Schedule of the amendments made by the Senate

(1) **Govt (1) [Sheet RA231]**

Clause 2, page 2 (table item 3, 2nd column), omit “Division 72 of the *Criminal Code*”, substitute “item 8 of Schedule 1”.

(2) **Govt (2) [Sheet RA231]**

Clause 4, page 2 (lines 12 to 14), omit the clause.

(3) **Govt (3) [Sheet RA231]**

Schedule 1, item 24, page 6 (lines 29 and 30), omit the definition of *approved lawyer*.

(4) **Govt (4) [Sheet RA231]**

Schedule 1, item 24, page 7 (after line 6), after the definition of *issuing authority*, insert:

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

(5) **Govt (5) [Sheet RA231]**

Schedule 1, item 24, page 7 (lines 12 to 14), omit the definition of *superior court*, substitute:

```
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.
```
(6) Govt (6) [Sheet RA231]

Schedule 1, item 24, page 7 (lines 15 to 28), omit section 34AA.

(7) Govt (7) [Sheet RA231]

Schedule 1, item 24, page 8 (line 23), omit “authority,”, substitute “authority”.

(8) Govt (8) [Sheet RA231]

Schedule 1, item 24, page 8 (line 29), omit “the person”.

(9) Govt (9) [Sheet RA231]

Schedule 1, item 24, page 8 (line 30), omit “has”, substitute “the person has”.

(10) Govt (10) [Sheet RA231]

Schedule 1, item 24, page 8 (lines 32 and 33), omit subsection 34B(5).

(11) Govt (11) [Sheet RA231]

Schedule 1, item 24, page 9 (lines 1 to 7), omit subsections 34B(6) to (8).

(12) Govt (12) [Sheet RA231]

Schedule 1, item 24, page 9 (lines 8 to 12), omit subsection 34B(9).

(13) Govt (13) [Sheet RA231]

Schedule 1, item 24, page 10 (line 18), omit “produce; and”, substitute “produce.”.

(14) Govt (1) [Sheet RA241]

Schedule 1, item 24, page 9 (line 28), omit “person.”, substitute “person; and”.

(15) Govt (2) [Sheet RA241]

Schedule 1, item 24, page 9 (after line 28), at the end of subsection 34C(2), add:
(d) if one or more warrants were issued under section 34D 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.
(16) **Opp (1) [Sheet 2953]**

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

(17) **Govt (15) [Sheet RA231]**

Schedule 1, item 24, page 11 (lines 5 to 11), omit subsection 34C(3B), substitute:

(3B) 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 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 34TA) 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 34TA that the person be prevented from contacting the lawyer.

(18) **Govt (16) [Sheet RA231]**

Schedule 1, item 24, page 11 (lines 12 to 29), omit subsection 34C(3C).

(19) **Govt (3) [Sheet RA241]**

Schedule 1, item 24, page 11 (before line 30), before subsection 34C(4), insert:

(3D) If, before the Director-General seeks the Minister’s consent to the request (the proposed request), the person has been detained under this Division in connection with one or more warrants (the earlier warrants) issued under section 34D, and the proposed request is for a warrant meeting the requirement in paragraph 34D(2)(b):

(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 (3).

(20) **Govt (17) [Sheet RA231]**

Schedule 1, item 24, page 11 (line 36) to page 12 (line 6), omit subsection 34C(5).
Schedule 1, item 24, page 12 (line 11), omit “, and with subsection 34C(5) if relevant”.

Schedule 1, item 24, page 12 (line 16), omit “offence; and”, substitute “offence.”.

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

Schedule 1, item 24, page 12 (after line 21), after subsection 34D(1), insert:

(1A) If the person has already been detained under this Division in connection with one or more warrants (the earlier warrants) issued under this section, and the warrant requested is to meet the requirement in paragraph (2)(b):
(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 last 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).

Schedule 1, item 24, page 12 (lines 33 to 35), omit “a specified period of not more than 48 hours starting when the person is brought before the authority”, substitute “the period (the questioning period) described in subsection (3)”.

Schedule 1, item 24, page 13 (lines 1 to 7), omit subsection 34D(3), substitute:

(3) The questioning 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 (5)(a) to make of the person;
(b) section 34HB 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.

(27) **Govt (23) [Sheet RA231]**

Schedule 1, item 24, page 13 (lines 9 and 10), omit “an approved lawyer”, substitute “a lawyer of the person’s choice”.

(28) **Govt (24) [Sheet RA231]**

Schedule 1, item 24, page 13 (after line 17), at the end of subsection 34D(4), add:

Note 3: A warrant authorising the person to be taken into custody and detained must permit the person to contact a single lawyer of the person’s choice, so the warrant must identify such a lawyer.

(29) **Govt (25) [Sheet RA231]**

Schedule 1, item 24, page 13 (after line 17), after subsection 34D(4), insert:

(4A) 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; 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 34TA that the person be prevented from contacting the lawyer.

(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.

(31) **Govt (26) [Sheet RA231]**

Schedule 1, item 24, page 15 (line 28), omit “is an approved lawyer or”.

(32) **Opp (3) [Sheet 2953]**

Schedule 1, item 24, page 16 (line 22), omit “168”, substitute “72”.
(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.

(35) **Govt (28) [Sheet RA231]**

Schedule 1, item 24, page 21 (after line 25), at the end of Subdivision B, add:

**34HB  End of questioning under warrant**

1. Anyone exercising authority under a warrant issued under section 34D 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 section 34D 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 34NA(7) in relation to that person; and
   f. anyone the person being questioned is permitted by a direction under section 34F 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 section 34D must not question a person under the warrant if the person has been questioned under the warrant for a total of 24 hours.

Release from detention when further questioning is prohibited

(7) If the warrant meets the requirement in paragraph 34D(2)(b), the prescribed authority must, at whichever one of the following times is relevant, direct under paragraph 34F(1)(f) that the person 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 of 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 34F(2) does not prevent the prescribed authority from giving a direction in accordance with this subsection.

(36) **Govt (5) [Sheet RA241]**

Schedule 1, item 24, page 21 (after line 25), at the end of Subdivision B, add:

**34HC Person may not be detained for more than 168 hours continuously**

A person may not be detained under this Division for a continuous period of more than 168 hours.

(37) **Opp**

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

(38) **Govt (29) [Sheet RA231]**

Schedule 1, item 24, page 21 (after line 34), after section 34J, insert:

**34JA Entering premises to take person into custody**

(1) If:
   (a) either a warrant issued under section 34D or subsection 34F(6) 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 34F(6) 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 34F(6), 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.

### 34JB Use 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 34D; or
   (ii) subsection 34F(6); or

(b) preventing the escape of a person from such custody; or

(c) bringing a person before a prescribed authority for questioning under such a
   warrant; or

(d) detaining a person in connection with such a warrant.

(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 a 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.

(39) Govt (30) [Sheet RA231]

Schedule 1, item 24, page 23 (line 22), omit “14”, substitute “16”.

(40) Govt (31) [Sheet RA231]

Schedule 1, item 24, page 23 (line 24), omit “14”, substitute “16”.

(41) Govt (32) [Sheet RA231]

Schedule 1, item 24, page 25 (line 10), omit “14”, substitute “16”.

8
(42) **Govt (33) [Sheet RA231]**

Schedule 1, item 24, page 25 (line 12), omit “14”, substitute “16”.

(43) **Govt (34) [Sheet RA231]**

Schedule 1, item 24, page 25 (line 16), omit “14”, substitute “16”.

(44) **Govt (35) [Sheet RA231]**

Schedule 1, item 24, page 25 (line 25), omit “14”, substitute “16”.

(45) **Govt (36) [Sheet RA231]**

Schedule 1, item 24, page 25 (line 29), omit “14”, substitute “16”.

(46) **Govt (37) [Sheet RA231]**

Schedule 1, item 24, page 26 (line 3), omit “14”, substitute “16”.

(47) **Govt (38) [Sheet RA231]**

Schedule 1, item 24, page 26 (line 18), omit subparagraph 34NA(6)(a)(iii).

(48) **Govt (39) [Sheet RA231]**

Schedule 1, item 24, page 27 (line 4), omit “14”, substitute “16”.

(49) **Govt (40) [Sheet RA231]**

Schedule 1, item 24, page 27 (lines 15 and 16), omit “an approved lawyer at any time when the person is in custody or”, substitute “a single lawyer of the person’s choice when the person is in”.

(50) **Govt (41) [Sheet RA231]**

Schedule 1, item 24, page 27 (line 29), omit “or (iii)”.

(51) **Govt (42) [Sheet RA231]**

Schedule 1, item 24, page 28 (after line 3), at the end of section 34NA, add:

(10) To avoid doubt, paragraphs (6)(b) and (8)(e) do not affect the operation of section 34HB.
(52) Govt (43) [Sheet RA231]

Schedule 1, item 24, page 29 (after line 5), after subsection 34NB(4), insert:

(4A) A person commits an offence if:
   (a) the person has been approved under section 24 to exercise authority conferred by a warrant issued under section 34D; and
   (b) the person exercises, or purports to exercise, the authority by questioning another person; and
   (c) the questioning contravenes section 34HB; and
   (d) the person knows of the contravention.

Penalty: Imprisonment for 2 years.

(53) Govt (44) [Sheet RA231]

Schedule 1, item 24, page 29 (line 30), omit “procedural statement”, substitute “written statement of procedures”.

(54) Govt (6) [Sheet RA241]

Schedule 1, item 24, page 30 (after line 26), after section 34Q, insert:

34QA Reporting 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 section 34D; and
   (b) one or more other warrants (the later warrants) meeting the requirement in paragraph 34D(2)(b) are issued later under that section in relation to the person.

(2) The Inspector-General must inspect a copy of the draft request given to the Minister under subsection 34C(2) for each of the warrants, to determine whether the draft request for each of the later warrants included information described in paragraph 34C(3D)(b).

Note: Paragraph 34C(3D)(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 section 34D 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.
Schedule 1, item 24, page 31 (after line 28), after section 34T, insert:

**34TA  Limit on contact of lawyer of choice**

(1) The person (the *subject*) specified in a warrant issued under section 34D that meets the requirement in paragraph 34D(2)(b) may be prevented from contacting a particular lawyer of the subject’s choice if the prescribed authority before whom the subject appears for questioning under the warrant so directs.

(2) The prescribed authority may so direct only if the authority is satisfied 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 34F(9)(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.

**34TB  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 section 34D 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 34H or section 34HAA to defer questioning because an interpreter is not present.

---

(56) **Opp (7) [Sheet 2953]**

Subsection 34TA(2), after “satisfied”, insert “, on the basis of circumstances relating to that lawyer,”.

(57) **Opp (8) [Sheet 2953]**

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

(58) **Opp (9) [Sheet 2953]**

Paragraph 34TA(2)(b), after “may” (second occurring), insert “, as a real possibility,”.
(59) **Govt (46) [Sheet RA231]**

Schedule 1, item 24, page 32 (line 1), omit “(whether the adviser is an approved lawyer or not)”.

(60) **Govt (47) [Sheet RA231]**

Schedule 1, item 24, page 32 (after line 5), after subsection 34U(2), insert:

> **Legal adviser to be given copy of the warrant**

(2A) 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.

(61) **Govt (48) [Sheet RA231]**

Schedule 1, item 24, page 32 (lines 25 and 26), omit “an approved lawyer other than the legal adviser”, substitute “someone else as a legal adviser”.

(62) **Govt (49) [Sheet RA231]**

Schedule 1, item 24, page 32 (lines 32 and 33), omit “(whether in connection with the warrant or another warrant issued under section 34D)”, substitute “in connection with the warrant”.

(63) **Govt (50) [Sheet RA231]**

Schedule 1, item 24, page 33 (line 2), omit “any of those warrants”, substitute “the warrant”.

(64) **Govt (51) [Sheet RA231]**

Schedule 1, item 24, page 33 (lines 9 and 10), omit “any of those warrants”, substitute “the warrant”.

(65) **Govt (52) [Sheet RA231]**

Schedule 1, item 24, page 33 (line 13), omit “2”, substitute “5”.

(66) **Govt (53) [Sheet RA231]**

Schedule 1, item 24, page 33 (line 33), omit “such a”, substitute “the”.

12
Schedule 1, item 24, page 35 (lines 22 and 23), omit “(whether in connection with the warrant or another warrant issued under section 34D)”, substitute “in connection with the warrant”.

Schedule 1, item 24, page 35 (line 26), omit “any of those warrants”, substitute “the warrant”.

Schedule 1, item 24, page 35 (lines 32 and 33), omit “any of those warrants”, substitute “the warrant”.

Schedule 1, item 24, page 35 (line 36), omit “2”, substitute “5”.

Schedule 1, item 24, page 36 (lines 4 and 5), omit “a warrant issued under section 34D”, substitute “the warrant”.

Schedule 1, item 24, page 36 (lines 8 and 9), omit “(whether in connection with the warrant mentioned in paragraph (a) or another warrant issued under section 34D)”, substitute “in connection with the warrant”.

Schedule 1, item 24, page 36 (lines 16 and 17), omit “any of those warrants”, substitute “the warrant”.

Schedule 1, item 24, page 36 (line 20), omit “2”, substitute “5”.
Schedule 1, item 24, page 36 (after line 20), after section 34V, insert:

**34VA 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 section 34D in relation to the person; or

(b) the treatment of the person in connection with such a warrant.

Schedule 1, item 24, page 37 (after line 4), at the end of Division 3, add:

**34Y Cessation of effect of Division**

This Division ceases to have effect 3 years after it commences.

Schedule 1, item 27D, page 39 (line 3), omit “as soon as possible after the third anniversary”, substitute “within 30 months”.

HARRY EVANS
Clerk of the Senate

The Senate
25 June 2003