(30) Dem (4) [Sheet 2923 Revised]

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.

(33) Opp (4) [Sheet 2953]

Schedule 1, item 24, page 18 (lines 13 and 14), omit the note.

(34) Opp (5) [Sheet 2953]

Schedule 1, item 24, page 18 (lines 30 and 31), omit the note.

(37) Opp

Section 34HC, omit “168” (wherever occurring), substitute “72”.

(57) Opp (8) [Sheet 2953]

Paragraph 34TA(2)(a), after “may”, insert “, as a real possibility,”.
Paragraph 34TA(2)(b), after “may” (second occurring), insert “, as a real possibility,”.

HOUSE OF REPRESENTATIVES REASONS FOR DISAGREEING TO SENATE AMENDMENT NOS 30, 33, 34, 37, 57 AND 58

Senate Amendment Number (30) – Rights while in detention

This amendment inserts a new provision that requires the prescribed authority to inform a person of their right to contact a lawyer at any time.

The House of Representatives does not accept this amendment as it adds nothing to the provision. The Bill already makes clear a person’s entitlement to contact a lawyer of their choice subject to conditions set out in section 34TA. The amendment merely repeats what is apparent on the face of the legislation.

Accordingly, the House of Representatives does not accept this amendment.

Senate Amendment Numbers (33) and (34) – Onus of proof

These amendments remove notes to subsections 34G(4) and (7).

The House of Representatives does not accept these amendments as the notes explain that the defendant bears an evidential burden of proof in relation to these matters in accordance with Commonwealth criminal law policy. This is not the same as reversing the onus of proof. The prosecution still has to prove the offence beyond a reasonable doubt. It is an evidential burden only.

Commonwealth criminal law policy is that this should only be allowed in cases where the matters to be proved are peculiarly within the knowledge of the defendant and are difficult and costly for the prosecution to disprove beyond a reasonable doubt, as is the case in respect of these provisions.

Accordingly, the House of Representatives does not accept these amendments.

Senate Amendment Number (37) – Questioning Regime

This amendment amends Government amendments to reduce the period of questioning from a maximum of 168 hours to 72 hours.

The amendment reduces the effectiveness of the questioning regime. Under the Government’s proposal a warrant would allow a total of 24 hours of questioning in
8 hour blocks, over a maximum period of 7 days (168 hours).

The Opposition’s proposal does not afford any greater protection to a subject of a warrant, it simply reduces the period of time in which important information can be obtained. The Government has already put in place strong safeguards that protect the rights and well-being of persons detained under the Bill for questioning.

Accordingly, the House of Representatives does not accept these amendments.

**Senate Amendment Number (57) and (58) – Lawyer of choice**

These amendments would require the prescribed authority to make an assessment of whether there is a real possibility that, in contacting a particular lawyer, a person involved in a terrorism offence may be alerted that the offence is being investigated or that a relevant record or thing may be destroyed, damaged or altered.

The House of Representatives does not accept these amendments as the Bill already provides for the provision of a lawyer of choice, with a range of safeguards to protect the disclosure of sensitive information. Under these arrangements, while the prescribed authority may direct that the subject not have access to their lawyer of choice, the subject of a warrant can then choose another lawyer.

This means that, subject to section 34TA which allows the prescribed authority to refuse access to a lawyer of choice in certain circumstances, a person may have access to a lawyer at any stage of the proceedings.

Accordingly, the House of Representatives does not accept these amendments.

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**SCHEDULE OF THE AMENDMENTS MADE BY THE SENATE TO WHICH THE HOUSE OF REPRESENTATIVES HAS DISAGREED, BUT MADE AMENDMENTS IN PLACE THEREOF**

(16) **Opp (1) [Sheet 2953]**

Schedule 1, item 24, page 10 (line 23), omit “168”, substitute “72”.

(23) **Opp (2) [Sheet 2953]**

Schedule 1, item 24, page 12 (line 21), omit “168”, substitute “72”.

(32) **Opp (3) [Sheet 2953]**
Schedule 1, item 24, page 16 (line 22), omit “168”, substitute “72”.

AMENDMENTS MADE BY THE HOUSE OF REPRESENTATIVES IN PLACE OF SENATE AMENDMENT NOS 16, 23 AND 32

(1) Schedule 1, item 24, page 10 (lines 19 to 23), omit paragraph (3)(d).

(2) Schedule 1, item 24, page 12 (lines 17 to 21), omit paragraph (c).

(3) Schedule 1, item 24, page 16 (lines 18 to 24), omit paragraphs (4)(a) and (aa), substitute:

(a) a person being detained after the end of the questioning period described in section 34D for the warrant; or

I C HARRIS
Clerk of the House of Representatives

House of Representatives
26 June 2003