



Statement of Procedures — warrants issued under Division 3 of Part III

Australian Security Intelligence Organisation Act 1979

I, PHILIP MAXWELL RUDDOCK, Attorney-General, approve this Statement of Procedures under subsection 34C (4) of the *Australian Security Intelligence Organisation Act 1979*.

Dated 16 October 2006

PHILIP RUDDOCK
Attorney-General

1 Name of Statement of Procedures

This Statement of Procedures is the *Statement of Procedures — warrants issued under Division 3 of Part III*.

2 Commencement

This Statement of Procedures commences on the day after it is registered.

3 Revocation of Protocol

The Protocol:

(a) provided for in paragraph 34C(3)(ba) and subsection 34C(3A) of the *Australian Security Intelligence Organisation Act 1979* (as in force immediately before 19 June 2006); and

(b) that was tabled in the House of Representatives by the Minister on 12 August 2003

is revoked.

4 Definitions

In this Statement of Procedures:

ASIO Act means the *Australian Security Intelligence Organisation Act 1979*.

police officer and *prescribed authority* have the meanings given in section 34A of the ASIO Act.

subject means a person who is authorised to be questioned before a prescribed authority in accordance with a warrant issued under Division 3 of Part III of the ASIO Act.

5 General

The Director-General must, in relation to a warrant issued under Division 3 of Part III of the ASIO Act, maintain a written record of:

- (a) the identity of the subject;
- (b) the authority for the questioning or detention of the subject;
- (c) the place, date and time of questioning under the warrant and the details of any procedural time (calculated by reference to subsection 34R(13)); and
- (d) the place, date and time of detention (if any) and release of the subject;

The Director-General must annex this record to the report required to be made under section 34ZH.

6 Transport

The subject may be transported if:

- (a) the subject is authorised to be detained under a warrant issued under section 34G of the ASIO Act; or
- (b) the prescribed authority directs that the subject be detained.

A police officer must arrange any transportation required. The transportation must be safe and dignified.

A police officer must remain present during the transportation of any subject who is being detained.

The subject must not be transported in a vehicle with inadequate ventilation or light, or in a way which would expose the subject to unnecessary physical hardship.

7 Questioning

7.1 Manner

All persons present during questioning or any period of detention under a warrant must interact with the subject in a manner that is both humane and courteous, and must not speak to the subject in a demeaning manner.

The subject must not be questioned in a manner that is unfair or oppressive in the circumstances.

A police officer must remain present at all times during the questioning of the subject.

7.2 Language

Information must be given to the subject in a language the subject can understand.

An interpreter must be provided for a subject if the prescribed authority believes on reasonable grounds that the subject is unable, because of inadequate knowledge of the English language or a physical disability, to communicate with reasonable fluency in English in accordance with section 34M or 34N.

7.3 Explanation of the effect of a warrant

The prescribed authority must explain to a subject the effect of the warrant in accordance with section 34J, and must satisfy him or herself that the subject has understood the explanations given.

In particular, the prescribed authority must explain to the subject the use which may be made of any information or materials provided by the subject, including any derivative use for the purpose of criminal investigations.

The prescribed authority must also explain to the subject the effect of the non-disclosure obligations set out in section 34ZS, in particular how those obligations relate to the subject in the questioning and detention context.

The prescribed authority must explain to a subject the function or role of all persons present during questioning. The prescribed authority must also state his or her role in supervising the questioning of the person and in giving appropriate directions under section 34K in relation to the person.

7.4 Conditions

The subject must have access to fresh drinking water and clean toilet and sanitary facilities at all times during questioning.

The subject must not be questioned continuously for more than 4 hours without being offered a break.

Such break must, at a minimum, be of 30 minutes duration.

A subject may elect to continue questioning without taking a break, or after taking a break shorter than 30 minutes, provided the prescribed authority is satisfied that this is entirely voluntary.

8 Detention

8.1 When detention occurs

A subject is detained if:

- (a) the subject is brought before a prescribed authority in accordance with a warrant issued under section 34G; or
- (b) the prescribed authority directs that the subject be detained under section 34K.

For the purposes of section 34S of the ASIO Act, the detention of the subject of a warrant is continuous from the time the person is first detained until the person is released from detention in accordance with a direction of the prescribed authority.

8.2 Arrangements for detention

A police officer must make arrangements to take a subject into custody and for subsequent detention. These arrangements must be consistent with applicable police practices and procedures in relation to custody of persons, except if such practices are inconsistent with the terms of the warrant or this Statement of Procedures.

8.3 Police supervision

A police officer must supervise any detention that occurs under a warrant.

The prescribed authority is responsible for issuing directions on any matter relating to the detention of the subject during questioning.

8.4 Personal effects

The subject must not have access to, or be able to manufacture, any implement that could be used as a weapon.

The subject must not be permitted to retain any listening or recording devices or any communications equipment during any periods of detention or questioning.

The subject must be permitted, upon request, to retain any clothing or personal effects during questioning unless the prescribed authority has reason to believe that the subject may use such items to:

- (a) injure him or herself, or other persons;
- (b) damage property; or
- (c) attempt to escape.

During periods of detention in which the subject is not being questioned, decisions on the retention of items by the subject are the responsibility of a police officer supervising detention. Any effects belonging to a subject which he or she is not allowed to retain in detention must be itemised and placed in safe custody. An inventory of the property retained is to be signed by the subject if the subject is able and willing to do so.

On release from detention all such articles must be returned to the subject who must be asked to sign a receipt for them.

A subject who is not permitted to wear his or her own clothing must be provided with clothing suitable for the climate and adequate to maintain good health and dignity. Such clothing must not be degrading or humiliating in any manner.

8.5 Searches

An ordinary or frisk search of a subject must, if practicable, be conducted by a police officer of the same sex as the subject.

Any strip search of a subject conducted pursuant to section 34ZB of the ASIO Act must comply with the requirements of section 34ZC, including the requirement that the search be conducted by a police officer of the same sex as the subject.

Any search of a subject must be conducted with appropriate sensitivity.

8.6 Use of force and restraint

A police officer may only use the minimum force reasonably necessary in the circumstances, and may only use instruments of restraint as is reasonably necessary in the circumstances.

In particular, the use of force or instruments of restraint must not be applied as a punishment.

Restraint may only be applied by a police officer, and must not be applied or a longer time than is necessary.

Health and welfare

9.1 Facilities and accommodation

Facilities employed for questioning or detention must:

- (a) have adequate fresh air and ventilation, floor space, and heating and cooling appropriate to the climatic conditions;
- (b) have sufficient natural or artificial light to permit reading; and
- (c) need not be the same throughout the period of the warrant.

9.2 Food during detention

This clause applies if a person is detained.

The subject must have access to fresh drinking water at all times.

The subject must be provided with three meals a day at the usual hours or at the times necessary to meet religious requirements.

Food must be of sufficient nutritional value, adequate for health and wellbeing, be culturally appropriate, and well-prepared and served.

A subject must be provided with special dietary food where such food is necessary for medical reasons, on account of a subject's religious beliefs, because the subject is a vegetarian, or if the subject has other special needs.

9.3 Sleep during detention

This clause applies if a person is detained.

The subject is to be provided with a separate bed and, where facilities permit, must be accorded a separate room or cell in which to sleep.

The subject must be provided with sufficient clean bedding which must be kept in good order and changed often enough to ensure its cleanliness.

Unless directed by the prescribed authority, a subject must be accorded the opportunity for a minimum continuous, undisturbed period of 8 hours sleep during any 24 hour period of detention.

9.4 Personal hygiene during detention

This clause applies if a person is detained.

The subject must be provided with access to clean toilet and sanitary facilities for the subject to use as required in a clean and decent manner.

The subject must be provided with such toilet articles as are necessary for health and cleanliness and the maintenance of self-respect.

The subject must be permitted to bathe or shower daily in facilities that are clean, adequate, and at a temperature suitable for the climate.

The subject must be permitted to bathe, use a toilet and dress in private, subject to the requirements of safety and security.

9.5 Health care

The subject must be provided with necessary medical or other health care.

Arrangements must be made for any recommendation made or treatment prescribed by a medical or health professional to be given effect.

9.6 Religion

The subject must be permitted to engage in religious practices as required by his or her religion.

The prescribed authority and persons exercising authority under the warrant may limit such practices in accordance with the requirements of safety and security.

9.7 Subjects under the age of 18 years

If the subject is under the age of 18 years:

- (a) the operation of this Statement of Procedures is limited as provided in section 34ZE of the ASIO Act; and
- (b) any period of questioning or detention may only take place under conditions that take full account of the subject's particular needs and any special requirements having regard to the subject's age.

10 Video recording of procedures

10.1 Facilities for recording

ASIO is responsible for ensuring that there are facilities available for the making of video recordings in accordance with section 34ZA of the ASIO Act.

The facilities must be appropriate to enable a clear visual recording to be made of the subject's appearance before the prescribed authority for the duration of questioning. The facilities must also enable a clear audio recording of all questions, answers and statements made during questioning, including any statements made by the prescribed authority in accordance with section 34J.

If there is a failure in the recording equipment, or if the recording has to be suspended, during the subject's appearance before the prescribed authority for questioning, the prescribed authority must direct that questioning of the subject be deferred until recording resumes.

10.2 Notification to the subject

Upon the commencement or resumption of any recording for the purpose of questioning in accordance with subsection 34ZA(1), the prescribed authority must inform the subject that the questioning is being recorded, and must state the time and date of the questioning.

10.3 Security of recordings

ASIO must ensure that a master version is retained of any video recording of the subject's appearance before a prescribed authority. The master version must be sealed in the presence of the prescribed authority and the label must be signed by the prescribed authority. The sealed master version must be made available to the Inspector-General of Intelligence and Security on request.

ASIO is responsible for ensuring that any copies of video recordings made in accordance with section 34ZA are securely maintained and that a register is kept of any persons or agencies that have access to such copies.

As required under section 34ZL, the Director-General must cause the destruction of a video recording, or copy of a video recording, which is in ASIO's possession or custody or under ASIO's control, if the Director-General is satisfied that the video recording or copy is not required for the purposes of the performance of functions or the exercise of powers under the ASIO Act.

11 Contact

11.1 Contact if subject is not authorised to be detained

If the subject is questioned but is not authorised to be detained, the subject may contact any person unless the prescribed authority limits such contact.

The subject must be provided with access to such facilities as are, in the view of the prescribed authority, appropriate for such contact in all the circumstances.

The prescribed authority may limit contact between the subject and:

(a) any person by directing questioning to continue despite the subject's request to contact a person; or

(b) a lawyer, or parent, guardian or other representative, if the prescribed authority directs a person exercising authority under the warrant to remove the lawyer, or parent, guardian or other representative, for disrupting the questioning.

The subject may only contact a person in accordance with section 34ZS of the ASIO Act.

11.2 Contact if subject is detained

A subject who is detained must be permitted to contact:

(a) a person specified in the warrant as a person with whom the subject may have contact;

(b) a person falling within a class of persons so specified in the warrant; and

(c) a person identified in a direction by the prescribed authority in accordance with paragraph 34K(1)(d).

The subject must be provided with access to such facilities as are, in the view of the prescribed authority, appropriate for such contact in all the circumstances.

Contact must be made in a way that can be monitored by persons present for the purposes of executing or supervising the execution of the warrant.

The prescribed authority may limit contact, including by:

(a) directing questioning to continue despite a subject's request to contact a person; or

(b) directing a person exercising authority under the warrant to remove the subject's lawyer, or parent, guardian or other representative, for disrupting the questioning.

The subject may only make contact in accordance section 34ZS of the ASIO Act.

12 Complaints

In accordance with subsection 34K(11), a subject must be permitted to contact:

(a) the Inspector-General of Intelligence and Security concerning ASIO;

(b) the Commonwealth Ombudsman, the Australian Federal Police (AFP) Commissioner or an AFP appointee concerning the AFP; or

(c) an appropriate complaints agency during the period of the warrant or following, including when the subject is being questioned or is in detention.

The subject must be provided with such facilities as are, in the view of the prescribed authority, appropriate to make such a complaint.

The subject must be permitted to make such complaint outside of the hearing of persons present for the purposes of executing or supervising the execution of the warrant.

13 Arrangements for liaison

As soon as possible after a warrant is issued under Division 3 of Part III of the ASIO Act, the Director-General must inform the Inspector-General of Intelligence and Security, the prescribed authority, and the Commissioner of the relevant police service(s) of the details of the warrant, and as to the proposed arrangements for its execution.