a) enter any premises for the purpose of recovering the listening device;
- (b) recover the listening device;
- (c) use any force that is necessary and reasonable to do either of the above;

at the following time:

- (d) at any time while the warrant is in force or within 28 days after it ceases to be in force;
- (e) if the listening device 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.

(7) Subsection (6) shall not be construed as preventing the issue of any further warrant.

(8) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the

Telecommunications (Interception and Access) Act 1979, constitute the interception of communication passing over a telecommunications system operated by a carrier or a carriage service provider.

Unlawful and lawful uses of tracking devices

Unlawful use of tracking devices

- (1) Subject to subsection (2), it is unlawful for an officer, employee or agent of the Organisation to use a tracking device for the purpose of tracking a person or an object. It is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

Note: **Tracking device**, **track** and **object** are defined in subsection (3).

Lawful use of tracking device

- (2) Despite any law of a State or Territory, an officer, employee or agent of the Organisation does not act unlawfully, by using, for the purposes of the Organisation, a tracking device for the purpose of tracking a person or an object if:
- (a) the person, or the person using the object, consents to it being done; or
 - (b) the officer, employee or agent of the Organisation does so in accordance with a warrant issued under section 26B or 26C.

Definitions

- (3) In this section:

apply includes attach to or place on or in.

object means:

- (a) a vehicle, aircraft, vessel or other means of transportation; or
- (b) clothing or any other thing worn; or
- (c) any other thing.

track an object or person means be aware of the movement of the object or person from place to place.

tracking device means a device or substance that, when applied to an object, enables a person to track the object or a person using or wearing the object.

king device warrants relating to persons

Issue of warrant

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that:
 - (a) a person (the ***subject***) is engaged in, or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
 - (b) the use by the Organisation of a tracking device applied to any object (a ***target object***) used or worn, or likely to be used or worn, by the subject to enable the Organisation to track the subject will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Note: ***Tracking device, track, object*** and ***apply*** are defined in subsection 26A(3).

Authorisation in warrant

- (3) The warrant:
 - (a) must be signed by the Minister; and
 - (b) must authorise the Organisation, subject to any restrictions or conditions specified in the warrant, to use a tracking device applied to a target object for the purpose

tracking the subject, who must be specified in the warrant; and

(c) may authorise the Organisation to:

- (i) enter any premises in which a target object is or is likely to be found, for the purpose of applying a tracking device to the target object, or using or maintaining a tracking device so applied; and
- (ii) enter or alter a target object, for the purpose of applying, using or maintaining a tracking device; and
- (iii) apply a tracking device to a target object; and
- (iv) maintain a tracking device applied to a target object; and
- (v) any other thing reasonably incidental to any of the above.

Authorisation of entry measures

(4) The warrant must:

- (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
- (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

Duration of warrant

(5) The warrant must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

Issue of further warrants not prevented

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

Tracking device may be recovered

- (7) If a tracking device is applied to a target object in accordance with the warrant, the Organisation is authorised to do any of the following:
- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
 - (b) enter or alter the target object for the purpose of recovering the tracking device;
 - (c) recover the tracking device;
 - (d) use any force that is necessary and reasonable to do any of the above;
- at the following time:
- (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
 - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.

Interpretation

- (8) Expressions used in this section that are also used in section 26A have the same meanings as in that section.

Tracking device warrants relating to objects*Issue of warrant*

- (1) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (2), the Minister may issue a warrant in accordance with this section.

Test for issue of warrant

- (2) The Minister is only to issue the warrant if he or she is satisfied that:

- (a) an object (the ***target object***) is used or worn, or likely to be used or worn by a person (whether or not his or her identity is known) engaged in or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
- (b) the use by the Organisation of a tracking device applied to the target object to enable the Organisation to track the target object will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Note: ***Tracking device, track, object*** and ***apply*** are defined in subsection 26A(3).

Authorisation in warrant

- (3) The warrant:
 - (a) must be signed by the Minister; and
 - (b) must authorise the Organisation, subject to any restrictions or conditions specified in the warrant, to use a tracking device applied to the target object for the purpose of tracking the target object which must be specified in the warrant; and
 - (c) may authorise the Organisation to:
 - (i) enter any premises specified in the warrant in which the target object is, or is likely to be, found, for the purpose of applying a tracking device to the target object, or maintaining or using a tracking device so applied; and
 - (ii) enter or alter the target object, for the purpose of applying, maintaining or using a tracking device; and
 - (iii) apply a tracking device to the target object; and
 - (iv) maintain a tracking device applied to the target object; and
 - (v) any other thing reasonably incidental to any of the above.

Authorisation of entry measures

- (4) The warrant must:

- (a) authorise the use of any force that is necessary and reasonable to do the things specified in the warrant; and
- (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

Duration of warrant

- (5) The warrant must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

Issue of further warrants not prevented

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

Tracking device may be recovered

- (7) If a tracking device is applied to a target object in accordance with the warrant, the Organisation is authorised to do any of the following:
 - (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
 - (b) enter or alter the target object for the purpose of recovering the tracking device;
 - (c) recover the tracking device;
 - (d) use any force that is necessary and reasonable to do any of the above;at the following time:
 - (e) at any time while the warrant is in force or within 28 days after it ceases to be in force;
 - (f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.

Interpretation

- (8) Expressions used in this section that are also used in section 26A have the same meanings as in that section.

Interception of postal articles

- (1) It is unlawful:

- (a) for a person, being an officer, employee or agent of the Organisation acting in his or her capacity as such, to seek from the Australian Postal Corporation or from an employee or agent of that Corporation; or
- (b) for that Corporation or an employee or agent of that Corporation to provide to such a person;

access to a postal article that is in the course of the post or information concerning the contents or cover of any postal article except in pursuance of, or for the purposes of, a warrant under this section or section 27A, and it is the duty of the Director-General to take all reasonable steps to ensure that this subsection is not contravened.

- (2) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to a person, the Minister is satisfied that:

- (a) that person is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organisation to postal articles posted by or on behalf of, addressed to or intended to be received by, that person, while the articles are in the course of the post, will, or is likely to, assist the Organisation in carrying out its functions or obtaining intelligence relevant to security;

the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that were posted by or on behalf of, or are addressed to, that person or are reasonably suspected

by a person authorized to exercise the authority of the Organisation under the warrant be intended to be received by that person, to inspect, and make copies of, or of the covers of, the articles, and to open the articles and inspect and make copies of the contents of any such article.

(3) Where, upon receipt by the Minister of a request by the Director-General for the issue of a warrant under this section in relation to an address, the Minister is satisfied that:

- (a) some or all of the postal articles that are being, or are likely to be, sent by post to that address are or will be intended to be received by a person (whether of known identity or not) engaged in, or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organisation to postal articles posted to that address and intended to be received by the person referred to in paragraph (a) will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security;

the Minister may, by warrant under his or her hand, authorize the Organisation to do such of the following acts and things as the Minister considers appropriate in the circumstances, namely, with respect to postal articles in the course of the post that are addressed to that address and appear on their face to be, or are reasonably suspected by a person authorized to exercise the authority of the Organisation under the warrant to be, intended to be received by the person referred to in paragraph (a), to inspect, and make copies of, or of the covers of, the articles and to open the articles and inspect and make copies of the contents of any such article.

(4) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding 6 months, but may be revoked by the Minister at any time before the expiration of the period so specified.

(5) Subsection (4) shall not be construed as preventing the issue of any further warrant.

(6) Where the Director-General is informed under section 32 of the issue of a warrant under this section, the Director-General must:

- (a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and
- (b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

(6A) Where:

- (a) the Director-General has been informed under section 32 of the issue of a warrant under this section; and
- (b) the Director-General is informed under that section that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
- (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.

(7) The Australian Postal Corporation shall give to a person acting in pursuance of a warrant under this section all reasonable assistance.

(8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything in pursuance of, or for the purposes of, a warrant under this section.

(9) Nothing in subsection (1) applies in relation to a postal article addressed to, or appearing to be intended to be received by or on behalf of, the Organisation.

(10) In this section:

address means any premises or place (including a post office box or bag service) to which postal articles may be addressed.

agent, in relation to the Australian Postal Corporation, includes any person performing services for that Corporation otherwise than under a contract of service and an employee of such a person.

Protection of delivery service articles

Unlawful access to delivery service articles

(1) It is unlawful for:

- (a) an officer, employee or agent of the Organisation, for the purposes of the Organisation, to seek from a delivery service provider or from an employee or agent of a delivery service provider; or
- (b) a delivery service provider or an employee or agent of a delivery service provider give an officer, employee or agent of the Organisation, for the purposes of the Organisation;

access to:

- (c) an article that is being delivered by the delivery service provider; or
- (d) information concerning the contents or cover of any such article;

except in accordance with, or for the purposes of, a warrant under this Division. It is the duty of the Director-General to take all reasonable steps to ensure that this subsection not contravened.

Note: ***Delivery service provider***, ***agent*** and ***article*** are defined in subsection (12).

Issue of delivery services warrant

(2) If the Director-General requests the Minister to do so, and the Minister is satisfied as mentioned in subsection (3) or (6), the Minister may issue a warrant in accordance with

this section.

Test 1 for issue of warrant

- (3) The Minister may issue a warrant if he or she is satisfied that:
- (a) a person (the **subject**) is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
 - (b) access by the Organisation to articles sent by or on behalf of, addressed to or intended to be received by, the subject while the articles are being delivered by a delivery service provider, will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Authorisation in warrant

- (4) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
 - (b) in respect of which any of the following are satisfied:
 - (i) the articles have been sent by or on behalf of the subject, who must be specified in the warrant, or addressed to the subject; or
 - (ii) the articles are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of having been so sent or addressed; or
 - (iii) the articles are intended to be received by the subject, who must be specified in the warrant, or are reasonably suspected, by a person authorised to exercise the authority of the Organisation under the warrant, of being intended to be received by the subject.

Things that may be specified for a warrant issued under subsection (3)

- (5) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of the articles or the covers of the articles;
 - (b) opening the articles;
 - (c) inspecting and making copies of the contents of the articles;
 - (d) any other thing reasonably incidental to any of the above.

Test 2 for issue of warrant

- (6) The Minister may issue a warrant if he or she is satisfied that:
- (a) some or all of the articles that are being, or are likely to be, sent by a delivery service provider to an address (the **subject address**) are, or will be intended to be received by a person (the **subject**) (whether of known identity or not) engaged in or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
 - (b) access by the Organisation to articles sent to, or intended to be received by, the subject while the articles are being delivered by a delivery service provider will, or is likely to, assist the Organisation in carrying out its function of obtaining intelligence relevant to security.

Authorisation in warrant

- (7) The warrant must be signed by the Minister and must authorise the Organisation to do specified things, subject to any restrictions or conditions specified in the warrant, in relation to articles that:
- (a) are being delivered by the delivery service provider; and
 - (b) are addressed to the subject address, which must be specified in the warrant; and
 - (c) appear on their face to be, or are reasonably suspected by a person authorised to exercise the authority of the Organisation under the warrant to be, intended to be

received by the subject.

Things that may be specified for warrant issued under subsection (6)

- (8) The things that may be specified are any of the following that the Minister considers appropriate in the circumstances:
- (a) inspecting or making copies of any of the articles or the covers of the articles;
 - (b) opening any of the articles;
 - (c) inspecting and making copies of the contents of any of the articles;
 - (d) any other thing reasonably incidental to any of the above.

Duration of warrant

- (9) A warrant issued under this section must specify the period during which it is to remain in force. The period must not be more than 6 months, although the Minister may revoke the warrant before the period has expired.

Issue of further warrants not prevented

- (10) Subsection (9) does not prevent the issue of any further warrant.

Definitions

- (11) To avoid doubt, the expression **deliver** an article includes any thing done by the deliverer, for the purpose of delivering the article, from the time when the article is given to the deliverer by the sender until it is given by the deliverer to the recipient.
- (12) In this section:
- agent**, in relation to a delivery service provider, includes:
- (a) any person performing services for the delivery service provider otherwise than under a contract of service; and
 - (b) an employee of the person mentioned in paragraph (a).

article means any object reasonably capable of being sent through the post.

delivery service provider means a person whose business is or includes delivering articles.

warrants for the performance of functions under paragraph 17(1)(e)

(1) Where:

- (a) the Director-General gives a notice in writing to the Minister (the **issuing Minister**) requesting the issuing Minister to issue a warrant under this section in relation to premises, a person, a computer or a thing identified in the notice authorising the Organisation to do acts or things referred to in whichever of subsections 25(4) or (5), 25A(4), 26(3) or (4), 26B(3), 26C(3), 27(2) or (3) or 27AA(5) or (8) is or are specified in the notice for the purpose of obtaining foreign intelligence relating to a matter specified in the notice; and
- (b) the issuing Minister is satisfied, on the basis of advice received from the Defence Minister or the Foreign Affairs Minister, that the collection of foreign intelligence relating to that matter is in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being;

the issuing Minister may, by warrant under his or her hand, authorise the Organisation subject to any conditions or restrictions that are specified in the warrant, to do such of those acts or things in relation to those premises, that person, that computer or those things as the issuing Minister considers appropriate in the circumstances and are specified in the warrant for the purpose of obtaining that intelligence.

(2) The warrant must:

- (a) authorise the use of any force that is necessary and reasonable to do the things mentioned in subsection (1); and
- (b) state whether entry is authorised to be made at any time of the day or night or during stated hours of the day or night.

(3) A warrant under this section shall specify the period for which it is to remain in force, being a period not exceeding:

- (a) in a case where the warrant authorises the doing of acts or things referred to in subsection 25(4) or (5)—90 days;
- (b) in a case where the warrant authorises the doing of acts or things referred to in subsection 25A(4), 26(3) or (4), 26B(3), 26C(3), 27(2) or (3) or 27AA(5) or (8)—6 months;

but may be revoked by the issuing Minister at any time before the end of the period so specified.

(3A) If a listening device is installed in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26(3) or (4), the Organisation is authorised to do any of the following:

- (a) enter any premises for the purpose of recovering the listening device;
- (b) recover the listening device;
- (c) use any force that is necessary and reasonable to do either of the above;

at the following time:

- (d) at any time while the warrant is in force or within 28 days after it ceases to be in force;
- (e) if the listening device 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.

(3B) If a tracking device is applied to a target object in accordance with a warrant under this section authorising the doing of acts referred to in subsection 26B(3) or 26C(3), the Organisation is authorised to do any of the following:

- (a) enter any premises in which the target object is or is likely to be found, for the purpose of recovering the tracking device;
- (b) enter or alter the target object for the purpose of recovering the tracking device;

(c) recover the tracking device;

(d) use any force that is necessary and reasonable to do any of the above;

at the following time:

(e) at any time while the warrant is in force or within 28 days after it ceases to be in force;

(f) if the tracking device is not recovered at a time mentioned in paragraph (e)—at the earliest time, after the 28 days mentioned in that paragraph, at which it is reasonably practicable to do the things concerned.

(4) Subsection (3) shall not be construed as preventing the issue of any further warrant.

(5) Nothing in this section, or in a warrant under this section, applies to or in relation to the use of a listening device for a purpose that would, for the purposes of the *Telecommunications (Interception and Access) Act 1979*, constitute the interception of communication passing over a telecommunications system operated by a carrier or a carriage service provider.

(6) Where the Director-General is informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3) the Director-General must:

(a) cause the Australian Postal Corporation to be informed of the issue of the warrant without delay; and

(b) where, under section 32, the Director-General receives the warrant—cause a certified copy of the warrant to be given to the Australian Postal Corporation as soon as practicable.

(6A) Where:

(a) the Director-General has been informed under section 32 of the issue of a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3); and

(b) the Director-General is informed under section 32 that the warrant has been revoked;

the Director-General must:

- (c) cause the Australian Postal Corporation to be informed of the revocation without delay; and
- (d) where, under section 32, the Director-General receives the instrument of revocation—cause a certified copy of the instrument of revocation to be given to the Australian Postal Corporation as soon as practicable.

- (7) The Australian Postal Corporation shall give to a person acting pursuant to a warrant under this section authorising the doing of acts or things referred to in subsection 27(2) or (3) all reasonable assistance.
- (8) Nothing in Part VIIA of the *Crimes Act 1914* or the *Australian Postal Corporation Act 1989* shall be taken to prohibit the doing of anything pursuant to, or for the purposes of, a warrant under this section.
- (9) The Director-General shall not request the issue of a warrant under this section for the purpose of collecting information concerning an Australian citizen or a permanent resident.
- (10) The reference in subsection (1) to conditions or restrictions includes a reference to conditions or restrictions designed to minimise the obtaining by the Organisation, pursuant to a warrant issued under that subsection, of information that is not publicly available concerning Australian citizens or permanent residents, or to minimise the retention of information of that kind.

Performance of other functions under paragraph 17(1)(e)

If:

- (a) the Director-General gives a notice in writing to the Minister (the ***authorising Minister***) requesting the authorising Minister to authorise the Organisation to

obtain foreign intelligence in relation to a matter specified in the notice; and

(b) the authorising Minister is satisfied, on the basis of advice received from the Defence Minister or the Foreign Affairs Minister, that the collection of foreign intelligence relating to that matter is in the interests of Australia's national security, Australia's foreign relations or Australia's national economic well-being; the authorising Minister may, by writing signed by the authorising Minister, authorise the Organisation to obtain the intelligence in relation to the matter.

Request for warrant to specify grounds

A request by the Director-General for the issue of a warrant under this Division shall specify the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued and (where appropriate) the grounds on which the Director-General suspects a person of being engaged in, or of being likely to engage in activities prejudicial to security.

Issue of certain warrants by Director-General in emergency

- (1) Where:
- (a) the Director-General has forwarded or made a request to the Minister for the issue of a warrant under section 25, 25A, 26, 26B, 26C, 27 or 27AA;
 - (b) the Minister has not, to the knowledge of the Director-General, issued, or refused issue, a warrant as a result of the request and has not, within the preceding period of 3 months, refused to issue a substantially similar warrant;
 - (c) the Director-General has not, within the preceding period of 3 months, issued a substantially similar warrant; and
 - (d) the Director-General is satisfied:
 - (i) that the facts of the case would justify the issue of a warrant by the Minister;
 - and

- (ii) that, if the action to be authorized by the warrant does not commence before warrant can be issued and made available by the Minister, security will be, is likely to be, seriously prejudiced;

the Director-General may issue a warrant signed by the Director-General of the kind that could be issued by the Minister in pursuance of the request.

- (2) A warrant under this section shall specify the period for which it is to remain in force, being a period that does not exceed 48 hours, but may be revoked by the Minister at any time before the expiration of the period so specified.
- (3) Where the Director-General issues a warrant under this section, the Director-General shall forthwith furnish to the Minister:
 - (a) a copy of the warrant; and
 - (b) a statement of the grounds on which the Director-General is satisfied as to the matter referred to in subparagraph (1)(d)(ii).
- (4) The Director-General must, within 3 working days after issuing a warrant under this section, give a copy of the warrant to the Inspector-General of Intelligence and Security.

Discontinuance of action before expiration of warrant

Where, before a warrant under this Division 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 shall forthwith inform the Minister accordingly and take such steps as are necessary to ensure that action in pursuance of the warrant (other than the recovery of a listening device or tracking device) is discontinued.

Retention of records obtained under a warrant to be destroyed

Where:

- (a) by virtue of a warrant under this Division, a record or copy has been made;

- (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;
- the Director-General shall cause the record or copy to be destroyed.

in action in relation to requests and warrants

- (1) Where the Director-General makes a request, otherwise than in writing, for the issue of warrant under this Division, the Director-General shall forthwith forward to the Minister a request in writing for the issue of a warrant.
- (2) Where the Minister issues or revokes a warrant under this Division, the Minister shall:
 - (a) cause the Director-General to be informed forthwith of the issue of the warrant or the revocation, as the case may be; and
 - (b) cause the warrant or the instrument of revocation, as the case may be, to be forwarded as soon as practicable to the Director-General.
- (3) The Minister shall record on each request in writing for the issue of a warrant under this Division received by the Minister from the Director-General the Minister's decision with respect to the request and shall cause the request to be returned to the Director-General.
- (4) The Director-General shall cause to be retained in the records of the Organisation all warrants issued by the Director-General under this Division and all warrants and instruments of revocation received by the Director-General from, and all requests and other documents returned to the Director-General by, the Minister under this Division.

Director-General to report to Minister

The Director-General shall furnish to the Minister in respect of each warrant issued under this Division a report in writing on the extent to which the action taken under the

warrant has assisted the Organisation in carrying out its functions.

3—Special powers relating to terrorism offences

Division A—Preliminary

Definitions

In this Division:

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.

issuing authority means:

- (a) a person appointed under section 34AB; or
- (b) a member of a class of persons declared by regulations made for the purposes of that section to be issuing authorities.

lawyer means a person enrolled as a legal practitioner of a federal court or the Supreme Court of a State or Territory.

police officer means a member or special member of the Australian Federal Police or a member of the police force or police service of a State or Territory.

prescribed authority means a person appointed under section 34B.

record has the same meaning as in Division 2.

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.

uing authorities

- (1) The Minister may, by writing, appoint as an issuing authority a person who is a Judge.
- (2) The Minister must not appoint a person unless:
 - (a) the person has, by writing, consented to being appointed; and
 - (b) the consent is in force.
- (3) The regulations may declare that persons in a specified class are issuing authorities.
- (4) The regulations may specify a class of persons partly by reference to the facts that the persons have consented to being issuing authorities and their consents are in force.

cribed authorities

- (1) The Minister may, by writing, appoint as a prescribed authority a person who has served as a judge in one or more superior courts for a period of 5 years and no longer holds a commission as a judge of a superior court.
- (2) If the Minister is of the view that there is an insufficient number of people to act as a prescribed authority under subsection (1), the Minister may, by writing, appoint as a prescribed authority a person who is currently serving as a judge in a State or Territory Supreme Court or District Court (or an equivalent) and has done so for a period of at least 5 years.
- (3) If the Minister is of the view that there are insufficient persons available under subsections (1) and (2), the Minister may, by writing, appoint as a prescribed authority person who holds an appointment to the Administrative Appeals Tribunal as President

or Deputy President and who is enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or Territory and has been enrolled for at least 5 years.

- (4) The Minister must not appoint a person under subsection (1), (2) or (3) unless:
- (a) the person has by writing consented to being appointed; and
 - (b) the consent is in force.

Written statement of procedures

- (1) The Director-General may prepare a written statement of procedures to be followed in the exercise of authority under warrants issued under this Division.

Consultation

- (2) The Director-General must consult the following persons about the preparation of the statement:
- (a) the Inspector-General of Intelligence and Security;
 - (b) the Commissioner of Police appointed under the *Australian Federal Police Act 1979*.

Approval by Minister

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

Approved statement is a legislative instrument

- (5) A statement prepared by the Director-General and approved by the Minister is a legislative instrument made by the Minister on the day on which the statement is approved, but neither section 42 nor Part 6 of the *Legislative Instruments Act 2003* applies to the statement.

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 Minister. The briefing may be done orally or in writing.

Division B—Questioning warrants**Request for questioning warrant***Seeking of Minister's consent to request for warrant*

- (1) The Director-General may seek the Minister's consent to request the issue of a warrant under section 34E in relation to a person.
- (2) To avoid doubt, this section operates in relation to a request for the issue of a warrant under section 34E in relation to a person, even if a request for the issue of a warrant under this Division has previously been made in relation to the person.
- (3) In seeking the Minister's consent, the Director-General must give the Minister a draft request that includes:
- (a) a draft of the warrant to be requested; and
 - (b) a statement of the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued; and
 - (c) a statement of the particulars and outcomes of all previous requests for the issue of a warrant under this Division relating to the person; and
 - (d) if one or more warrants were issued under this Division as a result of the previous requests—a statement of:
 - (i) the period for which the person has been questioned under each of those warrants before the draft request is given to the Minister; and
 - (ii) if any of those warrants authorised the detention of the person—the period for which the person has been detained in connection with each such warrant

before the draft request is given to the Minister.

Minister's consent to making of request

- (4) The Minister may, by writing, consent to the making of the request, but only if the Minister is satisfied:
- (a) that there are reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence that is important relation to a terrorism offence; and
 - (b) that relying on other methods of collecting that intelligence would be ineffective; and
 - (c) that there is in force under section 34C a written statement of procedures to be followed in the exercise of authority under warrants issued under this Division.
- The Minister may make his or her consent subject to changes being made to the draft request.
- (5) In consenting to the making of a request, the Minister must ensure that the warrant to be requested is to:
- (a) permit the person to contact a single lawyer of the person's choice at any time the person is appearing before a prescribed authority for questioning under the warrant; and
 - (b) permit the person to contact a single lawyer of the person's choice (subject to section 34ZO) at any time that is a time the person is in detention in connection with the warrant and a time after:
 - (i) the person has informed the prescribed authority concerned, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
 - (ii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34ZO that the person be prevented from contacting the lawyer.

Note: Section 34K allows for detention in connection with a warrant issued under section 34E.

Form of request

- (6) If the Minister has consented under subsection (4), the Director-General may request the issuing authority to issue a warrant by giving an issuing authority:
- (a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
 - (b) a copy of the Minister's consent.

Issue of questioning warrant

Issue of warrant

- (1) An issuing authority may issue a warrant under this section relating to a person, but only if:
- (a) the Director-General has requested it in accordance with subsection 34D(6); and
 - (b) the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

What the warrant authorises

- (2) The warrant must, in the same terms as the draft warrant given to the issuing authority, require a specified person to appear before a prescribed authority for questioning under the warrant immediately after the person is notified of the issue of the warrant, or at a time specified in the warrant.

Contacting a lawyer

- (3) The warrant must specify that the person is:

- (a) permitted to contact a single lawyer of the person's choice at any time the person :
appearing before a prescribed authority for questioning under the warrant; and
- (b) permitted to contact a single lawyer of the person's choice (subject to
section 34ZO) at any time that is a time the person is in detention in connection
with the warrant and a time after:
 - (i) the person has informed the prescribed authority concerned, in the presence of
a person exercising authority under the warrant, of the identity of the lawyer
whom the person proposes to contact; and
 - (ii) a person exercising authority under the warrant has had an opportunity to
request the prescribed authority to direct under section 34ZO that the person
be prevented from contacting the lawyer.

Note: Section 34K allows for detention in connection with a warrant issued under this
section.

Warrant must authorise certain actions by the Organisation

- (4) Also, the warrant must, in the same terms as the draft warrant given to the issuing
authority as part of the request:
 - (a) authorise the Organisation, subject to any restrictions or conditions, to question the
person before a prescribed authority by requesting the person to do either or both
of the following:
 - (i) give information that is or may be relevant to intelligence that is important in
relation to a terrorism offence;
 - (ii) produce records or things that are or may be relevant to intelligence that is
important in relation to a terrorism offence; and
 - (b) authorise the Organisation, subject to any restrictions or conditions, to make copies
and/or transcripts of a record produced by the person before a prescribed authority
in response to a request in accordance with the warrant.

Warrant to be signed and to specify the period it is in force

- (5) Also, the warrant must:
- (a) be signed by the issuing authority who issues it; and
 - (b) specify the period during which the warrant is to be in force, which must not be more than 28 days.

ion C—Questioning and detention warrants

Test for questioning and detention warrant

Seeking of Minister's consent to request for warrant

- (1) The Director-General may seek the Minister's consent to request the issue of a warrant under section 34G in relation to a person.
- (2) To avoid doubt, this section operates in relation to a request for the issue of a warrant under section 34G in relation to a person, even if a request for the issue of a warrant under this Division has previously been made in relation to the person.
- (3) In seeking the Minister's consent, the Director-General must give the Minister a draft request that includes:
 - (a) a draft of the warrant to be requested; and
 - (b) a statement of the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued; and
 - (c) a statement of the particulars and outcomes of all previous requests for the issue of a warrant under this Division relating to the person; and
 - (d) if one or more warrants were issued under this Division as a result of the previous requests—a statement of:
 - (i) the period for which the person has been questioned under each of those warrants before the draft request is given to the Minister; and

- (ii) if any of those warrants authorised the detention of the person—the period for which the person has been detained in connection with each such warrant before the draft request is given to the Minister.

Minister's consent to making of request

- (4) The Minister may, by writing, consent to the making of the request, but only if the Minister is satisfied:
- (a) that there are reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence that is important relation to a terrorism offence; and
 - (b) that relying on other methods of collecting that intelligence would be ineffective; and
 - (c) that there is in force under section 34C a written statement of procedures to be followed in the exercise of authority under warrants issued under this Division; and
 - (d) that there are reasonable grounds for believing that, if the person is not immediately taken into custody and detained, the person:
 - (i) may alert a person involved in a terrorism offence that the offence is being investigated; or
 - (ii) may not appear before the prescribed authority; or
 - (iii) may destroy, damage or alter a record or thing the person may be requested to produce in accordance with the warrant to produce.

The Minister may make his or her consent subject to changes being made to the draft request.

- (5) In consenting to the making of a request, the Minister must ensure that the warrant to be requested is to permit the person to contact a single lawyer of the person's choice (subject to section 34ZO) at any time that:
- (a) is a time while the person is in detention in connection with the warrant; and

(b) is after:

- (i) the person has been brought before a prescribed authority for questioning; and
- (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
- (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34ZO that the person be prevented from contacting the lawyer.

(6) If, before the Director-General seeks the Minister's consent to the request (the ***propose request***), the person has been detained under this Division in connection with one or more warrants (the ***earlier warrants***) issued under this Division:

- (a) the Minister must take account of those facts in deciding whether to consent; and
- (b) the Minister may consent only if the Minister is satisfied that the issue of the warrant to be requested is justified by information that is additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last of the earlier warrants issued before the seeking of the Minister's consent to the proposed request.

This subsection has effect in addition to subsection (4).

Form of request

(7) If the Minister has consented under subsection (4), the Director-General may request the issue of a warrant by giving an issuing authority:

- (a) a request that is the same as the draft request except for the changes (if any) required by the Minister; and
- (b) a copy of the Minister's consent.

e of questioning and detention warrant

Issue of warrant

- (1) An issuing authority may issue a warrant under this section relating to a person, but on if:
- (a) the Director-General has requested it in accordance with subsection 34F(7); and
 - (b) the issuing authority is satisfied that there are reasonable grounds for believing that the warrant will substantially assist the collection of intelligence that is important in relation to a terrorism offence.

Previous detention

- (2) If the person has already been detained under this Division in connection with one or more warrants (the **earlier warrants**) issued under this Division:
- (a) the issuing authority must take account of those facts in deciding whether to issue the warrant requested; and
 - (b) the issuing authority may issue the warrant requested only if the authority is satisfied that:
 - (i) the issue of that warrant is justified by information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the later of the earlier warrants issued before the seeking of the Minister's consent to the request for the issue of the warrant requested; and
 - (ii) the person is not being detained under this Division in connection with one of the earlier warrants.

This subsection has effect in addition to subsection (1).

What the warrant authorises

- (3) The warrant must, in the same terms as the draft warrant given to the issuing authority part of the request, do the following:
- (a) authorise a specified person to be:
 - (i) taken into custody immediately by a police officer; and
 - (ii) brought before a prescribed authority immediately for questioning under the warrant; and
 - (iii) detained under arrangements made by a police officer for the period described in subsection (4);
 - (b) permit the person to contact identified persons at specified times when the person in custody or detention authorised by the warrant.
- (4) The period starts when the person is first brought before a prescribed authority under the warrant and ends at the first time one of the following events happens:
- (a) someone exercising authority under the warrant informs the prescribed authority before whom the person is appearing for questioning that the Organisation does not have any further request described in paragraph (7)(a) to make of the person.
 - (b) section 34R prohibits anyone exercising authority under the warrant from questioning the person under the warrant;
 - (c) the passage of 168 hours starting when the person was first brought before a prescribed authority under the warrant.

Contacting persons

- (5) The warrant may identify someone whom the person is permitted to contact by reference to the fact that he or she is a lawyer of the person's choice or has a particular legal or familial relationship with the person. This does not limit the ways in which the warrant may identify persons whom the person is permitted to contact.

Note 1: The warrant may identify persons by reference to a class. See subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- Note 2: Section 34K permits the person to contact the Inspector-General of Intelligence and Security, the Ombudsman and a person referred to in paragraph 40SB(3)(b) of the *Australian Federal Police Act 1979* while the person is in custody or detention, so the warrant must identify them
- Note 3: A warrant issued under this section must permit the person to contact a single lawyer of the person's choice, so the warrant must identify such a lawyer.

- (6) The warrant may specify times when the person is permitted to contact someone identified as a lawyer of the person's choice by reference to the fact that the times are:
- (a) while the person is in detention in connection with the warrant; and
 - (b) after:
 - (i) the person has been brought before a prescribed authority for questioning; or
 - (ii) the person has informed the prescribed authority, in the presence of a person exercising authority under the warrant, of the identity of the lawyer whom the person proposes to contact; and
 - (iii) a person exercising authority under the warrant has had an opportunity to request the prescribed authority to direct under section 34ZO that the person be prevented from contacting the lawyer.

Warrant must authorise certain actions by the Organisation

- (7) Also, the warrant must, in the same terms as the draft warrant given to the issuing authority as part of the request:
- (a) authorise the Organisation, subject to any restrictions or conditions, to question the person before a prescribed authority by requesting the person to do either or both of the following:
 - (i) give information that is or may be relevant to intelligence that is important in relation to a terrorism offence;
 - (ii) produce records or things that are or may be relevant to intelligence that is important in relation to a terrorism offence; and
 - (b) authorise the Organisation, subject to any restrictions or conditions, to make copies and/or transcripts of a record produced by the person before a prescribed authority in response to a request in accordance with the warrant.

Warrant to be signed and to specify the period it is in force

(8) Also, the warrant must:

- (a) be signed by the issuing authority who issues it; and
- (b) specify the period during which the warrant is to be in force, which must not be more than 28 days.

Person taken into custody under warrant to be immediately brought before prescribed authority

If the person is taken into custody by a police officer exercising authority under the warrant, the officer must make arrangements for the person to be immediately brought before a prescribed authority for questioning.

Division D—Certain obligations and protections relating to a warrant issued under Subdivision B or C

Note: Subdivision E sets out other obligations and protections relating to a warrant issued under Subdivision B or C (as well as dealing with other matters).

Prescribed authority must explain warrant

- (1) When a person first appears before a prescribed authority for questioning under a warrant issued under this Division, the prescribed authority must inform the person of the following:
 - (a) whether the warrant authorises detention of the person by a police officer and, if it does, the period for which the warrant authorises detention of the person;
 - (b) what the warrant authorises the Organisation to do;
 - (c) the effect of section 34L (including the fact that the section creates offences);
 - (d) the period for which the warrant is in force;
 - (e) the person's right to make a complaint orally or in writing:

- (i) to the Inspector-General of Intelligence and Security under the *Inspector-General of Intelligence and Security Act 1986* in relation to the Organisation; or
 - (ii) to the Ombudsman under the *Ombudsman Act 1976* in relation to the Australian Federal Police;
 - (iii) to a complaints agency in relation to the police force or police service of the State or Territory concerned;
 - (ea) the person'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;
 - (f) the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant;
 - (g) whether there is any limit on the person contacting others and, if the warrant permits the person to contact identified persons at specified times when the person is in custody or detention authorised by the warrant, who the identified persons are and what the specified times are.
- (2) To avoid doubt, subsection (1) does not apply to a prescribed authority if the person has previously appeared before another prescribed authority for questioning under the warrant.
- (3) The prescribed authority before whom the person appears for questioning must inform the person of the role of the prescribed authority. In particular, the prescribed authority must inform the person that the role of the prescribed authority includes:
- (a) supervising the questioning of the person; and
 - (b) giving appropriate directions under section 34K in relation to the person.
- (4) The prescribed authority before whom the person appears for questioning must inform the person of the reason for the presence of each other person who is present at any time during the questioning. However:

- (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 person being questioned about a particular person's reason for presence need only be complied with once (even if that particular person subsequently returns to the questioning).
- (5) At least once in every 24-hour period during which questioning of the person under the warrant occurs, the prescribed authority before whom the person appears for questioning must inform the person of the fact that the person may seek from a federal court a remedy relating to the warrant or the treatment of the person in connection with the warrant.

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

Directions by prescribed authority etc.

Directions relating to detention or further appearance

- (1) At any time when a person is before a prescribed authority for questioning under a warrant issued under this Division, the authority may give any of the following directions:
- (a) a direction to detain the person;
 - (b) a direction for the further detention of the person;
 - (c) a direction about any arrangements for the person's detention;
 - (d) a direction permitting the person to contact an identified person (including someone identified by reference to the fact that he or she has a particular legal or familial relationship with the person) or any person and to disclose information other than specified information while in contact;
 - (e) a direction to defer questioning of the person under the warrant;

- (f) a direction for the person's further appearance before the prescribed authority for questioning under the warrant;
- (g) a direction that the person be released from detention.

(2) The prescribed authority is only to give a direction that:

- (a) is consistent with the warrant; or
- (b) has been approved in writing by the Minister.

However, the prescribed authority may give a direction that is not covered by paragraph (a) or (b) if he or she has been informed under section 34Q of a concern of the Inspector-General of Intelligence and Security and is satisfied that giving the direction is necessary to address the concern satisfactorily.

(3) To avoid doubt, the mere fact that the warrant is issued under section 34E does not prevent a direction under subsection (1) of this section from being consistent with the warrant for the purposes of subsection (2) of this section.

Note: A warrant issued under section 34E requires a person to appear before a prescribed authority for questioning under the warrant (rather than authorising the person to be taken into custody, brought before a prescribed authority and detained).

(4) The prescribed authority is only to give a direction described in paragraph (1)(a) or (b) if he or she is satisfied that there are reasonable grounds for believing that, if the person is not detained, the person:

- (a) may alert a person involved in a terrorism offence that the offence is being investigated; or
- (b) may not continue to appear, or may not appear again, before a prescribed authority; or
- (c) may destroy, damage or alter a record or thing the person has been requested, or may be requested, in accordance with the warrant, to produce.

(5) A direction under subsection (1) must not result in:

- (a) a person being detained after the first time when either of the following events happens:

- (i) someone exercising authority under the warrant informs the prescribed authority before whom the person is appearing for questioning that the Organisation does not have any further request described in paragraph 34E(4)(a) or 34G(7)(a) to make of the person;
 - (ii) section 34R prohibits anyone exercising authority under the warrant from questioning the person under the warrant; or
- (b) a person's detention being arranged by a person who is not a police officer.

Note: Section 34S also provides that this Division does not authorise a person to be detained for a continuous period of more than 168 hours.

Giving effect to directions

- (6) Directions given by a prescribed authority have effect, and may be implemented or enforced, according to their terms.
- (7) A police officer may take a person into custody and bring him or her before a prescribe authority for questioning under a warrant issued under this Division if the person fails appear before a prescribed authority as required by the warrant or a direction given by prescribed authority under this section.

Direction has no effect on further warrant

- (8) This section does not prevent any of the following occurring in relation to a person who has been released after having been detained under this Division in connection with a warrant issued under this Division:
- (a) an issuing authority issuing a further warrant under this Division;
 - (b) the person being detained under this Division in connection with the further warrant.

Complaints while appearing before a prescribed authority for questioning

- (9) If:

- (a) a person is appearing before a prescribed authority for questioning under a warrant issued under this Division; and
- (b) the person informs the prescribed authority that the person wants:
 - (i) to make an oral or written complaint of the kind referred to in paragraph 34J(1)(e); or
 - (ii) to give oral or written information of the kind referred to in paragraph 34J(1)(ea); and
- (c) the person requests facilities to make the complaint or give the information; and
- (d) the prescribed authority gives a direction under subsection (1) deferring questioning of the person under the warrant;

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

Communications while in custody or detention

- (10) A person who has been taken into custody, or detained, under this Division is not permitted to contact, and may be prevented from contacting, anyone at any time while in custody or detention.
- (11) However:
 - (a) the person may contact anyone whom the warrant under which he or she is detained, or a direction described in paragraph (1)(d), permits the person to contact; and
 - (b) subsection (10) does not affect the operation of sections 10 and 13 of the *Inspector-General of Intelligence and Security Act 1986* in relation to contact between the person and the Inspector-General of Intelligence and Security; and
 - (c) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Inspector-General of Intelligence and Security to make a complaint orally under section 10 of the *Inspector-General of Intelligence and Security Act 1986* if the person requests them; and

- (d) subsection (10) does not affect the operation of section 7 of the *Ombudsman Act 1976* in relation to contact between the person and the Ombudsman in respect of complaint, or proposed complaint, about the Australian Federal Police; and
- (e) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Ombudsman to make a complaint orally under section 7 of the *Ombudsman Act 1976* if the person requests them; and
- (f) subsection (10) does not affect the operation of section 40SB of the *Australian Federal Police Act 1979* in relation to contact between the person and a person referred to in paragraph 40SB(3)(b) of that Act; and
- (g) anyone holding the person in custody or detention under this Division must give the person facilities for contacting the Commissioner of the Australian Federal Police to give information orally under section 40SA of the *Australian Federal Police Act 1979* if the person requests them; and
- (h) subsection (10) does not affect the person'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
- (i) anyone holding the person in custody or detention under this Division must give the person facilities for contacting a complaints agency to make an oral or written complaint of the kind mentioned in paragraph (h) if the person requests them.

Note: The sections mentioned in paragraphs (11)(b), (d) and (f) give the person an entitlement to facilities for making a written complaint or for giving written information.

giving information and producing things etc.

- (1) A person must appear before a prescribed authority for questioning, in accordance with warrant issued under this Division or a direction given under section 34K.

Penalty: Imprisonment for 5 years.

- (2) A person who is before a prescribed authority for questioning under a warrant issued under this Division must not fail to give any information requested in accordance with

the warrant.

Penalty: Imprisonment for 5 years.

(3) Subsection (2) does not apply if the person does not have the information.

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

(4) A person commits an offence if:

- (a) the person is before a prescribed authority for questioning under a warrant issued under this Division; and
- (b) the person makes a statement that is, to the person's knowledge, false or misleading; and
- (c) the statement is made in purported compliance with a request for information made in accordance with the warrant.

Penalty: Imprisonment for 5 years.

(5) Subsection (4) 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 subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

(6) A person who is before a prescribed authority for questioning under a warrant issued under this Division must not fail to produce any record or thing that the person is requested in accordance with the warrant to produce.

Penalty: Imprisonment for 5 years.

(7) Subsection (6) does not apply if the person does not have possession or control of the record or thing.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7) (see subsection 13.3(3) of the *Criminal Code*).

(8) For the purposes of subsections (2) and (6), the person may not fail:

- (a) to give information; or
 - (b) to produce a record or thing;
- in accordance with a request made of the person in accordance with the warrant, on the ground that the information, or production of the record or thing, might tend to incriminate the person or make the person liable to a penalty.

(9) However, the following are not admissible in evidence against the person in criminal proceedings other than proceedings for an offence against this section:

- (a) anything said by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to give information;
- (b) the production of a record or thing by the person, while before a prescribed authority for questioning under a warrant, in response to a request made in accordance with the warrant for the person to produce a record or thing.

Interpreter provided at request of prescribed authority

- (1) This section applies if the prescribed authority before whom a person first appears for questioning under a warrant issued under this Division believes on reasonable grounds that the person is unable, because of inadequate knowledge of the English language or 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 defer informing under section 34J the person to be questioned under the warrant until the interpreter is present.
- (4) A person exercising authority under the warrant must defer the questioning under the warrant until the interpreter is present.

Interpreter provided at request of person being questioned

- (1) This section applies if a person appearing before a prescribed authority under a warrant issued under this Division requests the presence of an interpreter.
- (2) A person exercising authority under the warrant must arrange for the presence of an interpreter, unless the prescribed authority believes on reasonable grounds that the person who made the request has an adequate knowledge of the English language, or is physically able, to communicate with reasonable fluency in that language.
- (3) If questioning under the warrant has not commenced and the prescribed authority determines that an interpreter is to be present:
 - (a) the prescribed authority must defer informing under section 34J the person to be questioned under the warrant until the interpreter is present; and
 - (b) a person exercising authority under the warrant must defer the questioning until the interpreter is present.
- (4) If questioning under the warrant commences before the person being questioned requests the presence of an interpreter and the prescribed authority determines that an interpreter is to be present:
 - (a) a person exercising authority under the warrant must defer any further questioning until the interpreter is present; and
 - (b) when the interpreter is present, the prescribed authority must again inform the person of anything of which he or she was previously informed under section 34

Inspector-General of Intelligence and Security may be present at questioning or taking into custody

To avoid doubt, for the purposes of performing functions under the *Inspector-General of Intelligence and Security Act 1986*, the Inspector-General of Intelligence and Security, or an APS employee assisting the Inspector-General, may be present at the questioning or taking into custody of a person under this Division.

ension 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 a person specified in a warrant issued under this Division.

Note: For example, the Inspector-General may be concerned because he or she has been present at a questioning under section 34P.

- (2) When the person is appearing before a prescribed authority for questioning under the warrant, the Inspector-General may inform the prescribed authority of the Inspector-General's concern. If the Inspector-General does so, he or she must also inform the Director-General of the concern as soon as practicable afterwards.
- (3) The prescribed authority must consider the Inspector-General's concern.
- (4) The prescribed authority may give a direction suspending:
- (a) questioning of the person 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.

Note: The prescribed authority may give directions under section 34K instead or as well. These could:

- (a) deal with the Inspector-General's concern in a way satisfactory to the prescribed authority or
- (b) deal with treatment of the person while questioning is deferred; or
- (c) provide for release of the person from detention if the prescribed authority is satisfied that the Inspector-General's concern cannot be satisfactorily addressed within the remainder of the period for which the person may be detained under the warrant.

of questioning under warrant

- (1) Anyone exercising authority under a warrant issued under this Division must not question a person under the warrant if the person has been questioned under the warrant for a total of 8 hours, unless the prescribed authority before whom the person was being

questioned just before the end of that 8 hours permits the questioning to continue for the purposes of this subsection.

- (2) Anyone exercising authority under a warrant issued under this Division must not question a person under the warrant if the person has been questioned under the warrant for a total of 16 hours, unless the prescribed authority before whom the person was being questioned just before the end of that 16 hours permits the questioning to continue for the purposes of this subsection.
- (3) Anyone exercising authority under the warrant may request the prescribed authority to permit the questioning to continue for the purposes of subsection (1) or (2). The request may be made in the absence of:
 - (a) the person being questioned; and
 - (b) a legal adviser to that person; and
 - (c) a parent of that person; and
 - (d) a guardian of that person; and
 - (e) another person who meets the requirements of subsection 34ZE(7) in relation to that person; and
 - (f) anyone the person being questioned is permitted by a direction under section 34K to contact.
- (4) The prescribed authority may permit the questioning to continue for the purposes of subsection (1) or (2), but only if he or she is satisfied that:
 - (a) there are reasonable grounds for believing that permitting the continuation will substantially assist the collection of intelligence that is important in relation to a terrorism offence; and
 - (b) persons exercising authority under the warrant conducted the questioning of the person properly and without delay in the period mentioned in that subsection.
- (5) The prescribed authority may revoke the permission. Revocation of the permission does not affect the legality of anything done in relation to the person under the warrant before

the revocation.

- (6) Anyone exercising authority under a warrant issued under this Division must not question a person under the warrant if the person has been questioned under the warra for a total of 24 hours.

Release from detention when further questioning is prohibited

- (7) If the warrant is issued under section 34G, the prescribed authority must, at whichever one of the following times is relevant, direct under paragraph 34K(1)(g) that the perso be released immediately from detention:
- (a) at the end of the period mentioned in subsection (1) or (2), if the prescribed authority does not permit, for the purposes of that subsection, the continuation o questioning;
 - (b) immediately after revoking the permission, if the permission was given but later revoked;
 - (c) at the end of the period described in subsection (6).

Subsection 34K(2) does not prevent the prescribed authority from giving a direction ir accordance with this subsection.

Extra time for questioning with interpreter present

- (8) Subsections (9), (10), (11) and (12) apply if, because of section 34M or 34N, an interpreter is present at any time while a person is questioned under a warrant issued under this Division.
- (9) Anyone exercising authority under the warrant must not question the person under the warrant if the person has been questioned under the warrant for a total of 24, 32 or 40 hours, unless the prescribed authority before whom the person was being questioned just before the duration of that questioning reached that total permits the questioning t continue beyond that total for the purposes of this subsection.

- (10) Subsections (3), (4) and (5) and paragraph (7)(b) apply in relation to permitting, for the purposes of subsection (9), the questioning to continue beyond a total mentioned in subsection (9) in the same way as they apply in relation to permitting the questioning to continue for the purposes of subsection (1) or (2).
- (11) Subsection (6) and paragraph (7)(c) apply as if that subsection referred to a total of 48 hours (instead of 24 hours).
- (12) Paragraph (7)(a) applies as if it referred to the time at which the duration of questioning reached the total mentioned in subsection (1), (2) or (9) beyond which the questioning not permitted to continue.

Time that is not questioning time

- (13) For the purposes of working out the time that a person has been questioned under a warrant, disregard the following times:
 - (a) the time taken by a prescribed authority to inform the person of the matters referred to in section 34J;
 - (b) any time during which a prescribed authority has deferred questioning of the person under the warrant to allow:
 - (i) the change of a thing in equipment being used to record the questioning of the person; or
 - (ii) the person to make a complaint of the kind referred to in paragraph 34J(1)(e) or
 - (iia) the person to give information of the kind referred to in paragraph 34J(1)(ea) or
 - (iii) the person to contact a lawyer or another person as provided by this Division or
 - (iv) the person to receive medical attention; or

- (v) the person to engage in religious practices as required by the person's religious beliefs or
- (vi) the person to rest or recuperate;
- (c) any time during which a prescribed authority has suspended questioning of the person under the warrant as mentioned in subsection 34Q(4);
- (d) any other time determined by a prescribed authority before whom the person appears for questioning.

Person not to be detained for more than 168 hours continuously

This Division does not authorise a person to be detained for a continuous period of more than 168 hours.

Division E—Other provisions

Humane treatment of person specified in warrant

- (1) This section applies to a person specified in a warrant issued under this Division while anything is being done in relation to the person under the warrant or a direction given under section 34K.
- (2) The person must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment, by anyone exercising authority under the warrant or implementing or enforcing the direction.

Power to enter premises to take person into custody

- (1) If:
 - (a) either a warrant issued under section 34G, or subsection 34K(7), authorises a person to be taken into custody; and
 - (b) a police officer believes on reasonable grounds that the person is on any 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 person or taking the person into custody.

- (2) However, if subsection 34K(7) authorises a person to be taken into custody, a police officer must not enter a dwelling house under subsection (1) of this section at any time during the period:

- (a) commencing at 9 pm on a day; and
- (b) ending at 6 am on the following day;

unless the officer believes on reasonable grounds that it would not be practicable to take the person into custody under subsection 34K(7), either at the dwelling house or elsewhere, at another time.

- (3) In this section:

dwelling house includes an aircraft, vehicle or vessel, and a room in a hotel, motel, boarding house or club, in which people ordinarily retire for the night.

premises includes any land, place, vehicle, vessel or aircraft.

of force in taking person into custody and detaining person

- (1) A police officer may use such force as is necessary and reasonable in:
- (a) taking a person into custody under:
 - (i) a warrant issued under section 34G; or
 - (ii) subsection 34K(7); or
 - (b) preventing the escape of a person from such custody; or
 - (c) bringing a person before a prescribed authority for questioning under a warrant issued under this Division; or
 - (d) detaining a person in connection with a warrant issued under this Division.

- (2) However, a police officer must not, in the course of an act described in subsection (1) in relation to a person, use more force, or subject the person to greater indignity, than is necessary and reasonable to do the act.
- (3) Without limiting the operation of subsection (2), a police officer must not, in the course of an act described in subsection (1) in relation to a person:
 - (a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); or
 - (b) if the person is attempting to escape being taken into custody by fleeing—do such thing unless:
 - (i) the officer believes on reasonable grounds that doing that thing is necessary to protect life or to prevent serious injury to another person (including the officer); and
 - (ii) the person has, if practicable, been called on to surrender and the officer believes on reasonable grounds that the person cannot be taken into custody in any other manner.

render of passport by person in relation to whom warrant is sought

- (1) If the Director-General has sought the Minister's consent to request the issue of a warrant under this Division in relation to a person, then, as soon as practicable after the person is notified of that action and of the effect of this subsection, the person must deliver to an enforcement officer every passport that:
 - (a) is an Australian passport (as defined in the *Australian Passports Act 2005*), or a foreign passport, that has been issued to the person; and
 - (b) the person has in his or her possession or control.

Penalty: Imprisonment for 5 years.

(2) The Director-General must cause a passport delivered under subsection (1) to be returned to the person to whom it was issued, as soon as practicable after the first of the following events:

- (a) the Minister refuses to consent to request the issue of a warrant under this Division in relation to the person;
- (b) an issuing authority refuses to issue a warrant under this Division in relation to the person;
- (c) if a warrant under this Division 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 passport to be returned to that person earlier.

(3) Subsection (2) does not require:

- (a) the return of a passport 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 passport that has been cancelled.

(4) If a warrant under this Division is issued in relation to the person, a person approved under subsection 24(1) in relation to the warrant may, after a passport of the first-mentioned person is delivered under subsection (1) and before it is returned under subsection (2):

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

(5) In this section:

enforcement officer means any of the following:

- (a) a member of the Australian Federal Police;
- (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*).

on in relation to whom warrant is sought must not leave Australia without permission

- (1) A person commits an offence if:
- (a) the person has been notified:
 - (i) that the Director-General has sought the Minister's consent to request the issue of a warrant under this Division in relation to the person; and
 - (ii) of the effect of this subsection in connection with that action; and
 - (b) the person leaves Australia; and
 - (c) the leaving occurs after the person has been notified that the Director-General has sought the Minister's consent and of the effect of this subsection in connection with that action, and before the first of the following events:
 - (i) if the Minister refuses to consent to request the issue of a warrant under this Division in relation to the person—that refusal;
 - (ii) if an issuing authority refuses to issue a warrant under this Division in relation to the person—that refusal;
 - (iii) if a warrant under this Division 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 to leave Australia at a specified time. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is no in force.

ender of passport by person specified in warrant

(1) As soon as practicable after the person specified in a warrant issued under this Division is notified of the issue of the warrant and of the effect of this subsection, the person must deliver to someone exercising authority under the warrant every passport that:

- (a) is an Australian passport (as defined in the *Australian Passports Act 2005*), or a foreign passport, that has been issued to the person; and
- (b) the person has in his or her possession or control.

Penalty: Imprisonment for 5 years.

(2) The Director-General must cause a passport delivered under subsection (1) to be returned to the person to whom it was issued, 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 passport to be returned to that person earlier.

(3) Subsection (2) does not require:

- (a) the return of a passport 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 passport that has been cancelled.

(4) After a passport is delivered under subsection (1) and before it is returned under subsection (2), a person approved under subsection 24(1) in relation to the warrant mentioned in subsection (1) of this section may:

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

on specified in warrant must not leave Australia without permission

- (1) A person commits an offence if:
- (a) the person has been notified of:
 - (i) the issue of a warrant under this Division that specifies the person; and
 - (ii) the effect of this subsection in connection with the warrant; and
 - (b) the person leaves Australia; and
 - (c) the leaving occurs:
 - (i) after the person has been notified of the issue of the warrant and of the effect of this subsection in connection with the warrant; 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 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 to leave Australia at a specified time. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is no in force.

leo recording of procedures

- (1) The Director-General must ensure that video recordings are made of the following:
- (a) a person's appearance before a prescribed authority for questioning under a warrant issued under this Division;
 - (b) any other matter or thing 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 by a person specified in a warrant issued under this Division when he or she is not appearing before a prescribed authority for questioning under the warrant.

Power to conduct an ordinary search or a strip search

- (1) If a person has been detained under this Division, a police officer may:
 - (a) conduct an ordinary search of the person; or
 - (b) subject to this section, conduct a strip search of the person.
- (2) An ordinary search of the person under this section must, if practicable, be conducted by a police officer of the same sex as the person being searched.
- (3) A strip search may be conducted if:
 - (a) a police officer suspects on reasonable grounds that the person has a seizable item on his or her person; and
 - (b) the police officer suspects on reasonable grounds that it is necessary to conduct a strip search of the person in order to recover that item; and
 - (c) a prescribed authority has approved the conduct of the search.
- (4) The prescribed authority's approval may be obtained by telephone, fax or other electronic means.
- (5) A strip search may also be conducted if the person consents in writing.
- (6) A medical practitioner may be present when a strip search is conducted, and he or she may assist in the search.
- (7) If a prescribed authority gives or refuses to give an approval for the purposes of paragraph (3)(c), the prescribed authority must make a record of the decision and of the reasons for the decision.

- (8) Such force as is necessary and reasonable in the circumstances may be used to conduct strip search under subsection (1).
- (9) Any item:
- (a) of a kind mentioned in paragraph (3)(a); or
 - (b) that is relevant to collection of intelligence that is important in relation to a terrorism offence;
- that is found during a search under this section may be seized.

Rules for conduct of strip search

- (1) A strip search under section 34ZB:
- (a) must be conducted in a private area; and
 - (b) must be conducted by a police officer who is of the same sex as the person being searched; and
 - (c) subject to subsections (3) and (4), must not be conducted in the presence or view of a person who is of the opposite sex to the person being searched; and
 - (d) must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the search; and
 - (e) must not be conducted on a person who is under 16; and
 - (f) if, in a prescribed authority's opinion, the person being searched is at least 16 but under 18, or is incapable of managing his or her affairs:
 - (i) may only be conducted if a prescribed authority orders that it be conducted; and
 - (ii) must be conducted in the presence of a parent or guardian of the person or, if that is not acceptable to the person, in the presence of someone else who can represent the person's interests and who, as far as is practicable in the circumstances, is acceptable to the person; and
 - (g) must not involve a search of a person's body cavities; and

- (h) must not involve the removal of more garments than the police officer conducting the search believes on reasonable grounds to be necessary to determine whether the person has a seizable item on his or her person; and
 - (i) must not involve more visual inspection than the police officer believes on reasonable grounds to be necessary to determine whether the person has a seizable item on his or her person.
- (2) For the purposes of subparagraph (1)(f)(ii), none of the following can represent the person's interests:
 - (a) a police officer;
 - (b) the Director-General;
 - (c) an officer or employee of the Organisation;
 - (d) a person approved under subsection 24(1).
- (3) A strip search may be conducted in the presence of a medical practitioner of the opposite sex to the person searched if a medical practitioner of the same sex as the person being searched is not available within a reasonable time.
- (4) Paragraph (1)(c) does not apply to a parent, guardian or personal representative of the person being searched if the person being searched has no objection to the person being present.
- (5) If any of a person's garments are seized as a result of a strip search, the person must be provided with adequate clothing.

Power to remove, retain and copy materials etc.

- (1) In addition to the things that the Organisation is authorised to do that are specified in a warrant issued under this Division, the Organisation is also authorised:
 - (a) to remove and retain any record or other thing produced before a prescribed authority in response to a request in accordance with the warrant, for the purposes of:

- (i) inspecting or examining it; and
 - (ii) in the case of a record—making copies or transcripts of it, in accordance with the warrant; and
 - (b) subject to section 34ZC, to examine any items or things removed from a person during a search of the person under this Division; and
 - (c) to retain, and make copies of, any item seized under paragraph 34ZB(9)(b); and
 - (d) to do any other thing reasonably incidental to:
 - (i) paragraph (a), (b) or (c); or
 - (ii) any of the things that the Organisation is authorised to do that are specified in the warrant.
- (2) A police officer may retain for such time as is reasonable any seizable item seized by the officer under paragraph 34ZB(9)(a).
- (3) A record or other thing, or an item, retained as mentioned in paragraph (1)(a) or (c) may be retained:
- (a) if returning the record, thing or item would be prejudicial to security—only until returning the record, thing or item would no longer be prejudicial to security; and
 - (b) otherwise—for only such time as is reasonable.

Special rules for young people

Rules for persons under 16

- (1) A warrant issued under this Division has no effect if the person specified in it is under 16.
- (2) If a person appears before a prescribed authority for questioning as a result of the issue of a warrant under this Division and the prescribed authority is satisfied on reasonable grounds that the person is under 16, the prescribed authority must, as soon as practicable:

- (a) give a direction that the person is not to be questioned; and
 - (b) if the person is in detention—give a direction under paragraph 34K(1)(g) that the person be released from detention.
- (3) Subsection 34K(2) does not prevent the prescribed authority from giving a direction in accordance with paragraph (2)(b) of this section.

Rules for persons who are at least 16 but under 18

- (4) If the Director-General seeks the Minister's consent to request the issue of a warrant under this Division in relation to a person and the Minister is satisfied on reasonable grounds that the person is at least 16 but under 18, the Minister may consent only if he or she is satisfied on reasonable grounds that:
- (a) it is likely that the person will commit, is committing or has committed a terrorism offence; and
 - (b) the draft warrant to be included in the request will meet the requirements in subsection (6).
- (5) An issuing authority may issue a warrant under this Division relating to a person whom the authority is satisfied on reasonable grounds is at least 16 but under 18 only if the draft warrant included in the request for the warrant meets the requirements in subsection (6).

Note: Section 34E or 34G requires that a warrant issued under that section be in the same form as the draft warrant included in the request.

- (6) If subsection (4) or (5) applies, the draft warrant must:
- (a) if the warrant authorises the person to be taken into custody and detained—permit the person to contact, at any time when the person is in custody or detention authorised by the warrant:
 - (i) a parent or guardian of the person; and
 - (ii) if it is not acceptable to the person to be questioned in the presence of one of his or her parents or guardians—another person who meets the requirement

in subsection (7); and

(b) authorise the Organisation to question the person before a prescribed authority:

- (i) only in the presence of a parent or guardian of the person or, if that is not acceptable to the person, of another person who meets the requirements in subsection (7); and
- (ii) only for continuous periods of 2 hours or less, separated by breaks directed by the prescribed authority.

Note: The prescribed authority may set the breaks between periods of questioning by giving appropriate directions under paragraph 34K(1)(f) for the person's further appearance before the prescribed authority for questioning.

(7) The other person must:

- (a) be able to represent the person's interests; and
- (b) as far as practicable in the circumstances, be acceptable to the person and to the prescribed authority; and
- (c) not be one of the following:
 - (i) a police officer;
 - (ii) the Director-General;
 - (iii) an officer or employee of the Organisation;
 - (iv) a person approved under subsection 24(1).

(8) If a person appears before a prescribed authority for questioning under a warrant issued under this Division and the prescribed authority is satisfied on reasonable grounds that the person is at least 16 but under 18, the prescribed authority must, as soon as practicable:

- (a) inform the person that the person:
 - (i) may request that one of the person's parents or guardians or one other person who meets the requirements in subsection (7) be present during the questioning; and

- (ii) may contact the person's parents or guardians and another person who meets the requirements in subsection (7), at any time when the person is in custody or detention in connection with the warrant; and
- (iii) may contact a single lawyer of the person's choice when the person is in detention in connection with the warrant; and
- (b) if the person requests that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of the parent or guardian; and
- (c) if the person does not request that one of the person's parents or guardians be present during the questioning—direct everyone proposing to question the person under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection (7); and
- (d) direct under paragraph 34K(1)(d) that the person may contact someone described in subparagraph (a)(ii) of this subsection at any time described in that subparagraph; and
- (e) direct everyone proposing to question the person 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: The prescribed authority may set the breaks between periods of questioning by giving appropriate directions under paragraph 34K(1)(f) for the person's further appearance before the prescribed authority for questioning.

(9) Subsection 34K(2) does not prevent the prescribed authority from giving a direction in accordance with paragraph (8)(d) of this section.

(10) To avoid doubt, paragraphs (6)(b) and (8)(e) do not affect the operation of section 34R.

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 warrant issued under this Division; 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; and
- (c) the conduct contravenes section 34H; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(3) A person commits an offence if:

- (a) the person is identified (whether by name, reference to a class that includes the person or some other means) in a direction given by a prescribed authority under paragraph 34K(1)(c), (d), (e), (f) or (g) or subsection 34Q(4), 34ZE(2) or (8) or 34ZR(3) as a person who is to implement the direction; and
- (b) the person engages in conduct; and
- (c) the conduct contravenes the direction; and
- (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(4) A person commits an offence if:

- (a) the person engages in conduct; and
- (b) the conduct contravenes subsection 34K(9), paragraph 34K(11)(c), (e), (g) or (i), subsection 34M(4), paragraph 34N(3)(b) or (4)(a) or subsection 34T(2); and
- (c) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

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

Penalty: Imprisonment for 2 years.

- (6) A person (the *searcher*) commits an offence if:
- (a) the searcher is a police officer; and
 - (b) the searcher conducts a strip search of a person detained under this Division; and
 - (c) the search is conducted:
 - (i) without either the approval of a prescribed authority or the consent of the detained person; or
 - (ii) in a way that contravenes subsection 34ZC(1); and
 - (d) the searcher knows of the lack of approval and consent or of the contravention.

Penalty: Imprisonment for 2 years.

- (7) A person (the *searcher*) commits an offence if:
- (a) the searcher is a police officer who is conducting or has conducted a strip search of a person detained under this Division; and
 - (b) the searcher engages in conduct; and
 - (c) the conduct contravenes subsection 34ZC(5); and
 - (d) the searcher knows of the contravention.

Penalty: Imprisonment for 2 years.

(8) In this section:

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

Complaints and information about contravention of procedural statement

(1) Contravention of the written statement of procedures in force under section 34C 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.

(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*.

Providing reports to the Minister

The Director-General must give the Minister, for each warrant issued under this Division, a written report on the extent to which the action taken under the warrant has assisted the Organisation in carrying out its functions.

viding information to the Inspector-General

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

- (a) a copy of any draft request given to the Minister under subsection 34D(3) or 34F(3) in seeking the Minister's consent to request the issue of a warrant under this Division;
- (b) a copy of any warrant issued under this Division;
- (c) a copy of any video recording made under section 34ZA;
- (d) a statement containing details of any seizure, taking into custody, or detention under this Division;
- (e) a statement describing any action the Director-General has taken as a result of being informed of the Inspector-General's concern under section 34Q.

Porting by Inspector-General on multiple warrants

- (1) This section imposes requirements on the Inspector-General of Intelligence and Security if:
 - (a) a person is detained under this Division in connection with a warrant issued under this Division; and
 - (b) one or more other warrants (the *later warrants*) are issued later under section 34C in relation to the person.
- (2) The Inspector-General must inspect a copy of the draft request given to the Minister under subsection 34D(3) or 34F(3) for each of the warrants, to determine whether the draft request for each of the later warrants included information described in paragraph 34F(6)(b).

Note: Paragraph 34F(6)(b) describes information additional to or materially different from that known to the Director-General at the time the Director-General sought the Minister's consent to request the issue of the last warrant that:

- (a) was issued under this Division before the seeking of the Minister's consent to the request proposed in the draft request; and
- (b) was a warrant in connection with which the person was detained under this Division.

- (3) The Inspector-General must report on the outcome of the inspection in his or her annual report for the year in which he or she carries out the examination. For this purpose, **annual report** means a report under section 35 of the *Inspector-General of Intelligence and Security Act 1986*.

Discontinuing action before warrants expire

If, before a warrant issued under this Division 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 Minister, and the issuing authority who issued the warrant, accordingly and
- (b) take such steps as are necessary to ensure that action under the warrant is discontinued.

Retention of records obtained under warrant to be destroyed

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

- (a) the record or copy was made because of a warrant issued under this Division; 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.

Status of issuing authorities and prescribed authorities

- (1) An issuing authority or prescribed authority has, in the performance of his or her duties under this Division, the same protection and immunity as a Justice of the High Court.
- (2) If a person who is a member of a court created by the Parliament has under this Division a function, power or duty 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.

retain 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*.

limit on contact of lawyer of choice

- (1) If:
 - (a) a person (the ***subject***) is specified in a warrant issued under section 34E and the person is in detention in connection with the warrant; or
 - (b) a person (the ***subject***) is specified in a warrant issued under section 34G;the subject may be prevented from contacting a particular lawyer of the subject's choice if the prescribed authority concerned so directs.
- (2) The prescribed authority may so direct only if the authority is satisfied, on the basis of circumstances relating to that lawyer, that, if the subject is permitted to contact the lawyer:
 - (a) a person involved in a terrorism offence may be alerted that the offence is being investigated; or
 - (b) a record or thing that the person may be requested in accordance with the warrant to produce may be destroyed, damaged or altered.

- (3) This section has effect despite paragraph 34K(11)(a).
- (4) To avoid doubt, subsection (1) 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.

questioning person in absence of lawyer of person's choice

- (1) To avoid doubt, a person before a prescribed authority for questioning under a warrant issued under this Division may be questioned under the warrant in the absence of a lawyer of the person's choice.

Note: As the warrant authorises questioning of the person only while the person is before a prescribed authority, the prescribed authority can control whether questioning occurs by controlling whether the person is present before the prescribed authority.

- (2) This section does not permit questioning of the person 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 person.

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

involvement of lawyers

- (1) This section applies if the person (the *subject*) specified in a warrant issued under this Division contacts another person as a legal adviser as permitted by the warrant or a direction under paragraph 34K(1)(d).

Contact to be able to be monitored

- (2) The contact must be made in a way that can be monitored by a person exercising authority under the warrant.
- (3) Subsection (2) does not apply in relation to a warrant issued under section 34E if the contact is in circumstances covered by paragraph 34E(3)(a).

Legal adviser to be given copy of the warrant

- (4) A person exercising authority under the warrant must give the legal adviser a copy of the warrant. This subsection does not:
- (a) require more than one person to give the legal adviser a copy of the warrant; or
 - (b) entitle the legal adviser to be given a copy of, or see, a document other than the warrant.

Breaks in questioning to give legal advice

- (5) The prescribed authority before whom the subject is being questioned must provide a reasonable opportunity for the legal adviser to advise the subject during breaks in the questioning.

Note: The prescribed authority may set breaks between periods of questioning by giving directions under section 34K. Paragraphs 34R(13)(b) to (d) also contain examples of procedural breaks in questioning.

- (6) The legal adviser must not intervene in questioning of the subject or address the prescribed authority before whom the subject is being questioned, except to request clarification of an ambiguous question.

Breaks in questioning to address prescribed authority

- (7) During a break in the questioning of the subject, the legal adviser 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 section 34K. Paragraphs 34R(13)(b) to (d) also contain examples of procedural breaks in questioning.

- (8) The prescribed authority must approve or refuse a request under subsection (7).

Removal of legal adviser for disrupting questioning

- (9) If the prescribed authority considers the legal adviser's conduct is unduly disrupting the questioning, the authority may direct a person exercising authority under the warrant to

remove the legal adviser from the place where the questioning is occurring.

- (10) If the prescribed authority directs the removal of the legal adviser, the prescribed authority must also direct under paragraph 34K(1)(d) that the subject may contact someone else as a legal adviser. Subsection 34K(2) does not prevent the prescribed authority from giving the direction under paragraph 34K(1)(d) in accordance with this subsection.

If legal adviser also represents young person

- (11) If section 34ZR also applies to the legal adviser in another capacity in relation to the subject, this section does not apply to conduct of the legal adviser in that other capacity.

Conduct of parents etc.

- (1) This section applies in relation to a person (the **representative**) who:
- (a) is either:
 - (i) the parent or guardian of a person (the **subject**) specified in a warrant issued under this Division; or
 - (ii) another person who meets the requirements in subsection 34ZE(7) in relation to the subject; and
 - (b) either:
 - (i) is or has been contacted by the subject as permitted by the warrant or a direction under paragraph 34K(1)(d); or
 - (ii) is or has been present when the subject was before a prescribed authority for questioning under the warrant.
- (2) If a prescribed authority considers the representative's conduct is unduly disrupting questioning of the subject, the authority may direct a person exercising authority under the warrant to remove the representative from the place where the questioning is occurring.

- (3) If the prescribed authority directs the removal of the representative, the prescribed authority must also:
- (a) inform the subject that the subject:
 - (i) may request that one of the subject's parents or guardians or one other person who meets the requirements in subsection 34ZE(7), other than the representative, be present during the questioning; and
 - (ii) may contact a person covered by subparagraph (i) to request the person to be present during the questioning; and
 - (b) if the subject requests that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of the parent or guardian; and
 - (c) if the subject does not request that one of the subject's parents or guardians, other than the representative, be present during the questioning—direct everyone proposing to question the subject under the warrant not to do so in the absence of another person (other than the prescribed authority) who meets the requirements in subsection 34ZE(7); and
 - (d) direct under paragraph 34K(1)(d) that the subject may contact a person covered by subparagraph (a)(i) of this subsection to request the person to be present during the questioning.

Subsection 34K(2) does not prevent the prescribed authority from giving the direction under paragraph 34K(1)(d) in accordance with this subsection.

Secrecy relating to warrants and questioning

Before the expiry of the warrant

- (1) A person (the **discloser**) commits an offence if:
- (a) a warrant has been issued under this Division; 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 detention 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 under subsection 34K(1) 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 the expiry of the warrant

(2) A person (the **discloser**) commits an offence if:

(a) a warrant has been issued under this Division; 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 under subsection 34K(1) 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 person (the **subject**) specified in the warrant; or
- (b) a lawyer who has at any time been:
 - (i) present, as the subject's legal adviser, at 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*.

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).

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 person specified in the warrant mentioned 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 under subsection 34K(1);
 - (iv) exercising a power (including a power to make a complaint or to give information), or performing a function or duty, under the *Inspector-General of Intelligence and Security Act 1986*, the *Ombudsman Act 1976* or Part V of the *Australian Federal Police Act 1979*;
 - (v) exercising a power (including a power to make a complaint), or performing a function or duty, under a law of a State or Territory appointing or establishing a complaints agency;
- (b) a disclosure that is:
 - (i) made in the course of the questioning of a person under a warrant issued under this Division; and
 - (ii) made by a person who is present at the questioning when making the disclosure;
- (c) a disclosure to a lawyer for the purpose of:
 - (i) obtaining legal advice in connection with a warrant issued under this Division
 - 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 settlement) of legal proceedings relating to such a remedy;
 - (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 representative mentioned in subsection 34ZR(1), by the subject mentioned in that subsection or by a parent, guardian or sibling of the subject mentioned in that subsection, of information described in paragraph (1)(c) or (2)(c) of this section in relation to the warrant mentioned in that subsection:
 - (i) a parent, guardian or sibling of the subject;
 - (ii) the representative;
 - (iii) the subject;
 - (iv) a prescribed authority;
 - (v) a person exercising authority under the warrant;
 - (vi) the Inspector-General of Intelligence and Security;
 - (vii) the Commonwealth Ombudsman;
 - (viii) a complaints agency;
 - (g) a disclosure permitted by the Director-General;
 - (h) a disclosure permitted by the Minister;
 - (i) a disclosure 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 written permission, not inconsistent with the regulations (if any), for:
- (a) a person contacted as described in subsection 34ZQ(1); or
 - (b) the representative mentioned in subsection 34ZR(1);

to disclose specified information to a specified person. The permission may be given either unconditionally or subject to specified conditions.

Note 1: The prescribed authority may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is no in force.

- (7) For the purposes of paragraph (g) 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 1: The Director-General may revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is no in force.

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

Note 1: The Minister may, after obtaining advice from the Director-General, revoke or amend the permission. See subsection 33(3) of the *Acts Interpretation Act 1901*.

Note 2: If permission is given subject to a condition and the condition is not met, the permission is no in force.

- (9) In deciding whether to give permission to a person under subsection (6), (7) or (8), the prescribed authority, the Director-General or the Minister must take into account:
- (a) the person's family and employment interests to the extent that the prescribed authority, the Director-General or the Minister is aware of those interests; and
 - (b) the public interest; and
 - (c) the risk to security if the permission were given.

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

- (10) Regulations made for the purposes of paragraph (i) 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

- (11) To avoid doubt, subsections (1) and (2) apply whether or not the discloser has the information that he or she discloses as a result of a disclosure by someone else.

Relationship with other laws prohibiting disclosure

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

Implied freedom of political communication

- (13) This section does not apply to the extent (if any) that it would infringe any constitution doctrine of implied freedom of political communication.

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 warrant issued under this Division in relation to the person; or
- (b) the treatment of the person in connection with such a warrant.

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 warrant issued under this Division or the treatment of a person in connection with such a warrant.

Law relating to legal professional privilege not affected

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

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 warrant issued under this Division 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).

Financial assistance

Application for assistance

- (1) At any time after a person specified in a warrant issued under this Division is notified of the issue of the warrant, the person may apply to the Minister for the provision of assistance under this section in respect of the person's appearance before a prescribed authority for questioning under the warrant.

Authorisation of assistance

- (2) The Minister may authorise the provision by the Commonwealth to the person of such financial assistance as the Minister determines.

- (3) The Minister may authorise the provision of assistance on such conditions (if any) as the Minister determines.

Guidelines

- (4) The Minister may, in writing, determine guidelines that are to be applied in authorising the provision of assistance under this section.

Limit on assistance

- (5) This section does not apply in relation to:
- (a) any complaint the person makes that is of the kind mentioned in paragraph 34J(1)(e); or
 - (aa) any information the person gives that is of a kind mentioned in paragraph 34J(1)(ea); or
 - (b) any remedy the person seeks that is of the kind mentioned in paragraph 34J(1)(f).

Instruments are not legislative instruments

An instrument made under this Division (other than an instrument made by the Minister under section 34C) is not a legislative instrument.

Cessation of effect of Division

This Division ceases to have effect on 22 July 2016.

Security assessments

1—Preliminary

Interpretation

(1) In this Part, unless the contrary intention appears:

adverse security assessment means a security assessment in respect of a person that contains:

- (a) any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of the person; and
- (b) a recommendation that prescribed administrative action be taken or not be taken in respect of the person, being a recommendation the implementation of which would be prejudicial to the interests of the person.

agency head means:

- (a) the Director-General; or
- (b) the Director-General of the Australian Secret Intelligence Service; or
- (c) the Director-General of the Office of National Assessments; or
- (d) the Director of that part of the Defence Department known as the Defence Imager and Geospatial Organisation; or
- (e) the Director of that part of the Defence Department known as the Defence Intelligence Organisation; or
- (f) the Director of that part of the Defence Department known as the Defence Signals Directorate.

applicant means a person who has applied to the Tribunal for a review of a security assessment.

authority of a State includes a State Minister, Department or Police Force.

Commonwealth agency means a Minister or an authority of the Commonwealth.

Commonwealth contractor means a person performing work or rendering services, otherwise than as an employee, for the purposes of the Commonwealth or an authority of the Commonwealth, including a person performing such work or rendering such services as a sub-contractor or as an adviser or consultant.

prescribed administrative action means:

(a) action that relates to or affects:

- (i) access by a person to any information or place access to which is controlled or limited on security grounds; or
- (ii) a person's ability to perform an activity in relation to, or involving, a thing (other than information or a place), if that ability is controlled or limited on security grounds;

including action affecting the occupancy of any office or position under the Commonwealth or an authority of the Commonwealth or under a State or an authority of a State, or in the service of a Commonwealth contractor, the occupancy of which has or may have any such access or ability;

(b) the exercise of any power, or the performance of any function, in relation to a person under the *Migration Act 1958* or the regulations under that Act; or

(c) the exercise of any power, or the performance of any function, in relation to a person under the *Australian Citizenship Act 2007*, the *Australian Passports Act 2005* or the regulations under either of those Acts; or

(d) the exercise of a power under section 58A, or subsection 581(3), of the *Telecommunications Act 1997*.

Note: An obligation, prohibition or restriction imposed by a control order is not prescribed administrative action (see subsection (2)).

qualified security assessment means a security assessment in respect of a person that:

- (a) contains any opinion or advice, or any qualification of any opinion or advice, or a statement of information, that is or could be prejudicial to the interests of the person; and

(b) does not contain a recommendation of the kind referred to in paragraph (b) of the definition of ***adverse security assessment***;

whether or not the matters contained in the assessment would, by themselves, justify prescribed administrative action being taken or not being taken in respect of the person to the prejudice of the interests of the person.

security assessment or ***assessment*** means a statement in writing furnished by the Organisation to a Commonwealth agency expressing any recommendation, opinion or advice on, or otherwise referring to, the question whether it would be consistent with the requirements of security for prescribed administrative action to be taken in respect of a person or the question whether the requirements of security make it necessary or desirable for prescribed administrative action to be taken in respect of a person, and includes any qualification or comment expressed in connection with any such recommendation, opinion or advice, being a qualification or comment that relates or that could relate to that question.

staff member of the Organisation or an intelligence or security agency means:

- (a) the agency head of the Organisation or agency; or
- (b) an employee or officer of the Organisation or agency; or
- (c) a consultant or contractor to the Organisation or agency; or
- (d) a person who is made available by an authority of the Commonwealth, authority of a State or other person to perform services for the Organisation or agency.

Tribunal means the Administrative Appeals Tribunal.

- (2) To avoid doubt, an obligation, prohibition or restriction imposed on a person by a contravention order made under Division 104 of the *Criminal Code* is not prescribed administrative action.

Not to apply to certain assessments

This Part (other than subsections 37(1), (3) and (4)) does not apply to or in relation to:

- (a) a security assessment in relation to the employment, by engagement outside Australia for duties outside Australia, of a person who is not an Australian citizen or is not normally resident in Australia; or
- (b) a security assessment in relation to action of a kind referred to in paragraph (b) of the definition of ***prescribed administrative action*** in section 35 (other than an assessment made for the purposes of subsection 202(1) of the *Migration Act 1958* in respect of a person who is not:
 - (i) an Australian citizen;
 - (ii) a person who is, within the meaning of the *Migration Act 1958*, the holder of a valid permanent visa; or
 - (iii) a person who holds a special category visa or is taken by subsection 33(2) of the *Migration Act 1958* to have been granted a special purpose visa; or
- (c) a security assessment in relation to the engagement, or proposed engagement, of a person by or in the Organisation, or an intelligence or security agency, as a staff member of the Organisation or agency.

2—Furnishing of security assessments

ity assessments

- (1) The functions of the Organisation referred to in paragraph 17(1)(c) include the furnishing to Commonwealth agencies of security assessments relevant to their functions and responsibilities.
- (2) An adverse or qualified security assessment shall be accompanied by a statement of the grounds for the assessment, and that statement:
 - (a) shall contain all information that has been relied on by the Organisation in making the assessment, other than information the inclusion of which would, in the opinion of the Director-General, be contrary to the requirements of security; and
 - (b) shall, for the purposes of this Part, be deemed to be part of the assessment.
- (3) The regulations may prescribe matters that are to be taken into account, the manner in which those matters are to be taken into account, and matters that are not to be taken into account, in the making of assessments, or of assessments of a particular class, and any such regulations are binding on the Organisation and on the Tribunal.
- (4) Subject to any regulations made in accordance with subsection (3), the Director-General shall, in consultation with the Minister, determine matters of a kind referred to in subsection (3), but nothing in this subsection affects the powers of the Tribunal.
- (5) No proceedings, other than an application to the Tribunal under section 54, shall be brought in any court or tribunal in respect of the making of an assessment or anything done in respect of an assessment in accordance with this Act.

1 to be notified of assessment

- (1) Subject to this section, where, after the commencement of this Act, an adverse or qualified security assessment in respect of a person is furnished by the Organisation to

Commonwealth agency or a State or an authority of a State, the Commonwealth agency or the State or the authority of the State shall, within 14 days after the day on which the assessment is so furnished, give to that person a notice in writing, to which a copy of the assessment is attached, informing him or her of the making of the assessment and containing information, in the prescribed form, concerning his or her right to apply to the Tribunal under this Part.

- (1A) This section does not apply to a security assessment if section 38A applies to the assessment.
- (2) The Attorney-General may, by writing signed by the Attorney-General delivered to the Director-General, certify that the Attorney-General is satisfied that:
 - (a) the withholding of notice to a person of the making of a security assessment in respect of the person is essential to the security of the nation; or
 - (b) the disclosure to a person of the statement of grounds contained in a security assessment in respect of the person, or of a particular part of that statement, would be prejudicial to the interests of security.
- (3) Where the Attorney-General issues a certificate under subsection (2), he or she shall cause a copy of the certificate to be delivered to the Commonwealth agency to which the assessment was furnished.
- (4) Subsection (1) does not require a notice to be given in relation to a security assessment to which a certificate in accordance with paragraph (2)(a) applies.
- (5) In the case of a security assessment in relation to which a certificate certifying in accordance with paragraph (2)(b) has been given, the copy of the assessment to be attached to a notice under subsection (1) shall not contain any matter to which the certificate applies.
- (6) A notice under subsection (1) may be given to a person by delivering it to him or her personally or by sending it to the person by registered post at his or her address last

known to the Commonwealth agency.

ification where assessment relates to Telecommunications Act

- (1) This section applies to an adverse or qualified security assessment in respect of a person (the *assessed person*) if the assessment is given to the Attorney-General in connection with section 58A, or subsection 581(3), of the *Telecommunications Act 1997*.
- (2) Within 14 days after receiving the assessment, the Attorney-General must give to the assessed person a notice in writing, to which a copy of the assessment is attached, informing the assessed person of the making of the assessment and containing information, in the form prescribed for the purposes of subsection 38(1), concerning his or her right to apply to the Tribunal under this Part.
- (3) If the Attorney-General is satisfied that the assessment contains any matter the disclosure of which would be prejudicial to the interests of security, then the Attorney-General must exclude that matter from the copy provided under subsection (2).

of preliminary advice by Organisation

- (1) Subject to subsection (2), a Commonwealth agency shall not take, refuse to take or refrain from taking prescribed administrative action on the basis of any communication in relation to a person made by the Organisation not amounting to a security assessment or on the basis of an adverse or qualified security assessment made by the Organisation before the commencement of this Act.
- (2) Subsection (1) does not prevent a Commonwealth agency from taking action of a temporary nature to prevent:
 - (a) access by a person to any information or place access to which is controlled or limited on security grounds; or
 - (b) a person from performing an activity in relation to, or involving, a thing (other than information or a place), if the person's ability to perform that activity is controlled

or limited on security grounds;

if, on the basis of a preliminary communication by the Organisation, the Commonwealth agency is satisfied that the requirements of security make it necessary to take that action as a matter of urgency pending the furnishing of an assessment by the Organisation.

Functions for State purposes

- (1) If any prescribed administrative action in respect of a person by a State or an authority of a State would affect security in connection with matters within the functions and responsibilities of a Commonwealth agency, it is within the functions of the Organisation:
 - (a) in any case—to furnish a security assessment in respect of that person to the Commonwealth agency, for the purpose of its transmission to the State or the authority of the State for use in considering that prescribed administrative action or
 - (b) if the prescribed administrative action would affect security in connection with an event designated in writing by the Minister as a special event—to furnish a security assessment in respect of that person to the State or the authority of a State for use in considering that prescribed administrative action.
- (2) The Organisation shall not:
 - (a) subject to paragraph (1)(b), communicate directly to a State or an authority of a State, whether in the form of an assessment or otherwise, any information, recommendation, opinion or advice concerning a person which the Organisation knows is intended or likely to be used by the State or an authority of the State in considering prescribed administrative action in relation to that person; or
 - (b) furnish to a Commonwealth agency otherwise than in the form of an assessment any information, recommendation, opinion or advice concerning a person if the Organisation knows that the Commonwealth agency intends to communicate it to

a State or an authority of a State for use in considering prescribed administrative action in relation to that person.

- (3) For the purposes of paragraph 40(1)(b), the Minister must notify the Director-General :
writing of an event designated as a special event.

4—Review of security assessments

Applications to Tribunal

- (1) An application may be made to the Tribunal for a review of an adverse or qualified security assessment.
- (2) At any time after the completion of a review by the Tribunal of a security assessment (other than a review of a security assessment made for the purposes of subsection 202(1) of the *Migration Act 1958*), an application may be made for a review of the findings of the Tribunal on the ground that the applicant has fresh evidence of material significance that was not available at the time of the previous review.

Effect of findings

Where an assessment has been reviewed by the Tribunal, every Commonwealth agency concerned with prescribed administrative action to which the assessment is relevant, and any tribunal, person or authority having power to hear appeals from, or to review, decision with respect to any prescribed administrative action to which the assessment relevant, shall treat the findings of the Tribunal, to the extent that they do not confirm the assessment, as superseding that assessment.

Restriction on further assessments after review

Where the Tribunal has made findings upon a review of an assessment, the Organisation shall not make a further assessment in respect of the person concerned that is not in accordance with those findings except on the basis of matters occurring after the review or of which evidence was not available at the time of the review.

ence of certain matters to Tribunal by Minister

(1) Where:

- (a) before the commencement of this Act, the Organisation furnished, or is alleged to have furnished, to a Commonwealth agency a security assessment, or a communication of a similar nature, concerning a person; or
- (b) after the commencement of this Act, the Organisation has furnished, or is alleged to have furnished, to a Commonwealth agency a security assessment, or a communication of a similar nature, concerning a person, other than a security assessment of which a copy has been delivered to that person in accordance with this Part;

the Minister may, if satisfied that it is desirable to do so by reason of special circumstances, require the Tribunal to inquire and report to the Minister upon any question concerning that action or alleged action of the Organisation, and may require the Tribunal to review any such assessment or communication and any information or matter on which any such assessment or communication was based, and the Tribunal shall comply with the requirement and report its findings to the Minister.

(1A) For the purposes of determining whether it is desirable to make a requirement of the Tribunal under subsection (1) in relation to a matter, the Minister may request the Inspector-General of Intelligence and Security to inquire into the matter or into a specified aspect of the matter and to report to the Minister the results of the inquiry, and the Inspector-General shall comply with any such request.

(2) The constitution and procedure of the Tribunal under this section shall be as determined by the President.

(3) Sections 43 and 43AAA of the *Administrative Appeals Tribunal Act 1975* and section 6 of this Act do not apply in relation to a review under this section but, when the Tribunal has made findings under this section, the Minister shall, subject to the requirements of security, take or cause to be taken such action in relation to those findings, by way of

communication or publication of the findings or alteration of records, as the Minister considers appropriate in the interests of justice.

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- (1) A person who is or has been a member or an officer of the Tribunal shall not, either directly or indirectly, except for the purposes of this Act:
 - (a) make a record of, or divulge or communicate to any person, any information acquired by him or her by reason of his or her office or employment under or for the purposes of this Act; or
 - (b) produce to any person a document furnished for the purposes of this Act.

Penalty: Imprisonment for 2 years.

- (2) A person who is or has been a member or an officer of the Tribunal shall not be required to produce in a court any document of which the person has custody, or to which the person has access, by virtue of his or her office or employment under or for the purposes of this Act, or to divulge or to communicate to a court any information obtained by him or her by reason of such an office or employment, except when it is necessary to do so for the purposes of this Act.

- (3) In this section:

court includes any tribunal, authority or person having power to require the production of documents or the answering of questions.

produce includes permit access to, and **production** has a corresponding meaning; and a reference in this section to information or a document shall be read as a reference to information or a document supplied to the Tribunal for the purposes of this Part or otherwise related to proceedings under this Part.

—Staff of Organisation

Employment of officers and employees

- (1) Subject to this Act, the Director-General may, on behalf of the Commonwealth:
 - (a) employ, under agreements in writing, such officers of the Organisation as the Director-General thinks necessary for the purposes of this Act; and
 - (b) employ such temporary employees and casual employees of the Organisation as the Director-General thinks necessary for those purposes.
- (2) The Director-General shall not employ a person as an officer except:
 - (a) in an office the designation and salary or salary range of which have been determined, or are deemed to have been determined, under subsection 85(1); and
 - (b) upon the terms and conditions of employment that are in force under section 86 in relation to the employment of persons as officers at the date on which that person is so employed.
- (3) An agreement under this section may be varied from time to time by further agreement.

Designation of offices etc.

- (1) The designations of offices in the Organisation, other than the office of Director-General, and the salaries or salary ranges applicable to those offices, shall be such as are determined from time to time by the Director-General.
- (2) The designations of offices in the Organisation immediately before the date of commencement of this Act, and the salaries or salary ranges applicable to those offices immediately before that date, shall be deemed to have been determined under subsection (1).

tions of employment

Officers and employees of the Organisation are not subject to the *Public Service Act 1999* but, subject to this Act, the terms and conditions upon which the Director-General shall employ persons as officers, and the terms and conditions of employment applicable to temporary and casual employees, shall be such as are determined from time to time by the Director-General.

11 provisions relating to existing employees

- (1) A person who, immediately before the date of commencement of this Act, was employed in the Organisation under an agreement in writing with the Commonwealth shall, unless and until he or she agrees to accept other terms and conditions, continue to be employed upon the terms and conditions specified in that agreement.
- (2) A person, not being a person to whom subsection (1) applies, who was, immediately before the date of commencement of this Act, employed in the Organisation shall, until other terms and conditions applicable to him or her are determined under section 86, continue to be employed upon the terms and conditions applicable to him or her immediately before that date.

12 termination of employment of officers

The employment of an officer of the Organisation shall not be terminated except in accordance with a term or condition of his or her employment.

13 regulations relating to staff

- (1) The regulations may make provision for the employment of officers otherwise than under agreements in writing and may, in respect of officers so employed, make provision from time to time for their terms and conditions of employment (including salaries).

- (2) The regulations may make provision for the terms and conditions of employment applicable to temporary and casual employees.
- (2A) The regulations may make provision for the establishment of a body, or for a person, to review actions of the Organisation affecting persons who are or have been officers or temporary or casual employees, and for the immunity from civil proceedings of any such body or person in relation to their review of such actions.
- (3) Regulations made in accordance with this section have effect notwithstanding sections 84, 85 and 86.
- (4) Regulations made in accordance with this section shall not apply to the employment of an officer employed under an agreement made before the commencement of the first regulations so made in relation to officers except to the extent agreed in writing between the officer and the Director-General.

Definition of Crimes Act

The Director-General and officers and employees of the Organisation shall be deemed to be Commonwealth officers for the purposes of the *Crimes Act 1914*.

Definition of identity of officer of Organisation

- (1) A person (other than a member of the Committee on Intelligence and Security) shall not, except with the consent in writing of the Minister or of the Director-General, publish or cause to be published in a newspaper or other publication, or by radio broadcast or television, or otherwise make public, any matter stating, or from which it could reasonably be inferred, that a person having a particular name or otherwise identified, a person residing at a particular address, is an officer (not including the Director-General), employee or agent of the Organisation or is in any way connected with such an officer, employee or agent or, subject to subsection (1B), is a former

officer (not including a former Director-General), employee or agent of the Organisation or is in any way connected with such a former officer, employee or agent

Penalty: Imprisonment for one year.

- (1A) A member of the Committee referred to in subsection (1) shall not, except with the consent in writing of the Minister or of the Director-General, make public or authorise the publication of, any information acquired by the person by reason of being such a member, being information from which it could reasonably be inferred that a person having a particular name or otherwise identified, or a person residing at a particular address, is an officer (not including the Director-General), employee or agent or is in any way connected with such an officer, employee or agent or, subject to subsection (1B), is a former officer (not including a former Director-General), employee or agent of the Organisation or is in any way connected with such a former officer, employee or agent.

Penalty: Imprisonment for one year.

- (1B) Subsections (1) and (1A) do not apply in relation to action taken in respect of a former officer, employee or agent of the Organisation:
- (a) who has consented in writing to the taking of that action; or
 - (b) who has caused or permitted the fact that the person is a former officer, employee or agent of the Organisation to be made public.
- (2) Nothing in this section applies to the broadcasting, datacasting or reporting of proceedings in the Parliament (other than proceedings of the Committee referred to in subsection (1)).
- (3) A prosecution for an offence against this section shall be instituted only by or with the consent of the Attorney-General.

[—Miscellaneous

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- (5) Where, in proceedings for an offence against this Act in respect of any conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.
- (6) Any conduct engaged in on behalf of a body corporate:
- (a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or
 - (b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of the direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent;
- shall be deemed, for the purposes of this Act, to have been engaged in by the body corporate.
- (7) A reference in subsection (5) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for his or her intention, opinion, belief or purpose.

Annual report

- (1) The Director-General shall, as soon as practicable after each year ending on 30 June, furnish to the Minister a report on the activities of the Organisation during that year.
- (1A) The report must include a statement of:

- (a) the total number of requests made under Division 3 of Part III to issuing authorities during the year for the issue of warrants under that Division; and
- (b) the total number of warrants issued during the year under that Division; and
- (c) the total number of warrants issued during the year under section 34E; and
- (d) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year under section 34E and the total of all those hours for all those persons; and
- (e) the total number of warrants issued during the year under section 34G; and
- (f) the following numbers:
 - (i) the number of hours each person appeared before a prescribed authority for questioning under a warrant issued during the year under section 34G;
 - (ii) the number of hours each person spent in detention under such a warrant;
 - (iii) the total of all those hours for all those persons; and
- (g) the number of times each prescribed authority had persons appear for questioning before him or her under warrants issued during the year.

(1B) A statement included under subsection (1A) in a report must not name, or otherwise specifically identify, any person to whom information provided in the report relates.

Note: Subsection (4) lets the Minister delete information described in subsection (1A) from the copy of the report laid before each House of the Parliament under subsection (3), if the Minister considers it necessary to avoid prejudice to security, the defence of the Commonwealth, the conduct of the Commonwealth's international affairs or the privacy of individuals.

- (2) A copy of a report furnished under subsection (1) shall be given to the Leader of the Opposition in the House of Representatives, but it is the duty of the Leader of the Opposition to treat as secret any part of the report that is not tabled in a House of the Parliament.
- (3) Subject to subsection (4), the Minister shall cause a copy of a report furnished under subsection (1) to be laid before each House of the Parliament within 20 sitting days of that House after the report is received by the Minister.

- (4) For the purposes of subsection (3), the Minister may make such deletions from a report furnished under subsection (1) as the Minister, after obtaining advice from 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 Minister may not delete from a report a statement described in subsection (1A).

Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters required or permitted by this Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Endnotes

Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Australian Security Intelligence Organisation Act 1979*.

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Australian Security Intelligence Organization Act 1979	113, 1979	25 Oct 1979	1 June 1980 (<i>see Gazette</i> 1980, No. G21, p. 2)	
Australian Security Intelligence Organization Amendment Act 1979	182, 1979	4 Dec 1979	1 June 1980 (<i>see s. 2</i>)	—
Statute Law (Miscellaneous Provisions) Act (No. 1) 1985	65, 1985	5 June 1985	s. 3: 3 July 1985	—
Australian Security Intelligence Organization Amendment Act 1986	122, 1986	2 Dec 1986	ss. 33, 36 and 37: (<i>a</i>) ss. 34 and 35: (<i>a</i>) Remainder: 1 Feb 1987 (<i>see Gazette</i> 1987, No. S13)	—
as amended by				
Australian Security Intelligence Organization Amendment Act 1988	137, 1988	26 Dec 1988	26 Dec 1988	—
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	(<i>see</i> 115, 1990 below)	—

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Telecommunications (Interception) Amendment Act 1987	89, 1987	5 June 1987	ss. 1 and 2: Royal Assent ss. 5(1)(a), (2), 6 and 8: 16 Dec 1987 (<i>see</i> s. 2(1A)) Remainder: 1 Sept 1988 (<i>see Gazette</i> 1988, No. S256)	—
as amended by				
Crimes Legislation Amendment Act 1987	120, 1987	16 Dec 1987	ss. 53 and 54: Royal Assent	—
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s. 3: Royal Assent	s. 5(1)
Telecommunications Amendment Act 1988	121, 1988	14 Dec 1988	ss. 5, 6, 10, 12, 13, 23(2) and 26(1): 1 Jan 1989 (<i>see Gazette</i> 1988, No. S402) ss. 14, 23(3) and 26(2): 30 June 1989 (<i>see Gazette</i> 1989, No. S216) Remainder: Royal Assent	—
Postal Services Amendment Act 1988	126, 1988	14 Dec 1988	ss. 4, 5, 9–11, 21(2) and 22(1): 1 Jan 1989 (<i>see Gazette</i> 1988, No. S402) ss. 12, 21(3) and 22(2): 30 June 1989 (<i>see Gazette</i> 1989, No. S216) Remainder: Royal Assent	—

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
as amended by				
Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989	63, 1989	19 June 1989	(see 63, 1989 below)	—
Australian Security Intelligence Organization Amendment Act 1988	137, 1988	26 Dec 1988	26 Dec 1988	—
Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989	63, 1989	19 June 1989	ss. 1 and 2: Royal Assent Part 5 (ss. 17, 18): 30 June 1989 (see s. 2(3)) Remainder: 1 July 1989 (see <i>Gazette</i> 1989, No. S230)	s. 2(4)
as amended by				
Transport and Communications Legislation Amendment Act 1991	11, 1991	21 Jan 1991	s. 45: (b)	—
Courts and Tribunal Administration Amendment Act 1989	157, 1989	5 Dec 1989	Parts 1 and 6 (ss. 1, 2, 17, 18): Royal Assent Remainder: 1 Jan 1990 (see <i>Gazette</i> 1989, No. S398)	s. 2(3)
Migration Legislation Amendment (Consequential Amendments) Act 1989	159, 1989	18 Dec 1989	s. 4: 19 Dec 1989 (see s. 2(2)) Remainder: 19 Dec 1989 (see s. 2(1))	—
Law and Justice Legislation Amendment Act 1989	11, 1990	17 Jan 1990	Part 3 (ss. 6, 7): Royal Assent	—

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Defence Legislation Amendment Act 1990	75, 1990	22 Oct 1990	s. 5: Royal Assent	—
Law and Justice Legislation Amendment Act 1990	115, 1990	21 Dec 1990	ss. 1, 2 and 40–49: Royal Assent ss. 3, 5, 6, 8, 9, 16, 17, 20–23, 28, 30, 32, 33, 38 and 39: 4 Feb 1991 (<i>see Gazette</i> 1991, No. GN3) Remainder: 21 June 1991	—
Industrial Relations Legislation Amendment Act 1991	122, 1991	27 June 1991	ss. 4(1), 10(b) and 15–20: 1 Dec 1988 ss. 28(b)–(e), 30 and 31: 10 Dec 1991 (<i>see Gazette</i> 1991, No. S332) Remainder: Royal Assent	s. 31(2)
Law and Justice Legislation Amendment Act 1991	136, 1991	12 Sept 1991	ss. 4–9: 10 Oct 1991	—
Crimes (Aviation) Act 1991	139, 1991	27 Sept 1991	16 Mar 1992 (<i>see Gazette</i> 1992, No. S65)	—
as amended by				
Crimes and Other Legislation Amendment Act 1994	182, 1994	19 Dec 1994	s. 31: (c)	—
Transport and Communications Legislation Amendment Act 1994	64, 1994	30 May 1994	30 May 1994	s. 2(2)–(4)
Crimes and Other Legislation Amendment Act 1994	182, 1994	19 Dec 1994	ss. 3–7: Royal Assent	ss. 4 and 6(2)
Law and Justice Legislation Amendment Act (No. 1) 1995	175, 1995	16 Dec 1995	16 Dec 1995	Sch. 1 (item 60)

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Statute Law Revision Act 1996	43, 1996	25 Oct 1996	Schedule 4 (item 40): Royal Assent	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 252–258): 5 Dec 1999 (<i>see</i> s. 2(1) and <i>Gazette</i> 1999, No. S584)	—
Australian Security Intelligence Organisation Legislation Amendment Act 1999	161, 1999	10 Dec 1999	Schedules 1 and 2: Royal Assent (<i>d</i>) Schedule 3 (item 21): (<i>d</i>)	Sch. 1 (items 44, 45) and Sch. 2 (item 14)
Telecommunications (Interception) Legislation Amendment Act 2000	63, 2000	22 June 2000	Schedule 3 (item 1): Royal Assent	—
Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000	108, 2000	3 Aug 2000	Schedule 3 (item 1): 1 Jan 2001 (<i>see Gazette</i> 2000, No. GN50)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
Privacy Amendment (Private Sector) Act 2000	155, 2000	21 Dec 2000	Schedule 3: Royal Assent Remainder: 21 Dec 2001	Sch. 3 (item 2)
Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001	24, 2001	6 Apr 2001	s. 4(1), (2) and Schedule 4: (<i>e</i>)	s. 4(1) and (2)
Intelligence Services (Consequential Provisions) Act 2001	153, 2001	1 Oct 2001	29 Oct 2001 (<i>see</i> s. 2)	s. 4 and Sch. 1 (items 7–9)
Abolition of Compulsory Age Retirement (Statutory Officeholders) Act 2001	159, 2001	1 Oct 2001	29 Oct 2001	Sch. 1 (item 97)

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Cybercrime Act 2001	161, 2001	1 Oct 2001	21 Dec 2001 (<i>see Gazette</i> 2001, No. S529)	—
Australian Crime Commission Establishment Act 2002	125, 2002	10 Dec 2002	Schedule 2 (items 2–4): 1 Jan 2003	—
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003	77, 2003	22 July 2003	Schedule 1: (items 1–8, 15–27C): 23 July 2003 Schedule 1 (items 10, 11): (<i>ff</i>)	Sch. 1 (items 5, 11, 20, 27C)
ASIO Legislation Amendment Act 2003	143, 2003	17 Dec 2003	18 Dec 2003	Sch. 1 (items 2, 4, 6, 11)
Communications Legislation Amendment Act (No. 1) 2004	35, 2004	20 Apr 2004	21 Apr 2004	—
Anti-terrorism Act (No. 3) 2004	125, 2004	16 Aug 2004	Schedule 2: 13 Sept 2004	Sch. 2 (item 2)
Australian Security Intelligence Organisation Amendment Act 2004	141, 2004	14 Dec 2004	14 Dec 2004	—
Australian Passports (Transitionals and Consequentials) Act 2005	7, 2005	18 Feb 2005	Schedule 1 (items 2–4): 1 July 2005 (<i>see</i> s. 2(1))	—
Telstra (Transition to Full Private Ownership) Act 2005	118, 2005	23 Sept 2005	s. 3: Royal Assent Schedule 1 (items 43–46): 24 Nov 2006 (<i>see</i> F2006L03997)	s. 3
Intelligence Services Legislation Amendment Act 2005	128, 2005	4 Nov 2005	Schedule 4 (item 1) and Schedule 8 (items 2, 15–19): 2 Dec 2005	—
Anti-Terrorism Act (No. 2) 2005	144, 2005	14 Dec 2005	Schedule 10 (items 1–25): Royal Assent Schedule 10 (items 26–28): 15 Dec 2005	Sch. 10 (item 25)

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Telecommunications (Interception) Amendment Act 2006	40, 2006	3 May 2006	Schedule 1 (items 13–15): 13 June 2006 (<i>see</i> F2006L01623)	—
ASIO Legislation Amendment Act 2006	54, 2006	19 June 2006	Schedule 1 (items 1–10, 16–21): 20 June 2006 Schedule 2 (items 1–32): (<i>g</i>)	Sch. 1 (items 16–21)
Law Enforcement (AFP Professional Standards and Related Measures) Act 2006	84, 2006	30 June 2006	Schedule 3A (items 1–9): (<i>h</i>) Schedule 3A (items 10–22): (<i>h</i>)	—
Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006	86, 2006	30 June 2006	Schedule 1 (items 6–10): 30 Dec 2006 (<i>see</i> s. 2(1))	—
Privacy Legislation Amendment (Emergencies and Disasters) Act 2006	148, 2006	6 Dec 2006	7 Dec 2006	—
Law and Justice Legislation Amendment (Marking of Plastic Explosives) Act 2007	3, 2007	19 Feb 2007	Schedule 3 (item 2): 25 Aug 2007	—
Australian Citizenship (Transitionals and Consequentials) Act 2007	21, 2007	15 Mar 2007	Schedule 1 (item 5): 1 July 2007 (<i>see</i> s. 2(1))	—
Anti-People Smuggling and Other Measures Act 2010	50, 2010	31 May 2010	Schedule 2: 1 June 2010	—
Telecommunications Interception and Intelligence Services Legislation Amendment Act 2011	4, 2011	22 Mar 2011	Schedule 6 (items 1–17, 29): 23 Mar 2011	Sch. 6 (item 29)
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 6 (items 10, 11): 19 Apr 2011	—

Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (item 242) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Intelligence Services Legislation Amendment Act 2011	80, 2011	25 July 2011	Schedule 1 (items 1–18, 29–31): 26 July 2011	Sch. 1 (items 29–31)
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (items 51–53): 12 Apr 2013 (<i>see</i> s. 2(1))	Sch. 1 (item 53)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 1 (item 23): Royal Assent	—

- (a) The proposed amendments to sections 85 and 86 of the *Australian Security Intelligence Organisation Act 1979* made by sections 34 and 35 of the *Australian Security Intelligence Organization Amendment Act 1986* (as amended by the *Australian Security Intelligence Organization Amendment Act 1988*) were repealed before a date was fixed for their commencement.

The proposed amendments to sections 84, 88 and 90 of the *Australian Security Intelligence Organisation Act 1979* made by sections 33, 36 and 37 of the *Australian Security Intelligence Organization Amendment Act 1986* (as amended by the *Law and Justice Legislation Amendment Act 1990*) were repealed before a date was fixed for their commencement.

- (b) The *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989* was amended by section 45 only of the *Transport and Communications Legislation Amendment Act 1991*, paragraph 2(13)(e) of which provides as follows:

(13) The amendments made in the Schedule are taken to have commenced as follows:

- (e) each amendment of a provision of, or an item in a Schedule to, the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989* is taken to have commenced immediately after the commencement of the provision, or item, concerned.

Section 45 amended section 74 of the *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989* which commenced on 1 July 1989 (see *Gazette* 1989, No. S230).

- (c) The *Crimes (Aviation) Act 1991* was amended by section 31 only of the *Crimes and Other Legislation Amendment Act 1994*, subsection 2(5) of which provides as follows:

(5) The amendment made by this Act to Schedule 5 to the *Crimes (Aviation) Act 1991* is taken to have commenced on 16 March 1992 immediately after the commencement of that Act.

- (d) The *Australian Security Intelligence Organisation Act 1979* was amended by Schedules 1, 2 and Schedule 3 (item 21) only of the *Australian Security Intelligence Organisation Legislation Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) This Act (other than Schedule 3) commences on the day on which it receives the Royal Assent.

(2) Subject to subsections (3) to (6), Schedule 3 commences immediately after the commencement of the other Schedules to this Act.

- (e) The *Australian Security Intelligence Organisation Act 1979* was amended by Schedule 4 only of the *Law and Justice Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:

(1) Subject to this section, this Act commences at the later of the following times:

- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

Item 15 commenced on 24 May 2001.

- (f) Subsection 2(1) (items 2 and 3) of the *Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Act 2003* provides as follows:

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedule 1, items 1 to 8	The day after this Act receives the Royal Assent	23 July 2003
3. Schedule 1, items 10 and 11	Immediately after the commencement of item 8 of Schedule 1	23 July 2003

(g) Subsection 2(1) (items 2 and 3) of the *ASIO Legislation Amendment Act 2006* provides as follows

- (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.

Provision(s)	Commencement	Date/Details
2. Schedule 1	The day after this Act receives the Royal Assent.	20 June 2006
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	20 June 2006

(h) Subsection 2(1) (items 2–4) of the *Law Enforcement (AFP Professional Standards and Related Measures) Act 2006* provides as follows:

- (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.

Provision(s)	Commencement	Date/Details
2. Schedules 1 to 3	At the same time as section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences.	30 December 2006
3. Schedule 3A, Part 1	At the same time as section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences. However, the provision(s) do not commence at all if Schedule 1 to the <i>ASIO Legislation Amendment Act 2006</i> commences before, or at the same time as, the time at which section 3 of the <i>Law Enforcement Integrity Commissioner Act 2006</i> commences.	Does not commence

Provision(s)	Commencement	Date/Details
4. Schedule 3A, Part 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of Schedule 2 to the <i>ASIO Legislation Amendment Act 2006</i> .	30 December 2006 (paragraph (a) applies)

Endnote 2—Amendment history

This endnote sets out the amendment history of the *Australian Security Intelligence Organisation Act 1979*.

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
Title.....	am. No. 161, 1999
Part I	
s. 1.....	am. No. 161, 1999
s. 3.....	am. No. 161, 1999
s. 4.....	am. No. 122, 1986; No. 159, 1989; No. 75, 1990; No. 136, 1991; No. 139, 1991 (as am. by No. 182, 1994); No. 182, 1994; Nos. 146 and 161, 1999; No. 153, 2001; No. 77, 2003; Nos. 118, 128 and 144, 2005; No. 3, 2007; No. 50, 2010; Nos. 4, 5 and 80, 2011
s. 4A.....	ad. No. 24, 2001
s. 5.....	rs. No. 122, 1986
s. 5A.....	ad. No. 122, 1986
Part II	
Heading to Part II.....	am. No. 161, 1999
Heading to s. 6.....	am. No. 161, 1999
s. 6.....	am. No. 161, 1999
Heading to s. 8.....	am. No. 161, 1999
s. 8.....	am. No. 122, 1986; No. 161, 1999
s. 8A.....	ad. No. 122, 1986 am. No. 137, 1988; No. 161, 1999; No. 153, 2001; No. 128, 2005
s. 9.....	am. No. 141, 1987; No. 159, 2001
s. 10.....	am. No. 141, 1987; No. 43, 1996
s. 11.....	rs. No. 122, 1991 am. No. 146, 1999
s. 12.....	am. No. 141, 1987
s. 13.....	am. No. 141, 1987; No. 122, 1991
s. 14.....	am. No. 141, 1987; No. 161, 1999
s. 15.....	am. No. 141, 1987
s. 16.....	rep. No. 65, 1985 ad. No. 122, 1986

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 161, 1999
Part III	
Heading to Part III.....	am. No. 161, 1999
Division 1	
Heading to s. 17.....	am. No. 161, 1999
s. 17.....	am. No. 122, 1986; No. 161, 1999; No. 63, 2000; No. 40, 2006; No. 4, 2011
s. 17AA.....	ad. No. 161, 1999
s. 17A.....	ad. No. 122, 1986
	am. No. 161, 1999
Subhead. to s. 18(1)	ad. No. 4, 2011
Subhead. to s. 18(2)	ad. No. 4, 2011
Subhead. to s. 18(5)	ad. No. 4, 2011
s. 18.....	am. No. 182, 1979; No. 122, 1986; No. 141, 1987; No. 161, 1999; No. 125, 2002; No. 77, 2003; Nos. 86 and 148, 2006; No. 4, 2011
Heading to s. 19.....	am. No. 4, 2011
s. 19.....	am. No. 122, 1986; No. 161, 1999; No. 4, 2011
Note to s. 19(2)	ad. No. 4, 2011
s. 19A.....	ad. No. 4, 2011
Heading to s. 20.....	am. No. 161, 1999
s. 20.....	am. No. 161, 1999
s. 21.....	am. No. 141, 1987
Division 2	
s. 22.....	am. No. 122, 1986; No. 161, 1999
s. 23.....	rep. No. 77, 2003
	ad. No. 144, 2005
Heading to s. 24.....	am. No. 161, 1999
s. 24.....	am. No. 141, 1987
	rs. No. 182, 1994
	am. Nos. 146 and 161, 1999; No. 77, 2003; No. 54, 2006
s. 25.....	am. No. 122, 1986; No. 141, 1987
	rs. No. 161, 1999
	am. No. 77, 2003; No. 144, 2005

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 25AA.....	ad. No. 77, 2003
s. 25A.....	ad. No. 161, 1999 am. No. 144, 2005; No. 54, 2006; No. 80, 2011
Note to s. 25A(4)	am. No. 161, 2001
s. 26.....	am. No. 122, 1986; Nos. 89 and 141, 1987; No. 121, 1988; No. 64, 1994; No. 161, 1999; No. 118, 2005; No. 40, 2006
s. 26A.....	ad. No. 161, 1999
s. 26B.....	ad. No. 161, 1999
s. 26C.....	ad. No. 161, 1999
s. 27.....	am. No. 122, 1986; No. 141, 1987; No. 126, 1988 (as am. by No. 63, 1989); No. 63, 1989 (as am. by No. 11, 1991); No. 136, 1991; No. 161, 1999; No. 144, 2005
s. 27AA.....	ad. No. 161, 1999 am. No. 144, 2005
s. 27A.....	ad. No. 122, 1986 am. Nos. 121 and 126, 1988; No. 63, 1989 (as am. by No. 11, 1991); No. 136, 1991; No. 64, 1994; No. 161, 1999; Nos. 118 and 144, 2005; No. 40, 2006; No. 80, 2011
s. 27B.....	ad. No. 161, 1999 am. No. 80, 2011
s. 29.....	am. No. 141, 1987; No. 161, 1999; No. 128, 2005
s. 30.....	am. No. 141, 1987; No. 161, 1999
s. 31.....	rs. No. 122, 1986 am. No. 161, 1999
s. 32.....	am. No. 141, 1987; No. 161, 1999
s. 33.....	am. No. 161, 1999 rep. No. 137, 2000
s. 34.....	am. No. 122, 1986; No. 161, 1999
Division 3	
Div. 3 of Part III.....	ad. No. 77, 2003
Subdivision A	
s. 34A.....	ad. No. 77, 2003 am. No. 54, 2006; No. 13, 2013

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 34AB.....	ad. No. 77, 2003 am. No. 13, 2013
s. 34B.....	ad. No. 77, 2003
s. 34C.....	ad. No. 77, 2003 am. No. 128, 2005 rs. No. 54, 2006
Subdivision B	
Subdiv. B of Div. 3 of Part III.....	rs. No. 54, 2006
s. 34D.....	ad. No. 77, 2003 rs. No. 54, 2006 am. No. 54, 2006
s. 34DA.....	ad. No. 77, 2003 rep. No. 54, 2006
s. 34E.....	ad. No. 77, 2003 rs. No. 54, 2006 am. No. 54, 2006
Subdivision C	
Subdiv. C of Div. 3 of Part III.....	rs. No. 54, 2006
s. 34F.....	ad. No. 77, 2003 am. No. 143, 2003 rs. No. 54, 2006
s. 34G.....	ad. No. 77, 2003 am. No. 144, 2005 rs. No. 54, 2006 am. No. 54, 2006
Note 1 to s. 34G(5)	am. No. 46, 2011
Note 2 to s. 34G(5)	am. No. 84, 2006
s. 34H.....	ad. No. 77, 2003 rs. No. 54, 2006
ss. 34HAA, 34HAB.....	ad. No. 77, 2003 rep. No. 54, 2006

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 34HA.....	ad. No. 77, 2003 rep. No. 54, 2006
s. 34HB.....	ad. No. 77, 2003 am. No. 143, 2003 rep. No. 54, 2006
s. 34HC.....	ad. No. 77, 2003 rep. No. 54, 2006
Subdivision D	
Heading to Subdiv. D of..... Div. 3 of Part III	ad. No. 54, 2006
s. 34J.....	ad. No. 77, 2003 rs. No. 54, 2006 am. Nos. 54 and 84, 2006
Note to s. 34J.....	ad. No. 54, 2006
ss. 34JA, 34JB.....	ad. No. 77, 2003 rep. No. 54, 2006
s. 34JBA.....	ad. No. 125, 2004 am. No. 7, 2005 rep. No. 54, 2006
s. 34JBB.....	ad. No. 125, 2004 rep. No. 54, 2006
s. 34JC.....	ad. No. 143, 2003 am. No. 7, 2005 rep. No. 54, 2006
s. 34JD.....	ad. No. 143, 2003 rep. No. 54, 2006
s. 34K.....	ad. No. 77, 2003 rs. No. 54, 2006 am. Nos. 54 and 84, 2006
Note to s. 34K(11)	rep. No. 54, 2006
s. 34L.....	ad. No. 77, 2003 rs. No. 54, 2006
s. 34M.....	ad. No. 77, 2003

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	rs. No. 54, 2006
s. 34N.....	ad. No. 77, 2003
	am. No. 144, 2005
	rs. No. 54, 2006
ss. 34NA–34NC.....	ad. No. 77, 2003
	rep. No. 54, 2006
s. 34P.....	ad. No. 77, 2003
	rs. No. 54, 2006
s. 34Q.....	ad. No. 77, 2003
	rs. No. 54, 2006
	am. No. 54, 2006
s. 34QA.....	ad. No. 77, 2003
	rep. No. 54, 2006
s. 34R.....	ad. No. 77, 2003
	rs. No. 54, 2006
	am. Nos. 54 and 84, 2006
s. 34S.....	ad. No. 77, 2003
	rs. No. 54, 2006
s. 34SA.....	ad. No. 77, 2003
	rep. No. 54, 2006
Subdivision E	
Heading to Subdiv. E of..... Div. 3 of Part III	ad. No. 54, 2006
s. 34T.....	ad. No. 77, 2003
	rs. No. 54, 2006
ss. 34TA, 34TB.....	ad. No. 77, 2003
	rep. No. 54, 2006
s. 34U.....	ad. No. 77, 2003
	am. No. 143, 2003
	rs. No. 54, 2006
s. 34V.....	ad. No. 77, 2003
	am. No. 143, 2003
	rs. No. 54, 2006

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 34VAA.....	ad. No. 143, 2003 rep. No. 54, 2006
s. 34VA.....	ad. No. 77, 2003 rep. No. 54, 2006
s. 34W.....	ad. No. 77, 2003 rs. No. 54, 2006
s. 34WA.....	ad. No. 77, 2003 rep. No. 54, 2006
s. 34X.....	ad. No. 77, 2003 rs. No. 54, 2006
s. 34Y.....	ad. No. 77, 2003 rs. No. 54, 2006
s. 34Z.....	ad. No. 54, 2006
s. 34ZA.....	ad. No. 54, 2006
s. 34ZB.....	ad. No. 54, 2006
s. 34ZC.....	ad. No. 54, 2006
s. 34ZD.....	ad. No. 54, 2006
s. 34ZE.....	ad. No. 54, 2006 am. No. 54, 2006
s. 34ZF.....	ad. No. 54, 2006 am. Nos. 54 and 84, 2006
s. 34ZG.....	ad. No. 54, 2006 rs. No. 84, 2006
s. 34ZH.....	ad. No. 54, 2006
s. 34ZI.....	ad. No. 54, 2006
s. 34ZJ.....	ad. No. 54, 2006
s. 34ZK.....	ad. No. 54, 2006
s. 34ZL.....	ad. No. 54, 2006
s. 34ZZM.....	ad. No. 54, 2006
s. 34ZN.....	ad. No. 54, 2006 am. No. 84, 2006
s. 34ZO.....	ad. No. 54, 2006

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 54, 2006
s. 34ZP.....	ad. No. 54, 2006
s. 34ZQ.....	ad. No. 54, 2006
	am. No. 54, 2006
Note to s. 34ZQ(5)	rs. No. 54, 2006
s. 34ZR.....	ad. No. 54, 2006
s. 34ZS.....	ad. No. 54, 2006
	am. Nos. 54 and 84, 2006
s. 34ZT.....	ad. No. 54, 2006
s. 34ZU.....	ad. No. 54, 2006
	am. No. 103, 2013
s. 34ZV.....	ad. No. 54, 2006
s. 34ZW.....	ad. No. 54, 2006
s. 34ZX.....	ad. No. 54, 2006
	am. No. 84, 2006
s. 34ZY.....	ad. No. 54, 2006
s. 34ZZ.....	ad. No. 54, 2006
	am. No. 54, 2006
Part IV	
Division 1	
s. 35.....	am. No. 122, 1986; No. 175, 1995; No. 161, 1999; No. 77, 2003; Nos. 35 and 141, 2004; Nos. 7 and 144, 2005; No. 21, 2007; No. 80, 2011
s. 36.....	am. No. 122, 1986; No. 159, 1989; No. 136, 1991; No. 175, 1995; No. 161, 1999; No. 141, 2004; No. 80, 2011
Division 2	
s. 37.....	am. No. 175, 1995; No. 161, 1999
s. 38.....	am. No. 141, 1987; No. 161, 1999; No. 35, 2004
s. 38A.....	ad. No. 35, 2004
Heading to s. 39.....	am. No. 161, 1999
s. 39.....	am. No. 161, 1999; No. 141, 2004
s. 40.....	am. No. 161, 1999; No. 77, 2003
Div. 3 of Part IV.....	rep. No. 175, 1995
s. 41.....	rep. No. 175, 1995

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
ss. 42, 43.....	am. No. 141, 1987 rep. No. 175, 1995
s. 44.....	rep. No. 175, 1995
ss. 45–50.....	am. No. 141, 1987 rep. No. 175, 1995
s. 51.....	rep. No. 175, 1995
s. 52.....	am. No. 141, 1987 rep. No. 175, 1995
s. 53.....	rep. No. 175, 1995
Division 4	
s. 54.....	am. No. 122, 1986; No. 141, 1987 rs. No. 175, 1995
s. 55.....	rep. No. 175, 1995
s. 56.....	am. No. 122, 1986 rep. No. 175, 1995
s. 57.....	rep. No. 175, 1995
ss. 58, 59.....	am. No. 141, 1987 rep. No. 175, 1995
s. 60.....	am. No. 65, 1985; No. 122, 1986; No. 141, 1987 rep. No. 175, 1995
s. 60A.....	ad. No. 122, 1986 rep. No. 175, 1995
s. 61.....	am. No. 122, 1986; No. 141, 2004
s. 62.....	rep. No. 175, 1995
s. 63.....	am. No. 122, 1986; No. 141, 1987; No. 136, 1991 rep. No. 175, 1995
s. 64.....	am. No. 161, 1999
s. 65.....	am. No. 122, 1986; No. 141, 1987; No. 175, 1995; No. 161, 1999
Div. 5 of Part IV.....	rep. No. 175, 1995
ss. 66–68.....	rep. No. 175, 1995
ss. 69, 70.....	am. No. 141, 1987 rep. No. 175, 1995

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 71.....	rep. No. 175, 1995
Heading to Div. 6 of Part IV	rep. No. 175, 1995
s. 72.....	am. No. 141, 1987
	rep. No. 175, 1995
s. 72A.....	ad. No. 122, 1986
	rep. No. 175, 1995
s. 73.....	am. No. 141, 1987
	rep. No. 175, 1995
ss. 74–76.....	am. No. 122, 1986; No. 141, 1987
	rep. No. 175, 1995
s. 77.....	am. No. 141, 1987
	rep. No. 175, 1995
s. 78.....	am. No. 157, 1989
	rep. No. 175, 1995
ss. 79, 80.....	rep. No. 175, 1995
s. 81.....	am. No. 122, 1986; No. 141, 1987; No. 161, 1999
ss. 82, 83.....	rep. No. 175, 1995
Part V	
Heading to Part V.....	am. No. 161, 1999
s. 84.....	am. No. 141, 1987; No. 161, 1999
s. 85.....	am. No. 122, 1986 (as am. by No. 137, 1988); No. 137, 1988; No. 161, 1999
s. 86.....	am. No. 122, 1986 (as am. by No. 137, 1988); No. 137, 1988; Nos. 146 and 161, 1999
s. 87.....	am. No. 141, 1987; No. 161, 1999
s. 88.....	rep. No. 65, 1985
s. 89.....	am. No. 141, 1987; No. 161, 1999
s. 90.....	am. Nos. 146 and 161, 1999
s. 90A.....	ad. No. 182, 1994
	rep. No. 146, 1999
s. 91.....	am. No. 161, 1999
Heading to s. 92.....	am. No. 161, 1999

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
s. 92.....	am. No. 122, 1986; No. 161, 1999; No. 108, 2000; No. 153, 2001; No. 128, 2005
Heading to Part VA.....	am. No. 161, 1999 rep. No. 153, 2001
Part VA.....	ad. No. 122, 1986 rep. No. 153, 2001
s. 92A.....	ad. No. 122, 1986 am. No. 161, 1999 rep. No. 153, 2001
Heading to s. 92B.....	am. No. 161, 1999 rep. No. 153, 2001
s. 92B.....	ad. No. 122, 1986 am. No. 161, 1999 rep. No. 153, 2001
s. 92C.....	ad. No. 122, 1986 am. No. 161, 1999 rep. No. 153, 2001
ss. 92D–92F.....	ad. No. 122, 1986 rep. No. 153, 2001
s. 92G.....	ad. No. 122, 1986 am. No. 115, 1990; No. 161, 1999 rep. No. 153, 2001
s. 92H.....	ad. No. 122, 1986 am. No. 161, 1999 rep. No. 153, 2001
Heading to s. 92J.....	am. No. 161, 1999 rep. No. 153, 2001
s. 92J.....	ad. No. 122, 1986 am. No. 161, 1999 rep. No. 153, 2001
ss. 92K, 92L.....	ad. No. 122, 1986 rep. No. 153, 2001
s. 92M.....	ad. No. 122, 1986

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted
exp. = expired or ceased to have effect

Provision affected	How affected
	am. No. 161, 1999; No. 24, 2001
	rep. No. 153, 2001
s. 92N.....	ad. No. 122, 1986
	am. No. 161, 1999
	rep. No. 153, 2001
s. 92P.....	ad. No. 122, 1986
	rs. No. 115, 1990
	rep. No. 153, 2001
s. 92Q.....	ad. No. 122, 1986
	am. No. 161, 1999
	rep. No. 153, 2001
s. 92R.....	ad. No. 122, 1986
	am. No. 115, 1990
	rep. No. 153, 2001
s. 92S.....	ad. No. 122, 1986
	am. No. 161, 1999
	rep. No. 153, 2001
s. 92T.....	ad. No. 122, 1986
	rep. No. 153, 2001
Part VI	
s. 93.....	rs. No. 122, 1986
	am. No. 161, 1999
s. 93A.....	ad. No. 11, 1990
	am. No. 161, 1999
	rep. No. 155, 2000
s. 94.....	am. No. 122, 1986; No. 161, 1999; No. 77, 2003; No. 54, 2006

Endnote 3—Uncommenced amendments [none]

There are no uncommenced amendments.

Endnote 4—Misdescribed amendments [none]

There are no misdescribed amendments.

