THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION
LEGISLATION AMENDMENT (TERRORISM) BILL 2002
[No. 2]

(Amendments to be moved by Senator Greig on behalf of the Australian Democrats)

(R1) Schedule 1, item 24, page 9 (after line 34), after paragraph (3)(a), insert:

(ab) that there are reasonable grounds for believing that it is likely that the person will
commit, is committing or has committed a terrorism offence; and

[warrants limited to terrorist suspects]

(2) Schedule 1, item 24, page 11 (after line 29), after subsection (3C), insert:

(3D) In consenting to the making of a request to issue a warrant authorising the person to be
taken into custody immediately, brought before a prescribed authority immediately for
questioning and detained, the Minister must, if the person is a citizen of an overseas
country represented in Australia by a diplomatic mission, ensure that the warrant to be
requested is to require the Director-General to contact that diplomatic mission as soon as
practicable after the person has been taken into custody and advise it of the person’s name
and that they are being detained for questioning under the Act.

(3E) However, subsection (3D) does not apply if the Minister is satisfied on reasonable
grounds that advising the diplomatic mission of the person’s detention would be likely to
pose a serious threat to national security.

[warrants—contacting diplomatic missions]

(R3) Schedule 1, item 24, page 12 (line 21), at the end of subsection (1), add:

; and (d) the issuing authority is satisfied that there are reasonable grounds for believing that
it is likely that the person will commit, is committing or has committed a terrorism
offence.

[warrants limited to terrorist suspects]
(4) Schedule 1, item 24, page 14 (line 32), at the end of subsection (1), add:

; (h) subject to sections 34TA, 34TB and 34U, the person’s right to contact a lawyer of choice at any time during the questioning period.

[right to lawyer]

(5) Schedule 1, item 24, page 14 (line 32), at the end of subsection (1), add:

; (i) the person’s right to an interpreter on request.

[right to interpreter]

(6) Schedule 1, item 24, page 14 (line 32), at the end of subsection (1), add:

; (j) subject to subsection 34C(3E), if the person is a citizen of another country which is represented in Australia by a diplomatic mission, that the diplomatic mission has or will be advised that the person is subject to a questioning warrant under this Act.

[right to diplomatic contact]

(7) Schedule 1, item 24, page 17 (lines 26 to 30), omit paragraph (c), substitute:

(c) anyone holding the person in custody or detention under this Division must, if the person requests, give the person facilities for contacting:

(i) any person whom the person is permitted to contact pursuant to paragraph (a); or

(ii) the Inspector-General of Intelligence and Security or the Ombudsman to make a complaint orally under a section mentioned in paragraph (b).

[permissible contacts]

(8) Schedule 1, item 24, page 19 (line 17), at the end of subsection (9), add:

; (c) information obtained as a consequence of anything said by the person or any document or thing produced 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 or to produce a document or thing.

[information etc obtained]

(9) Schedule 1, item 24, page 19 (lines 19 to 23), omit subsection (1), substitute:

(1) This section applies if a person who is before a prescribed authority for questioning under a warrant requests the presence of an interpreter or if the prescribed authority before whom the person first appears believes on reasonable grounds that the person is unable, because of inadequate knowledge of the English language or a physical disability, to communicate with reasonable fluency in that language.

[interpreter]

(R10)Schedule 1, item 24, page 20(lines 1 to 6), subclause (2), omit all words from and including “, unless” to the end of subclause (2).

[interpreter]

(11) Schedule 1, item 24, page 20 (lines 14 to 21), omit subclause (4), substitute:

(4) If questioning under the warrant commences before the person being questioned requests the presence of an interpreter and the person subsequently makes such a request:

(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 34E.

(12) Schedule 1, item 24, page 32 (after line 2), after subsection (1), insert:

(1A) Any legal fees incurred as a result of the person contacting a lawyer must be met by the
Commonwealth where the person satisfies the means test for legal aid funding.

(13) Schedule 1, item 24, page 32 (lines 3 to 5), omit subsection (2).

Amendments to Opposition Amendment [Sheet 2953]

(14) Opposition amendment (6), omit subclause (11), substitute:

(11) Subsection (10) does not apply to:

(a) contact between the person and the Inspector-General of Intelligence and Security
or the Ombudsman under:

(i) sections 10 and 13 of the Inspector General of Intelligence and Security Act
1986; or
(ii) section 22 of the Complaints (Australian Federal Police) Act 1981;

as the case may be; or

(b) contact between the person or the person’s lawyer of choice and a court or another
lawyer for the purposes of seeking a remedy in relation to the warrant, the treatment
of the person in connection with the warrant, or the questioning or custody of the
person in connection with the warrant.

Amendment to Government Amendments [Sheet RA231]

(15) Amendment to government amendment (15), subclause (3B), after “warrant” (first occurring),
insert “requiring a person to appear before a prescribed authority for questioning, or”.

(16) Amendment to government amendment (15), after subsection (3B), insert:

(3BA) If a person is unable to identify or engage a single lawyer of the person’s choice in
accordance with subsection (3B), the prescribed authority must assist the person by
locating a lawyer competent and available to advise in the circumstances.

(17) Amendment to government amendment (25), after subsection (4A), insert:

(4B) If a person is unable to identify or engage a lawyer of choice in accordance with
subsection (4A), the prescribed authority must assist the person by locating a lawyer
competent and available to advise in the circumstances.

(18) Amendment to government amendment (29), omit subsection 36JA(2), substitute:
(2) However, 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 search the premises or take the person into custody under section 34D or subsection 34F(6), either at the dwelling house or elsewhere, at another time.

[restriction on hours to enter a home]

(19) Amendment to government amendment (45), before subsection 34TB(1), insert:

   (1A) To avoid doubt, this section must not operate unless a person before a prescribed authority for questioning under a warrant has:
   (a) been informed of his or her right to a lawyer of choice or his or her right to assistance from the prescribed authority to engage a lawyer competent and available to advise in the circumstances; and
   (b) exercised a free choice either to require the presence of a lawyer of choice or for questioning to proceed without a lawyer of choice being present.

   (1AB) To avoid doubt, this section must not operate and questioning must not commence, where the person has exercised their right to a lawyer of choice, before the arrival of the person’s lawyer of choice unless the prescribed authority is satisfied on application by the Director-General that there is a threat of an imminent terrorist act.

[conditions for questioning without a lawyer]