

Introduction

- 1.1 These supplementary submissions on behalf of Dr. Haneef are intended to update, as far as possible, the submissions delivered on Friday, 23 May 2008. They do not respond to the just received submissions of the Australian Federal Police. A further response document will be provided shortly.
- 1.2 These submissions draw on information made available through the processes of the Inquiry. They also draw on the further investigations, principally, FOI applications made on behalf of Dr. Haneef. At the time of submitting these submissions, various FOI processes are continuing.
- 1.3 It is also the case that, because the majority of the Inquiry's processes have been closed to the public, Dr. Haneef has been prevented from commenting on much of the evidence that the Inquiry has received. Notwithstanding, as with the initial submission, we are attempting, on behalf of Dr. Haneef, to provide as much assistance to the Inquiry as possible.
- 1.4 The format of these supplementary submissions follows that of the first submission. The headings, for the most part, refer to page numbers in the original submission.

Pages 3-10: Chronology

- 2.1 In paragraph 2.6, an error was made. The reference to the date of readmission of Dr. Haneef's daughter, Haniyah, to hospital should have been "1 July 2007" not "1 June 2007".
- 2.2 Because the Australian Federal Police ("the AFP") have provided transcripts of interviews which had never been made available, details are available from the time of Dr. Haneef's arrest which were not previously available.
- 2.3 Dr. Haneef was arrested at 11.05 pm on the evening of Monday, 2 July.¹ Dr. Haneef was taken to an interview room at the airport terminal and questioned, immediately.² When asked whether he wanted a lawyer or someone else with him, Dr. Haneef indicated that he did.³ The request appears to have been ignored. He was searched⁴ as was his luggage.⁵ This first interview terminated "at 11.23.55pm".⁶

¹ See transcript of electronic interview, 2 July 2007, 11.05pm, page 1. (See appendix 1)

² See transcript of electronic interview, 2 July 2007, 11.05pm, page 1 and following. (See appendix 1)

³ See transcript of electronic interview, 2 July 2007, 11.05pm, pages 6 and 7. (See appendix 1)

⁴ See transcript of electronic interview, 2 July 2007, 11.05pm, page 9. (See appendix 1)

⁵ See transcript of electronic interview, 2 July 2007, 11.05pm, page 17 and following. (See appendix 1)

⁶ See transcript of electronic interview, 2 July 2007, 11.05pm, page 27. (See appendix 1)

- 2.4 It is not clear whether the transcript is indicating that the interview concluded at five seconds before 11.24pm or that Mr. Simms corrected himself and the interview finished at 11.55pm. The latter seems more likely from the 27 pages of transcript. It also seems more consistent with the suggestion from the Simms document relied on at paragraph 2.9 of the original submissions which suggested that the interview took 50 minutes. The interview is noticeable in that Dr. Haneef explained, at this very first opportunity, the reason why he was going to Bangalore; why his ticket was one way only; and the fact that he was only going to be away for 7 days.
- 2.5 Dr. Haneef saw his interviewers at 9.17am on the following morning, 3 July, at police headquarters in Wharf Street.⁷ He was told that he had the right to have a lawyer appear on the application for questioning time. He was not told that his lawyer or Dr. Haneef, himself, could make submissions about whether that order should be made. This time Dr. Haneef declined a lawyer.⁸ The conversation concluded at 9.35am.⁹
- 2.6 There remains substantial confusion about the timing of events in the early evening of 3 July 2007. The Simms document¹⁰ states that an order for a 12 hour extension of the investigation time was made at 5.30pm.¹¹ The first (long) interview ended at 5.31pm.¹² However, a transcript of the short interview concerning the making of that order shows that that interview went 5.30-5.36pm.¹³ It seems, on the present data, that three events were taking place, simultaneously. If the order were made at 5.30pm, it would seem that Mr. Gordon was very close by if Mr. Simms were, indeed, the applicant. As discussed below, the copy of Mr. Gordon's order suggests that the order was made at 5.20pm, not 5.30pm.
- 2.7 It is noticeable, again, that (whatever had happened to the space/time continuum) Mr. Simms and Mr. Thompson did not tell Dr. Haneef that he had a right to make submissions to the magistrate.
- 2.8 Another short interview took place at 9.10pm on 3 July.¹⁴ This presaged the first application for specified (or down) time. Again, Dr. Haneef was told he had a right to have a lawyer attend the application but not told that he could attend, himself, and make submissions. In the order,¹⁵ Mr. Gordon declared that he was

⁷ See transcript of electronic interview, 3 July 2007, 9.17am, page 1. (see appendix 2)

⁸ See transcript of electronic interview, 3 July 2007, 9.17am, pages 2-4. (see appendix 2)

⁹ See transcript of electronic interview, 3 July 2007, 9.17am, page 5. (see appendix 2)

¹⁰ Page 1 of application. (See appendix 1 of original submission to Dr Haneef)

¹¹ See appendix 3.

¹² First record of interview, page 142. (See appendix 8 of original submission of Dr Haneef)

¹³ See transcript of electronic interview, 3 July 2007, 5.30pm, pages 1 and 2. (See appendix 4)

¹⁴ See transcript of electronic interview, 3 July 2007, 9.10pm, page 1. (see appendix 2)

¹⁵ AFP, FOI release, folio 70. (See appendix 5)

satisfied that Dr. Haneef had been given the opportunity to make representations about the application.¹⁶¹⁷

- 2.9 There is an error at paragraph 2.12 of the original submissions. It states that the order for 48 hours specified time was made at 11.05pm. In fact, both the order and the Simms document give the time as 11.20pm on 3 July.
- 2.10 At paragraph 2.13 in the original submissions, it was noted that the AFP had never acknowledged receiving the Kafeel email. At time of writing, 15 months later, the public record remains unchanged in that respect.
- 2.11 An important addition to the chronology occurred at 4.15pm on Thursday, 5 July 2007. This was another short interview between the two police officers and Dr. Haneef (who appears not to have seen them since shortly after 9.00pm, two days earlier). This may explain the poignancy of the interview. Dr. Haneef promises to attend for questioning whenever required if he could be let out.¹⁸
- 2.12 Dr. Haneef states that he is very lonely. He wants to be able to talk to his family and this time, he states that he wants a lawyer: “Yeah, I ... need someone. I mean it’s just going on, extending and extending”.¹⁹ Dr. Haneef offers to clarify anything that might still be unclear.²⁰ As is discussed elsewhere in these supplementary submission, subsection 3W(2) Crimes Act imposes an obligation to release a person if they no longer believe on reasonable grounds that he is guilty of the offence for which he has been arrested. It appears, from this interview, that the two police officers, incorrectly, believed they could hold Dr. Haneef until they, definitively, satisfied themselves that he was innocent of any connection with the events in London and Glasgow.²¹ It also appears that Dr. Haneef was deliberately kept incommunicado from his family by the AFP officers.²² Dr. Haneef asked whether he could speak to “my family, my wife, my mother at least”. Mr. Simms said: “Look. At this point, no. I have to be honest with you. I will make some inquiries, but, look, at this point, that’s unlikely”.
- 2.13 The refusal to allow contact appears anomalous in that, at the time of the arrest, contact with a lawyer or friend was offered.²³
- 2.14 Section 23G Crimes Act gives a detainee the right to communicate with a friend or relative to inform that person of his or her whereabouts. This is expressed to be subject to s.23L. Section 23L provides that the right to communicate with a friend or relative does not apply if the [police officer] believes on reasonable grounds

¹⁶ Ibid, paragraph 6.

¹⁷ Note, also, that John Matus, not Mr. Simms, was the applicant.

¹⁸ See transcript of electronic interview, 5 July 2007, 4.15pm, page 2. (See appendix 6)

¹⁹ See transcript of electronic interview, 5 July 2007, 4.15pm, pages 3-4. (See appendix 6)

²⁰ See transcript of electronic interview, 5 July 2007, 4.15pm, page 5. (See appendix 6)

²¹ See transcript of electronic interview, 5 July 2007, 4.15pm, pages 3 and 4. (See appendix 6)

²² See transcript of electronic interview, 5 July 2007, 4.15pm, page 8. (See appendix 6)

²³ See transcript of electronic interview, 2 July 2007, 11.05pm, page 6. (See appendix 1)

- that compliance with the requirement is likely to result in an accomplice avoiding apprehension; the loss of evidence; or that the need to question is so urgent that the police officers cannot wait for the communication to take place.
- 2.15 Clearly, the latter did not apply. It is unclear whether communication with Dr. Haneef's family was refused because of one or other of the other two bases. Subsection 23L(3) requires that the grounds for the relevant belief must be documented and contact must be allowed as soon as possible after the ground for refusing contact no longer applies.
- 2.16 We have not seen, either on FOI or otherwise, a document produced to comply with subs.23L(3) Crimes Act.
- 2.17 It is submitted that, unless s.23L(1) was considered to be operative, there was no proper basis for preventing contact with Dr. Haneef's family. Apart from the specific right in s.23G, one would think regular contact with the mother of one's new born (and hospitalised) child would fall within s.23Q Crimes Act: the duty to treat the detainee with humanity and respect for human dignity.
- 2.18 The police officers did attempt to arrange a lawyer to attend. Mr. Russo was contacted shortly before 4.50pm.²⁴ This was two hours and fifteen minutes before the hearing before Mr. Gordon took place.²⁵

The Arrest: pages 11 - 18

When did the UK Authorities Make Contact?

- 3.1 There is conflicting information in the AFP documents as to when the AFP were first contacted by UK authorities. A case note of 5 July quotes from an email of Federal Agent Stephanie Taylor to Federal Agent Dick Moses which states²⁶ that the AFP received information from Metropolitan Police on 1 June 2007 linking Dr. Haneef to car bombs in London and the attack in Glasgow. This later document is probably inaccurate and should not be preferred to the AFP document written for the whole of government National Counter Terrorism Committee²⁷ of 3 July which, very clearly, dates the information as being received on 2 July.²⁸ If the AFP were contacted on 1 July, the suggestion becomes stronger that the AFP did not, at first, treat the information from the UK with much priority and took a lengthy time to attempt to locate and question Dr. Haneef.

²⁴ See transcript of electronic interview, 5 July 2007, 4.15pm, page 8. (See appendix 6)

²⁵ The Simms document, application, page 1, paragraph 2.

²⁶ AFP FOI release, folio 62. (See appendix 5)

²⁷ When the earlier submissions were written, it was thought that the National Counter Terrorism Committee was merely a committee of the AFP. The fact that it is a whole of government Committee has implications for the extent to which Departments and ministers were aware of the detail concerning the investigation into Dr. Haneef and the decisions which were made.

²⁸ See AFP release, page 37. (See appendix 5)

- 3.2 The Queensland Police Service (“QPS”) submission states that the QPS was first informed on 2 July 2007.²⁹

Knowledge at the Time of the Arrest

- 3.3 The discussion concerning the knowledge available to the arresting officers, at the time of the arrest, is supplemented by the knowledge that the “AFP only became aware of the link with Dr. Haneef about midday 2 July 2007 and that only related to the handset”.³⁰ The statement contradicts Simms’ statement³¹ that the AFP were advised at 5.00am of “a mobile telephone number subscribed in the name of Dr. Haneef was linked to the terrorist attacks ...”
- 3.4 Morrish goes on to say that it was not until after the arrest (“not until the taped record of conversation with Dr. Haneef on 2-3 July 2007”) that the AFP became aware of the SIM card link”).
- 3.5 This is consistent with the fact that none of the documents provided to Mr. Gordon particularised the assistance to a terrorist organisation which was the basis of the offence for which Dr. Haneef was arrested. Dr. Haneef was arrested for providing support to a terrorist organisation.³² However, the arresting officer, if asked, would not have been able to say what form this support took. This further information makes it more likely that at the time of the arrest, the grounds for a reasonable belief that would have supported a lawful arrest were not present.
- 3.6 The QPS submission sets out that information was received with regard to the events in the UK. The paragraph concludes with a statement that “the information related to a person of interest, Dr. Mohamed Haneef.³³ It was established that Dr. Haneef had a residential address at Southport in Queensland.”³⁴
- 3.7 While the paragraph is not definitive, it does not suggest that any substantial negative information about Dr. Haneef was conveyed by the UK authorities.
- 3.8 An undated page of notes in Ms. Hogan’s handwriting contained in the QPS review FOI release throws some light on this question. Its internal context suggests that it might have been written on 2 July 2007, soon after the QPS was advised by the AFP of the UK authorities’ interest in Dr. Haneef.³⁵

²⁹ QPS Submission, paragraph 1.3.

³⁰ Luke Morrish, draft application for a preventive detention order, AFP, FOI release, folio 130. (See appendix 5)

³¹ Quoted at paragraph 3.9 of the submission.

³² In making the arrest, Mr. Simms said: “You are under arrest for the offence supporting a terrorist ... organisation”. See transcript of electronic interview, 2 July 2007, 11.05pm, page 2. (See appendix 1)

³³ It is comforting to observe a police document referred to Dr. Haneef by his correct honorific.

³⁴ QPS submission, paragraph 1.3.

³⁵ QPS Submission, paragraph 1.3.

- 3.9 The notes refer to “UK JCTT³⁶ Preliminary Inquiries on Gold Coast Long Bow – may be something in it. Long term monitoring job. Footage Customs. May be nothing.”³⁷ If the assumptions about the date are correct, the entries support the proposition that the information received from the MPS did not suggest that there was any evidence of Dr. Haneef having any prior knowledge of or involvement in the UK attacks.
- 3.10 If this were the case, then the decision to arrest Dr. Haneef seems to have been made without the reasonable grounds to believe that he had committed any offence.

Situation Report: 2 July 2007: 5.37pm.

- 3.11 The above discussion and the discussion in the submissions at paragraphs 3.8 and following are supported by information released on internal review.
- 3.12 First, the situation report created at 5.37pm on 2 July 2007 sets out what was known at that time. It provides another version of what was received from the Metropolitan Police Service (“the MPS”) in the UK: “[the MPS] ... have advised that they have identified an Australian resident as being closely connected to this investigation. The MPS have requested assistance in locating this person”.³⁸
- 3.13 The situation report goes on to indicate that surveillance of Dr. Haneef's residence was being conducted.
- 3.14 It also reveals that Dr. Haneef owned a car; was employed as an intern at the Gold Coast hospital; and had sent \$8,000 to the UK both to himself and another identity. His visa provided that he was a “lawful citizen until 20/08/2010”.³⁹
- 3.15 This situation report seems to confirm the other indicators that the AFP was not aware of the SIM card, at least, at 5.17pm. It seems that the MPS request was only to help locate Dr. Haneef, presumably, so he could be questioned.
- 3.16 By 5.17pm, Dr. Haneef was trying to contact UK authorities (Mr. Webster) to see what inquiries needed answering.
- 3.17 The available evidence continues to suggest that, at the time of the arrest, the AFP had no information which would support a reasonable belief that Dr. Haneef had committed any offence.

³⁶ Joint Counter Terrorism Taskforce.

³⁷ QPS FOI review release, page 134. (See appendix 7)

³⁸ AFP FOI release, folio 210. (See appendix 5)

³⁹ AFP FOI release, folio 210. (See appendix 5)

Ms. Hogan's Notes

- 3.18 The QPS FOI releases (both original and on internal review) contain a large number of hand written notes that appear to be from Ms. Hogan's police note book.⁴⁰ However, the Queensland FOI legislation does not require schedules of documents to be released and the record of the dates on which many of the copies provided were made have been omitted from the documents during photocopying. Dr. Haneef's lawyers have requested assistance from the QPS but, at time of writing, the request is still being processed.
- 3.19 However, the first page of the original release does suggest that Ms. Hogan did give some thought to whether there was sufficient evidence to justify an arrest. The note states: "Have we enough to arrest. What is the meaning of suspicion".⁴¹
- 3.20 It is clear that one police officer was prepared to ask the difficult questions and was not prepared to support an arrest of Dr. Haneef on mere speculation.

Applications Pursuant to Part 1C Crimes Act: pages 19 -26

Errors in Original Submissions

- 4.1 Some errors were made in the submissions concerning "the second order" made in the early evening of 3 July 2007.

Contemporaneous Events

- 4.2 Concern expressed in the submission is confirmed by the interview conducted for that order. It shows the interview as being conducted between 5.30pm and 5.36pm. Accordingly, the available documents show an order being made 16 minutes prior to the conclusion of the interview which was conducted to ask Dr. Haneef whether he wanted to be represented at that hearing at which the order was going to be made.
- 4.3 The long interview and the short interview are shown in AFP documents as occurring simultaneously. Meanwhile, the hearing and order which are dependant on the results of one of those interviews has occurred at least ten minutes earlier. This appears to be evidence of a misuse of the detention powers.

⁴⁰ QPS FOI review release, page 104, has a sample of hand writing signed by Ms. Hogan. (See appendix 7)

⁴¹ Section 3W Crimes Act refers to "belief on reasonable grounds". Was Ms. Hogan mistakenly looking at s.23C Crimes Act in part 1C which refers to investigating another terrorism offence about which one has a "reasonable suspicion".

Reasons for Detention

- 4.4 Part 1C Crimes Act is very specific about the purpose of the detention for which it provides. Section 23CA(1) makes the detention provisions dependant upon a lawful arrest.
- 4.5 Subsection 23CA(2) restricts the purpose of detention to two specific ends. A person may be detained for the purpose of investigating whether the detainee committed the offence for which the arrest took place. Second, the person may be detained for the purpose of investigating whether the person committed another terrorism offence that an investigating official reasonably suspects the detainee to have committed.
- 4.6 The submissions raised the prospect that the AFP did not use the detention orders for the purpose for which the legislation permitted.⁴²
- 4.7 Further evidence of a misunderstanding of the legislative purpose appears in recent FOI releases. On 11 July 2007, the inquiry was directed at checking Dr. Haneef's qualifications.⁴³ In the same situation report, dated 12 July 2007,⁴⁴ preparing a brief of evidence concerning possible fraud charges against Dr. Haneef was a higher priority than identifying potential threats to Australia's national security.⁴⁵ Further details of the fraud inquiries are set out at folio158. It would also appear that authorities sought information from the Queensland Audit Review Branch relating to fraud inquiries.⁴⁶
- 4.8 Since as is discussed in these supplementary submissions, by 9 July at the latest, the AFP was in possession of almost all the information eventually used to question Dr. Haneef, it seems very questionable that, by 12 or 13 July, the resources of the AFP were being used to investigate matters which had no obvious connection to the basis on which the part 1C detention orders claimed to be justified, namely, investigation of an allegation that he provided support to a terrorist organisation in the UK.⁴⁷

Documents Not Provided

- 4.9 As the Inquiry will be aware, Dr. Haneef's lawyers commenced pursuing documents relating to his treatment well before the Inquiry was announced. The original submissions to the Inquiry drew upon these documents to provide assistance by way of a framework for the Inquiry's own inquiries.

⁴² See, for example, paragraph 4.22.

⁴³ AFP FOI release, page 149. (See appendix 5)

⁴⁴ See AFP FOI release, page 147. (See appendix 5)

⁴⁵ AFP FOI release, page 155. (See appendix 5)

⁴⁶ AFP FOI release, page 160. (See appendix 5)

⁴⁷ The entries at AFP FOI release, folios 157-158 appear to relate to events that occurred on either 12 or 13 July 2007. (See appendix 5)

4.10 The Inquiry found itself unable to provide documents it had received through its processes. Accordingly, Dr. Haneef's lawyers continued to pursue such FOI processes as the human resources available made possible.

4.11 However, these supplementary submissions are made without access to many documents which Dr. Haneef's lawyers might have expected to receive. This was made, particularly, clear by a letter received from the Australian Government Solicitor acting for the AFP dated 26 August 2008. The letter states:

“Since receiving your client’s application for review in the [Administrative Appeals] Tribunal, the respondent has checked and has now discovered that there are potentially a very large number of documents relevant to your request not identified when the initial search for documents was undertaken in or about November 2007.

Analysis is continuing but at this stage preliminary inquiries reveal that there could be several thousand relevant documents, and that it will be necessary for many thousands of documents to be reviewed to determine whether they contain material relevant to the request. As you would appreciate, the respondent will not be in a position to make a decision in relation to any additional documents for some time.”

4.12 Dr. Haneef's lawyers were concerned that, if so many additional documents had been so recently “identified”, they may have not been provided to the Inquiry.

4.13 AFP Chief Counsel, Mr. Watson has provided assurances that all documents have been provided to the Inquiry.⁴⁸

4.14 This left the question as to how, with a request that covers the same areas as the first paragraph of the Inquiry’s terms of reference, the documents had not been identified earlier. (The original FOI request was made in November 2007 and a decision on internal review was made in July 2008.) A letter to the Australian Government Solicitor making this enquiry remains unanswered at the time of writing.⁴⁹

The First Order

4.15 As stated in paragraph 4.7 of the submission, the first order for ‘down-time’ was made at 10.15am on 3 July 2007. This order, pursuant to s.23DA Crimes Act extended the investigation period by 8 hours from 4 to 12 hours.

4.16 No documentation of the material tendered in support of that application has been received by Dr. Haneef's lawyers.⁵⁰

⁴⁸ Letter dated 5 September 2008. (See appendix 8)

⁴⁹ See letter from Maurice Blackburn to Australian Government Solicitor dated 25 September 2008. (See appendix 9)

⁵⁰ The documents relating to the investigation period extension orders have not been provided in the FOI documents. The further documents received since the submission relate to specified down time orders.

4.17 A transcript of an interview that took place at 9.17am on 3 July has been provided. In that interview, Mr. Simms said: “You have the right to have a lawyer present when that’s [the application] done.”⁵¹ Dr. Haneef was told of the nature of the application: “And we have to make an application to him [the magistrate] to further our time to question you”.⁵²

4.18 Dr. Haneef actually raised the question of clarifying matters in front of the magistrate in person. He was told: “Oh no, no, a Magistrate won’t be asking any questions. It’s just an application that goes through to him”.⁵³

4.19 Section 23DA(4)(d) Crimes Act provides:

“... the judicial officer may extend the investigation period, by signed authority, if satisfied that:

...

(d) the person, or his or her legal representative, has been given the opportunity to make representations about the application.”

4.20 It is submitted that Dr. Haneef was not given the opportunity to make submissions as required by the sub-section. The police officers knew he did not have a lawyer. At that point, he should have been offered an opportunity to make submissions to the magistrate himself. Not only was he not offered that opportunity, he was actively told that there was no opportunity for him to appear before the magistrate.

4.21 The precondition to the making of the order was not complied with.

The Second Order

4.22 This order was, according to the Simms document of 11 July 2007 made at 5.30pm on 3 July. The time recorded on the order itself is 5:20pm.⁵⁴ This was an order to extend the investigation time from 12 hours to the maximum of 24 hours.

4.23 Documentation in support of this order has not been received by Dr. Haneef’s lawyers.

4.24 The fact that this order was made suggests that the magistrate, Mr. Gordon, was provided with information suggesting that there was 12 hours of further questioning which could be justified and was necessary. It is curious that the further questioning was, then, continually postponed until the afternoon of 13 July. How was the extension of 12 hours justified if there were no questions available to be asked?

⁵¹ See transcript of electronic interview, 3 July 2007, 9.17am, page 2. (See appendix 2)

⁵² See transcript of electronic interview, 3 July 2007, 9.17am, page 2. (See appendix 2)

⁵³ See transcript of electronic interview, 3 July 2007, 9.17am, pages 2-3. (See appendix 2)

⁵⁴ (See appendix 10)

- 4.25 The interview with Dr. Haneef concerning the making of this order took place at 5.30pm, the same time that the order was made.⁵⁵
- 4.26 The interview had the same shortcomings as the one in the morning.⁵⁶ Mr. Simms said: “So are you happy if we progress that, you’ve indicated previously you didn’t want a lawyer present, is that still the case?” Dr. Haneef’s answer was “Um, yeah”.⁵⁷
- 4.27 There was no indication to Dr. Haneef that, absent a lawyer, he had, at law, “the opportunity to make representations about the application”

The Third Order: Specified Down Time

- 4.28 The third order was made at 11.20pm.⁵⁸
- 4.29 The applicant was an AFP officer, John Matus.⁵⁹
- 4.30 The interview with Dr. Haneef concerning this application was over two hours earlier at 9.10pm.⁶⁰ Again, Dr. Haneef raises the prospect of his appearing before the magistrate. The exchange is:

“Simms: I have here an application which I’m going to present to the magistrate tonight.

Haneef: Yeah.

Simms: When I do present that to the Magistrate, as I’ve stated to you previously you are able to have a lawyer present at that time application if you so wish.

Haneef: Yeah.

Simms: That’s entirely up to you.

Haneef: My presence in front of the Magistrate.

Simms: You are not required to attend.

Haneef: Aahh hah.

Simms: But as I said, you can have a lawyer present if you so wish, as I’ve offered you in the past.

Haneef: Okay. Okay, you can go ahead and hopefully that should sort out the matter.

- 4.31 The legal requirement for the detainee to be given an opportunity to make submissions is contained subss.23CB(6) and (&)(e) Crimes Act. Mr. Simms failed to comply with that requirement.

⁵⁵ As discussed above, AFP timings have the first long interview; the short interview concerning this order; and the making of the order all occurring at once.

⁵⁶ See transcript of electronic interview, 3 July 2007, 5.30pm. (See appendix 4)

⁵⁷ See transcript of electronic interview, 3 July 2007, 5.30pm, page 1. (See appendix 4)

⁵⁸ See order of Mr. Gordon showing that time: AFP FOI release, folio 70. (See appendix 5)

⁵⁹ Mr. Simms was later to tell Mr. Gordon that all previous applications were made by him. See, for example, AFP FOI release, folio 74. No obvious explanation exists for this wrong statement. (See appendix 5)

⁶⁰ See transcript of electronic interview, 3 July 2007, 9.10pm, page 1. (see appendix 2)

- 4.32 The application by Mr. Matus is in the form of a number of paragraphs which also set out the factual basis relied upon.⁶¹ The application forms a template for the other applications which followed over subsequent days.
- 4.33 In paragraph 2, Mr. Matus sets out the charge to which the investigation period relates. It is described simply as a terrorism offence as defined under the Crimes Act, “namely, an offence contrary to Criminal Code 1995 section 102(7)(1) Providing Support to a Terrorist Organisation. This offence carries 25 years imprisonment.” This formulation is used in all of the applications which have been provided.
- 4.34 The reference to the subsection and the maximum penalty makes it clear that Mr. Matus was relying on an offence where it was alleged that Dr. Haneef had knowledge that the people to whom he gave the SIM card (his cousin, Sabeel) was a terrorist group.⁶²
- 4.35 It was not noted in the original submission, but the vague formulation of the offence makes it appear much worse than if it had been fully particularised. That is, if the Magistrate had been told that the allegation was that Dr. Haneef had given a SIM card with a small amount of funds on it to his cousin, 12 months earlier, then it is arguable that the Magistrate may have been much less willing to grant the long periods of detention time which were, in fact, granted.
- 4.36 Paragraph 3 of Mr. Matus’ application is intended to be a timeline. It appears to leave out the key times for the commencement of the long interview which took place that day. The interview had commenced at 11.01 am.⁶³
- 4.37 Paragraph 4 of the application misrepresents the earlier interview between Dr. Haneef and Mr. Simms at 9.10, earlier that evening. Mr. Matus says:
- “[Dr. Haneef] was informed that he or his legal practitioner may make representations regarding this application at 9.10pm on 3rd July 2007. The aforementioned person has declined legal representation to date.”
- 4.38 As has been pointed out above, Dr. Haneef was given the impression by AFP officers that he had no opportunity to appear before the magistrate. The magistrate was clearly misled as to a key element of the requirement for the making of the order.
- 4.39 The first matter specified as the basis of the need for delay in questioning was inquiries with Indian Law authorities concerning any information available on Dr. Haneef and any known associates. The reason for this appears to be the fact that Dr. Haneef’s father-in-law had the same surname as Sabeel and Kafeel Ahmed. In

⁶¹ AFP FOI release, folios 66-69. (See appendix 5)

⁶² See AFP FOI release, folio 66. (See appendix 5)

⁶³ First record of interview of Dr. Haneef, page 1. (See appendix 8 of original submission of Dr Haneef)

- fact, there is no relationship between the two families and Ahmed is a fairly common surname. The first record of interview (which had been conducted earlier that day) made it clear that Sabeel and Kafeel were “distant cousins ... from my maternal side”.⁶⁴ There was no reason for Mr. Matus to regard the common surname as suspicious or warranting of investigation of Dr. Haneef's father in law before proceeding with the questioning Dr Haneef.
- 4.40 Mr. Matus then referred to Dr. Haneef's bank statement for an HSBC bank account which showed a payment to Kafeel Ahmed, then “a UK prisoner”. There is a discrepancy between the amount put to Dr. Haneef in the interview (960 pounds)⁶⁵ and the amount shown in the application by Mr. Matus (940 pounds).
- 4.41 More importantly, Dr. Haneef had explained the nature of the payment fully in his interview.⁶⁶ The explanation was that Dr. Haneef needed to transfer money to his family but had no remit facilities to India. Mr. Ahmed was in India and could forward moneys to Dr. Haneef's family and it was also convenient for Mr. Ahmed to have money in his English account. It is submitted that it was quite misleading for Mr. Matus not to have included that explanation in the application.
- 4.42 Mr. Matus then stated that Dr. Haneef had confirmed that Kafeel Ahmed was his cousin when this information was put to him.⁶⁷ This was false. Dr. Haneef had volunteered a reference to Kafeel Ahmed and the fact that he was a distant cousin when he was asked whether he had visited Cambridge.⁶⁸ Dr. Haneef is also said to have “...admitted that Dr. Sabeel Ahmed (who has been detained in relation to the Glasgow terrorist attack and the UK terrorist attacks)⁶⁹ is ... his cousin”. This was misleading. Dr. Haneef had told police that Sabeel was his cousin within minutes of his arrest, the night before.⁷⁰
- 4.43 The next factual error is just silly but it had the power to put very misleading thoughts in the mind of the magistrate. Mr. Matus states that Dr. Haneef admitted that his last contact with Kafeel was in March 2007 where Haneef congratulated Kafeel on the recent birth of his child. The statement was wrong. The last contact with Kafeel had been in March.⁷¹ As far as is known, Kafeel never had any children. The police had confused a later chat with Sabeel about Dr. Haneef's child.⁷²

⁶⁴ First record of interview of Dr. Haneef, page 77. See also page 88 where it is made clear that they are not related to his wife's family. (See appendix 8 of original submission of Dr Haneef)

⁶⁵ First record of interview of Dr. Haneef, page 117. (See appendix 8 of original submission of Dr Haneef)

⁶⁶ First record of interview of Dr. Haneef, page 117-8. (See appendix 8 of original submission of Dr Haneef)

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⁶⁸ First record of interview of Dr. Haneef, page 88. (See appendix 8 of original submission of Dr Haneef)

⁶⁹ Since when did Glasgow cease to be part of the United Kingdom?

⁷⁰ Dr. Haneef had told police that Sabeel was his cousin within minutes of his address. See transcript of electronic interview, 2 July 2007, 11.05pm, page 10. (See appendix 1)

⁷¹ First record of interview of Dr. Haneef, page 88 and 134. (See appendix 8 of original submission of Dr Haneef)

⁷² First record of interview of Dr. Haneef, page 134. (See appendix 8 of original submission of Dr Haneef)

- 4.44 Mr. Matus then went on to say that it was believed that Dr. Haneef had shared a residential premises with both Sabeel and Kafeel. This was misleading. Dr. Haneef and Sabeel lived in the same residence but at different times.⁷³ Dr. Haneef had stayed at Cambridge in Kafeel's dorm for five days when he went to visit Kafeel mid 2004.⁷⁴ It is very unlikely that this "belief" was sourced anywhere other than in misquotes of Dr. Haneef's interview.
- 4.45 Mr. Matus then said that it had been ascertained that Dr. Haneef had provided his mobile phone to both these UK suspects prior to departing the UK for Australia. This was also misleading. Dr. Haneef had provided full details of the circumstances in which he loaned his SIM card to Sabeel.⁷⁵
- 4.46 It seems that the MPS had provided information that Dr. Haneef had used a mobile number based in the United Kingdom in September 2006.⁷⁶ If the MPS did provide that information, then it was almost certainly wrong Dr. Haneef was in India or Australia in September 2006. The MPS were aware of the SIM card connection quite early. This seems clear from the fact that messages were coming from Sabeel Ahmed's mother to ring Tony Webster about a card.
- 4.47 However, Luke Morrish later made his statement that the "AFP only became aware of the link with Dr. Haneef about midday 2 July 2007 and that only related to the handset".⁷⁷ Morrish also said that it was not until after the arrest ("not until the taped record of conversation with Dr. Haneef on 2-3 July 2007") that the AFP became aware of the SIM card link".
- 4.48 The most likely conclusion concerning the statement of Mr. Matus is that it was a misleading and inaccurate presentation of Dr. Haneef's freely provided information in his interview.
- 4.49 The next statement by Mr. Matus is that inquiries are being conducted with UK police regarding Dr. Haneef's possible involvement in the most recent UK terrorism incidents. Dr. Haneef was arrested and was being detained for providing a SIM card to the terrorist group who carried out the UK incidents. If his involvement was only "possible", he should have been released from arrest. Mr. Matus' statement, therefore, raises concern about the lawful basis of the continuing applications for detention orders.
- 4.50 The document then contains information not yet released. The material is most likely statements concerning the UK suspects. This may be inferred from the

⁷³ First record of interview of Dr. Haneef, page 125. (See appendix 8 of original submission of Dr Haneef)

⁷⁴ First record of interview of Dr. Haneef, page 89-90. (See appendix 8 of original submission of Dr Haneef)

⁷⁵ First record of interview of Dr. Haneef, page 127-9. (See appendix 8 of original submission of Dr Haneef)

⁷⁶ See incident update prepared for National Counter Terrorism Committee dated 3 July 2007, AFP FOI release, page 37. (See appendix 5)

⁷⁷ Luke Morrish, draft application for a preventive detention order, AFP, FOI release, folio 130. (See appendix 5)

statement on the next page at paragraph 10.⁷⁸ Ironically, the names of the suspects appear to have already been raised with Dr. Haneef in his interview that day.⁷⁹ It is difficult to know what Mr. Matus could have said about those suspects which would have justified further detention time.

- 4.51 In paragraph 9, Mr. Matus states that the further detention of Dr. Haneef was necessary to complete the investigation of the terrorism offence for which Dr. Haneef had been detained. Dr. Haneef was, essentially, arrested and detained for supplying a SIM card (or mobile phone, although this seems to be based on some mix up in the information) to Sabeel Ahmed. Sabeel Ahmed was then in custody, apparently, for withholding information. All of the relevant information about this postulated offence had been provided by Dr. Haneef. All that needed to be investigated was whether his statements about the SIM card were correct. This could be checked by data from the phone company (which the MPS almost certainly still had).
- 4.52 Even though paragraph 9 shows that Mr. Matus had some familiarity with the basis on which Dr. Haneef was entitled to be held, the balance of the document shows that the statement was false. This like the other applications to Mr. Gordon take on the air of fishing exercises.
- 4.53 The submission on behalf of Dr. Haneef showed that Mr. Simms did not record and present all of the information relating to Dr. Haneef, accurately and fairly. The application by Mr. Matus shows that he also had problems recording information, correctly. Like Mr. Simms after him, Mr. Matus got the facts wrong; left out key contextual matters; and completely failed to mention facts that indicated Dr. Haneef's likely innocence of any wrongdoing such as his attempts to ring Mr. Webster to answer the questions that law enforcement agencies might have of him.
- 4.54 A draft application prepared in the name of Mr. Simms has also been obtained on FOI.⁸⁰ While the document contains factual errors, because of its apparent draft and incomplete nature, it is not intended to analyse it further.

Fourth Order: 5 July 2007: 7.05pm

- 4.55 This application was made when Mr. Russo, Dr. Haneef's newly appointed solicitor was excluded from the room by Mr. Gordon. Mr. Russo was not given access to the information on which Mr. Gordon acted.
- 4.56 The document has now been released in full.⁸¹ The application is by Mr. Simms and was signed at 7.05pm. The order was signed at exactly the same minute.⁸²

⁷⁸ AFP FOI release, page 69. (See appendix 5)

⁷⁹ First record of interview of Dr. Haneef, page 107-8. (See appendix 8 of original submission of Dr Haneef)

⁸⁰ AFP FOI release, folio 71. (See appendix 5)

⁸¹ AFP FOI release, folios 74-80. (See appendix 5)

- Nonetheless, Mr. Gordon certified that Dr. Haneef⁸³ “has been given the opportunity to make representations about this application”. One wonders how he could so certify if Dr. Haneef was not present and Mr. Russo was still out of the room.
- 4.57 The application, in paragraph 2, describes the alleged offence in the misleading and unparticularised form previously used by Mr. Matus (see paragraph 4.37).
- 4.58 In paragraph 3, Mr. Simms wrongly states that he made the previous application which was made by Mr. Matus. It is difficult to believe that Mr. Gordon would not, at least for form’s sake, insist on a fresh application being made when he must have known that this basic and obvious error existed in the drafting.
- 4.59 The chronology in paragraph 5 states, in successive lines, the chronological impossibility that Dr. Haneef’s long interview concluded at 5.30pm on 3 July and the order was made at 5.30pm. It will be recalled that the transcript of the short interview in which Dr. Haneef was asked if he wanted to be represented on the making of that order records that that interview concluded at 5.36pm. The chronology also shows a specified time application having occurred at 4.45pm on 5 July. It is almost certain that no order was made at that time. It was possibly the arranged time for the application but Dr. Haneef had delayed matters by asking for a lawyer.⁸⁴
- 4.60 The request by Dr. Haneef for legal representation is recorded in the application at paragraph 7. The request is said to have been made at 4.00pm that day. The time is wrong. The interview during which the request was made went from 4.15pm to 4.52pm.⁸⁵
- 4.61 In paragraph 10a, like Mr. Matus, Mr. Simms is conflating the father-in-law, Ahmed, with the second cousin, Ahmeds, because of the common surname.
- 4.62 Mr. Simms also refers to Dr. Haneef being arrested with a suitcase at Brisbane airport. Any reference to the HSBC account entry appears to have been deleted. However, the next line goes on state: “This information was put to [Dr. Haneef]”. It now suggests that it was put to Dr. Haneef that he had a suitcase in his possession. The careless drafting has led to results that do not make sense.
- 4.63 The same faulty statement about Dr. Haneef congratulating Kafeel on the birth of Kafeel’s child in March is made. The same statement about providing a mobile phone (not a SIM card) is made. The same false statement about sharing residential premises is made.

⁸² AFP FOI release, folio 81. (See appendix 5)

⁸³ Note, like the AFP, the magistrate called Dr. Haneef “Mr. Haneef, not giving him the benefit of the title his medical studies had achieved.

⁸⁴ Transcript of electronic interview, 4.15pm, 5 July 2007, page 1. (See appendix 6)

⁸⁵ Transcript of electronic interview, 4.15pm, 5 July 2007, pages 1-9. (See appendix 6)

- 4.64 As with the Matus application, the information said to be provided by UK authorities is not provided.
- 4.65 The application⁸⁶ contains an expanded and more misleading collection of statements about financial transactions. The documents states: "... since Haneef's arrival in Australia, there is evidence of fund's transfers ..." the statement is misleading because "the evidence" is taken from Dr. Haneef's bank statement which he was carrying on him amongst his papers. He had been asked about, and explained each of the transactions.⁸⁷ If the applicant had any remaining questions (they had run out of questions in the interview), he could have resumed the questioning.
- 4.66 The applicant went on to say that further inquiries were necessary to determine the purpose and recipient of the funds. This was misleading. The AFP should have had no trouble at all checking that Dr. Haneef's statements as to the recipient of the funds were correct.
- 4.67 There was a further statement that two other domestic bank accounts had been identified. If this were correct, all the AFP had to do was resume their questioning. It would seem that certain very simple matters (of no forensic significance) were being presented to the magistrate as if they were matters of great weight.
- 4.68 It is difficult from the second record of interview to identify any questions about undisclosed "domestic bank accounts". One possible candidate is a Citibank account in the UK.⁸⁸ It was not disclosed because it was not a current account, that is, it had been closed some years previously.
- 4.69 Another candidate is the UTI Bank Ltd.⁸⁹ It was not disclosed because it is not a bank: it is the internet portal used by RMIT India to transfer funds.
- 4.70 The decision to detain rather than simply ask Dr. Haneef about the entries in his financial records appears to have created unjustified suspicions and false impressions.
- 4.71 In paragraph 10b, Mr. Simms presented a very misleading picture of Dr. Haneef's movements on the day of his arrest. It is not explained that Dr. Haneef informed officers within minutes of his arrest that Sabeel's mother had raised with him the issue of his SIM card having been the cause of some problems in the UK. It is not

⁸⁶ AFP FOI release, page 77. (See appendix 5)

⁸⁷ First record of interview of Dr. Haneef, pages 66-76. See second record of interview at page 310 where Mr. Simms acknowledges having discussed the MA Ali transaction on the previous occasion. (See appendices 8 and 29 of original submission of Dr Haneef)

⁸⁸ See second record of interview, page 302. (See appendix 29 of original submission of Dr Haneef)

⁸⁹ See second record of interview, page 318. (See appendix 29 of original submission of Dr Haneef)

stated that the purchase of the one way ticket had also been explained. There is no mention that Dr. Haneef had tried to ring UK investigator, Tony Webster. There is no mention of the fact that Dr. Haneef's wife had recently given birth and his baby, born prematurely, had two days earlier been readmitted hospital. There is no mention of Dr. Haneef's explanation that this was the earliest time that he could get cover for his shifts at the Gold Coast Hospital allowing him to leave.

- 4.72 Perhaps, most significantly, there is no mention as to whether the police had contacted Mr. Webster to confirm Dr. Haneef's story. This could have been done within minutes of the arrest. It was certainly not a reason to keep Dr. Haneef detained.
- 4.73 At paragraph 12, Mr. Simms mentions that Dr. Haneef was facilitated access to Indian consular assistance. He does not mention that the conversation was taped and transcribed by the AFP.⁹⁰
- 4.74 The application by Mr. Simms at 7.05 pm on 5 July 2007 was full of misleading and inaccurate information of the kind seen in earlier and later applications.

Fifth Application: 9 July 2008

- 4.75 This application took place in a court in the new Magistrates Court building at the corner of Turbot and George Streets. The applicant, Mr. Simms and an AFP lawyer, Michael Rendina, appeared for the applicant. Stephen Keim appeared for Dr. Haneef instructed by Ryan & Bosscher, solicitors.
- 4.76 The AFP representatives tendered their secret document and the lawyers for Dr. Haneef objected. Mr. Keim then argued the applicability of natural justice principles to part 1C applications. This appears to be the first time that any thought was given in the hearing process to that concept.
- 4.77 Mr. Simms' application document for this hearing was not available when the original submission was made.⁹¹
- 4.78 The application contains most of the misleading pieces of information contained in earlier applications.
- 4.79 The entry concerning two undisclosed domestic bank accounts had morphed and become more specific.⁹² There is specific mention of \$12,000 transferred to Citibank and cleared through UTI Bank in India.
- 4.80 As has already been discussed above, the transactions were simply cases of Dr. Haneef sending money back home to his family (of which, in the absence of his

⁹⁰ See AFP FOI release, folios 45 and 55. (See appendix 5)

⁹¹ The application is at AFP FOI release at folios 82-91. (See appendix 5)

⁹² AFP FOI release, page 85. (See appendix 5)

father) he was the breadwinner and father figure.⁹³ They were probably short of funds since Dr. Haneef had obtained a paid position for the first time after more than a year of passing PLAB 2 examinations and getting his qualifications recognised in the UK.⁹⁴

- 4.81 Through detaining Dr. Haneef rather than asking him about the transactions that were causing concern, Mr. Simms was presenting the Magistrate with false issues.

Fifth Application Continued: The Chatroom Conversation Turns Up

- 4.82 One thing that is noticeable from the application documents that were not available at the time of the submission in May is that the material provided on 11 July to Dr. Haneef's lawyers was censored. This was not conveyed to Dr. Haneef's lawyers, expressly, although Mr. Howe QC did say that he was "trying to make as much information available as was possible". When the information was provided, there was no suggestion that it was incomplete. Dr. Haneef's lawyers were given no reason to believe that what was tendered to the Magistrate was different to what they had received.
- 4.83 One result of this was that Mr. Gordon had been provided with information on earlier applications which was not now, officially, before him and Dr. Haneef's lawyers were not made aware of this. If the AFP applicant chose, for strategic reasons, to run the case on a smaller base of information, it should, at least, have been made clear that the judicial officer had been provided, on previous occasions, with other prejudicial information. This would have been relevant at least to the application that Mr. Gordon disqualify himself. It is also noticeable that Mr. Gordon did not raise this imbalance in the data, himself, even though the apprehended bias case was argued before him for a number of hours.
- 4.84 A second result is that the application (and statutory declaration) on 11 July, when information was provided to Dr. Haneef's lawyers, left out much of the material from earlier applications that made it clear that the AFP had unanswered questions about which they could have proceeded to ask questions. The impression given was that an indefinite wait must occur before any new material on which questions could be asked would be available. *Au contraire*, they had been using the new information to influence the magistrate when they could have proceeded with further questioning and resolved many of the matters that they felt gave rise to suspicion.
- 4.85 Another noticeable feature is the change in the form of the documents when it appeared that they might have to be given to Dr. Haneef's lawyers. Suddenly, the form of statutory declaration was used. Up to that point, the applicant did not feel it necessary to place himself under the obligation of any form of sworn document or solemn declaration. It is, again, noticeable that the magistrate did not seem to

⁹³ Second record of interview at page 326. (See appendix 29 of original submission of Dr Haneef)

⁹⁴ See second record of interview at pages 299 and 318. (See appendix 29 of original submission of Dr Haneef)

- find it necessary to require any such form before he acted on the information provided.
- 4.86 An important aspect of the information that “dropped out” when it became necessary to provide the information to Dr. Haneef’s lawyers is the (translated and partial) extract from the chatroom conversation between Dr. Haneef and his brother.⁹⁵
- 4.87 It is now clear that the conversation was translated from the original by a Queensland Police Officer, Constable Hafiz Mayar.⁹⁶ The DPP submission to the Inquiry shows the pressure that was applied to individuals brought in from outside to do something for the AFP investigation. It is very likely that Constable Mayar found himself under great pressure when he was brought in to translate material that might have been of importance to this AFP investigation. By 5 July, it was clear to the outside world (and any insider) that the AFP; AFP leadership; and Ministers of the Crown were treating this investigation as one of great importance.
- 4.88 In the submission, it was pointed out how the mistranslation that the police were using at the time of the second interview made the conversation look much more sinister than it was.⁹⁷ It was also pointed out that the long time over which the conversation took place had not been fully appreciated from the reading of the Mr. Simms’ presentation in the second record of interview.⁹⁸ It was also pointed out that Dr. Haneef was not given a fair opportunity to point out the errors in the police translation.⁹⁹
- 4.89 The analysis in the submission is now supported by the translation of the conversation (with provision of context) carried out by Dr. Haneef and provided to the Inquiry. A copy of the translation (and the original provided to us by the Inquiry) is attached to these supplementary submissions. The significance of long delays to the conversation is particularly evident from the log of the original conversation. An example of this is that the reference to the pop up news item about the arrests in the UK does not occur until 5.31pm, 78 minutes into the conversation.
- 4.90 In his application of 9 July 2007, Mr. Simms provided 23 lines of a conversation that stretched 106 minutes and occupied six pages of internet log. The impact is misleading from the mistranslation; from the lack of context; from the non-indication of the extent of the time gaps; and from the partial and selective nature of the extract.

⁹⁵ AFL FOI release, page 86. (See appendix 4)

⁹⁶ AFL FOI release, folios 59 and 60. Note that the entry at 18.34 on 5 July (folio 60) shows that the AFP had the chatroom conversation from 5 July but continued to obtain orders for detention (on the basis that they needed time to get information) for another 8 days. (See appendix 5)

⁹⁷ Submission, paragraph 7.65.

⁹⁸ Submission, paragraph 7.65.

⁹⁹ Submission, paragraph 7.65.

- 4.91 No reference is made to the repeated references by Dr. Haneef's brother to the need to leave his details and to contact Mr. Webster, the UK police officer.
- 4.92 It is interesting to note that the English version in this application by Mr. Simms is different, at least in its use of idiom, to that read to Dr. Haneef in the second interview. For example, "tell me quickly, when are you leaving"¹⁰⁰ has been rendered in the application as "Say quickly, when will you get out?"¹⁰¹ The rendering in the application is more provocative and more calculated to read suspiciously.
- 4.93 In another example, the interview version has Dr. Haneef saying "I have told [the hospital] that I had a child born in emergency C section".¹⁰² The application renders the same words as "Say a baby has been born with an emergency C section- say that".¹⁰³
- 4.94 It is not clear whether these differences are the result of a new more competent translator having been brought in or whether the AFP felt more comfortable presenting the more provocative translation when it was expected that neither Dr. Haneef nor lawyers on his behalf would see the document and, therefore, would not be able to contest it.
- 4.95 As well as presenting a selective and badly presented version of the chatroom conversation, Mr. Simms felt he had to go further and spell it out for the magistrate. He stated: "Police suspect that the above conversation refers to the UK attacks,¹⁰⁴ indicates [Dr. Haneef] intends to conceal his connection to the UK suspects and to evade police inquiries by fleeing".
- 4.96 That statement is a very odd one when Mr. Simms had known for a full week that Dr. Haneef had made at least four calls to Mr. Webster and was told he had made a number more. Mr. Simms knew that Dr. Haneef had attempted one of those calls to Mr. Webster during the chat room conversation itself.¹⁰⁵ The statement is also odd when one considers how many times it was said in the conversation that Dr. Haneef should leave his contact details.
- 4.97 It is worth noting a very poignant note at 17.52.47 where Dr. Haneef's brother says that Sabeel and Kafeel Ahmed's Mum had said that "Kafeel will come and set things right". This mother knew that her son, Sabeel, had been taken into custody and that it was something to do with a phone card that Dr. Haneef had

¹⁰⁰ AFL FOI release, page 86. (See appendix 4)

¹⁰¹ Second record of interview at page 364. (See appendix 29 of original submission of Dr Haneef)

¹⁰² Second record of interview at page 366. (See appendix 29 of original submission of Dr Haneef)

¹⁰³ AFL FOI release, page 87. (See appendix 4)

¹⁰⁴ It did touch upon the UK arrests. This bit was not included in the extract. See translation by Dr. Haneef of chat room conversation, top of page 2. (See appendix 11)

¹⁰⁵ Transcript of first interview of Dr. Haneef, page 104. the call occurred between Dr. Haneef's brother saying "OK" and the brother saying: "kya kerin" translated as "What are you doing?" at page 1 of the log in the second half of the page. (See appendix 8 of original submission of Dr Haneef)

provided. The two brothers were just working out from news bulletins that Sabeel's arrest had something to do with the attacks at London and Glasgow. Little does anyone know that it is the older brother, Kafeel, that has caused everyone the heartache. Perhaps, there lies a clue in Dr. Haneef's brother's next line of chat. He says: "But [Kafeel] is also unable to be contacted".

- 4.98 What is clear is that the decision by the AFP to use the detention applications as a basis for keeping Dr. Haneef detained rather than questioning him about the chat room conversation resulted in the police officers harbouring unjustified suspicions. As the inadequate opportunity given to Dr. Haneef to correct the translation showed, a proper questioning would have allowed these suspicions to be laid to rest, very quickly.¹⁰⁶

Fifth Application Continued: the Questions Waiting to be Asked

- 4.99 There are further indications in the application of 9 July that the AFP was in a position to further question Dr. Haneef
- 4.100 By 9 July, the AFP had translated 97 of 120 separate chat conversations. Only two had proven of interest. 95% of the material had been examined.¹⁰⁷
- 4.101 Seven Yahoo profiles had been located.
- 4.102 1636 photographs had been downloaded from the computer. The ones which were asked about¹⁰⁸ (other than happy snaps of Dr. Haneef and his wife) had been identified. They were pictures of Dr. Haneef and Sabeel Ahmed on holidays.¹⁰⁹ Mr. Simms claimed he was making further inquiries about an Islamic self help doctor's group (about which Dr. Haneef had freely spoken in his first interview) but the questioning appears to have gained nothing by keeping Dr. Haneef detained for a further five days.¹¹⁰
- 4.103 The AFP had the whole of the SKYPE contacts list about which they wished to, and did ask questions.¹¹¹
- 4.104 The AFP had downloaded all of the data from Dr. Haneef's mobile telephone about which they later asked questions.¹¹²
- 4.105 The matter to which the AFP gave prominence in the application was Dr. Haneef's contacts list. They were concerned that the entry for a "Dr. Bilal", who may or

¹⁰⁶ Transcript of second interview, pages 361-371. (See appendix 29 of original submission of Dr Haneef)

¹⁰⁷ AFL FOI release, folios 87-8. (See appendix 4)

¹⁰⁸ Transcript of second interview, pages 74-87. (See appendix 29 of original submission of Dr Haneef)

¹⁰⁹ AFL FOI release, folio 88. (See appendix 4)

¹¹⁰ Transcript of second interview, pages 89-92. (See appendix 29 of original submission of Dr Haneef). Mr. Simms could have tried a Google search. That would have provided considerable background.

¹¹¹ AFL FOI release, page 88. (See appendix 4)

¹¹² AFL FOI release, page 88. (See appendix 4)

may not be a UK suspect called “Bilal Abdulla”, which was dated “16/12/2006 8:30:17PM”. This was a time when Dr. Haneef was in Australia.

- 4.106 The AFP were concerned that Dr. Haneef had mentioned meeting a person at Cambridge in 2004 called Bilal.¹¹³ Mr. Simms’ explanation conceded that there may be an innocent explanation of this “discrepancy” when he said in the application: “Further analysis is required to establish whether this was manual entry or an automated system update.”¹¹⁴
- 4.107 At the same time, Mr. Simms was quite misleading in telling the magistrate there was importance in Sabeel’s name being in Dr. Haneef’s list of contacts. Mr. Simms knew that Sabeel was Dr. Haneef’s cousin and that they had contact as recently as after the birth of Dr. Haneef’s baby on 26 June 2007. There was nothing suspicious about Dr. Haneef having a number for his cousin amongst the contacts on his computer.
- 4.108 Again, instead of asking Dr. Haneef this legitimate question about Bilal, the AFP sought to detain him and delay asking the question.
- 4.109 As it turned out, there was a very innocent and simple explanation. Dr. Haneef had suffered water damage to his mobile phone and lost his contacts. He asked Sabeel to send him contact details of doctors in the UK with whom he had worked or had otherwise come into contact. Sabeel sent the contacts as an Outlook contact distribution list which had been incorporated into the Outlook contacts on the laptop. This explained the date and was consistent with Dr. Haneef not having had any contact with “Bilab” since 2004.¹¹⁵
- 4.110 By using the legislation to obtain detention orders, the AFP, in another respect, caused themselves to harbour suspicions which could have been put easily to rest.
- 4.111 Another misleading aspect of the application by Mr. Simms was his reference to Kafeel Ahmed.¹¹⁶ The application stated that the AFP had located details relating to Kafeel Ahmed showing an address in Ireland. This information had been the subject of questioning in the first interview.¹¹⁷ Dr. Haneef had explained that that was where Kafeel had lived when Dr. Haneef first went to the UK in 2004. He had also explained visiting Kafeel in Cambridge.¹¹⁸

¹¹³ Transcript of first interview, pages 108-9. Dr. Haneef thought his name was “Bilab” and that he was from Iraq. Their conversation was about the PLAB 2 examination which Dr. Haneef had just passed on his second attempt and Bilab was about to attempt. (See appendix 8 of original submission of Dr Haneef)

¹¹⁴ AFL FOI release, page 89. (See appendix 4)

¹¹⁵ Transcript of second interview, pages 139-141. (See appendix 29 of original submission of Dr Haneef)

¹¹⁶ AFL FOI release, pages 89-90. (See appendix 4)

¹¹⁷ Transcript of first interview, pages 122-123. (See appendix 8 of original submission of Dr Haneef)

¹¹⁸ Transcript of first interview, pages 122-124. (See appendix 8 of original submission of Dr Haneef)

- 4.112 It was most misleading to suggest to the magistrate that this was a subject that had been lately discovered and remained unexplained.
- 4.113 The application made by Mr. Simms on 9 July 2007 is a good example of how the part 1C detention processes went wrong. Mr. Gordon was given wrong and inaccurate information. On a proper reading, however, the application provided a great deal of evidence that the AFP could have questioned Dr. Haneef, then and there. Instead, matters which could have been laid to rest continued to fester in AFP minds.

Sixth Application: 11 July 2007: the Simms Document supported by the Jabbour Affidavit

- 4.114 The document which was tendered to support this application was the subject of chapter 6 in the submission. The chapter was entitled “The Simms Document: Nine Days After the Arrest”.
- 4.115 Accordingly, it is not necessary to re-examine that document for the purpose of these supplementary submissions.
- 4.116 It is important to note, however, that a further statutory declaration, this time by Ramzi Jabbour, had been prepared for that application but was not, to the knowledge of Dr. Haneef’s lawyers, tendered to the magistrate. This document is called a “classified affidavit”.¹¹⁹
- 4.117 The Jabbour Affidavit appears to have greater amounts of material that has still not been disclosed than the earlier applications for detention time. It is not clear why it was felt necessary to place more “secret” information before the magistrate. One explanation may be that it was thought with applications becoming contested, more detail was required. Whether that is true or not is hard to glean from the available material.
- 4.118 The Jabbour affidavit, to the extent that it has been disclosed, appears to have been a resting place for many of the misleading statements included in the application of 9 July (discussed above) which were not included in the disclosed “Simms document” of 11 July .
- 4.119 The Jabbour affidavit seeks to attach suspicion to Dr. Haneef by association with Dr. Ali. At paragraph 8, mention is made of Dr. Haneef leaving his computer and “unspecified jewellery” with Dr. Ali. This action had been discussed by Dr. Haneef in his first interview. It was, in fact, volunteered by Dr. Haneef during his questioning after his arrest.¹²⁰

¹¹⁹ AFL FOI release, pages 106-109. (See appendix 4)

¹²⁰ Transcript of electronic interview, 11.05 pm, 2 July 2007, page 24. (See appendix 1)

- 4.120 Mr. Jabbour then goes on to say that “Ali has subsequently become a person of interest as his links to the network have been identified throughout the UK and Australian investigations”.
- 4.121 Dr. Ali was never arrested. No person other than Dr. Haneef has been arrested in Australia with any alleged connection to Kafeel Ahmed’s actions in London and Glasgow. The validity of the allegation concerning “a network” has not been able to be assessed in these supplementary submissions because relevant information has not been disclosed. However, the allegation of guilt by association with Dr. Ali (especially by 11 July: nine days after the arrest) is likely to be as misleading as the information proffered to Mr. Gordon which has been analysed in these supplementary submissions and the submission.

Sixth Application: 11 July 2007: Mr. Jabbour enters the Chat room

- 4.122 In paragraph 20, Mr. Jabbour decided to deal with the chat room conversation by paraphrasing selected extracts.¹²¹ Because the affidavit was not tendered, it is not intended to analyse this paraphrasing in full detail. However, one example where the paraphrase (or the translation on which it is based) is clearly wrong involves the reference to Kafeel Ahmed. Mr. Jabbour has Dr. Haneef’s brother saying: “Say Kafeel is using it”. Dr. Haneef’s translation is: “Mami (Aunty (Kafeel and Sabeel’s Mum) was saying that brother Kafeel used it”.¹²² By not questioning Dr. Haneef (and keeping him detained), the AFP caused the misunderstandings to grow.

Sixth Application: 11 July 2007: Jabbour and Knowledge of the SIM Card

- 4.123 Mr. Jabbour went on to state that the AFP did not become aware of the SIM card link “until the taped conversation with Dr. Haneef on 2-3 July”.¹²³
- 4.124 Dr. Haneef mentioned the source of his knowledge of the SIM card link within minutes of being arrested and answered every question about it in the long interview on 3 July.¹²⁴ That the AFP did not know of the SIM card connection is more a symptom of what the UK authorities thought was important to tell the AFP than any indication that Dr. Haneef “knew” things he should not know. Mr. Jabbour’s statement feigns ignorance (in a very misleading way) about Dr. Haneef’s explanation as to how he knew of the SIM card.

Sixth Application: 11 July 2007: Jabbour and the Timing of Leave

¹²¹ See AFP FOI release, folios 100-101. (See appendix 5)

¹²² See entry in chat room log at 17:51:55. (See appendix 9)

¹²³ See AFP FOI release, folio 101. (See appendix 5)

¹²⁴ See, for the first mention, transcript of electronic interview, 11.05pm, 2 July, page 4. (See appendix 1)

- 4.125 Mr. Jabbour stated¹²⁵ that Dr. Haneef requested his leave about 4.15pm to 4.30pm on 2 July. This is most unlikely to be true.
- 4.126 Dr. Haneef had given detailed information as to his interaction with Cathy Bosworth.¹²⁶
- 4.127 Dr. Haneef had not been far from his laptop between 16.16.11 and 16.27.09.¹²⁷
- 4.128 As discussed in detail in the submission, the available circumstantial evidence makes Dr. Haneef's time estimates (which suggest he applied to Ms. Bosworth about 2.30pm on 2 July) appear to be accurate.¹²⁸
- 4.129 Certainly, there was no suggestion in Dr. Haneef's second interview that his statements in the first interview that he obtained leave from Cathy Bosworth were not confirmed by Ms. Bosworth's statement.
- 4.130 The most cogent evidence that this statement by Mr. Jabbour was based on inaccurate information is contained in the handwritten notes (which may have been made by senior Queensland Police Officer, Gayle Hogan). The handwritten notes¹²⁹ made on or shortly after 8 July¹³⁰ show notes of a statement taken from Cathy Bosworth. The notes indicating the conversation with Ms. Bosworth read as follows: "Mon 2.7.07 [Haneef] 4-4.30pm told me "My wife has had to have an emergency Caesar – bit jaundice – asked for ten days leave. – working Mon – appeared slightly anxious – may have mentioned India – can't clearly recall".¹³¹
- 4.131 So far the notes support Mr. Jabbour. However, the time of "4-4.30pm" carries an asterisk. The author has recorded in the outside column: "amended to prior to 2.51pm".
- 4.132 It is not clear whether the notes were corrected with the asterisk at the time they were made or some days later. It is also unclear whether Mr. Jabbour's statement as to time was accurate at the time it was made or not. His error was also reflected in Mr. Simms' statutory declaration of the same date at paragraph 23.
- 4.133 Whether or not Mr. Simms and Mr. Jabbour were reflecting an error by Ms. Bosworth or simply failed to keep track of what the investigation had later found is not clear.

¹²⁵ AFP FOI release, folio 101. (See appendix 5)

¹²⁶ Transcript of first interview, pages 73-74. (See appendix 8 of original submission of Dr Haneef)

¹²⁷ See chat room log entries, page 1. (See appendix 9)

¹²⁸ Submission on behalf of Dr. Haneef, paragraphs 7.50 – 7.64.

¹²⁹ QPS FOI release, page 158. (See appendix 13)

¹³⁰ The preceding page in the FOI release is dated 8 July.

¹³¹ It is clear that Ms. Bosworth's recollection of the conversation when Dr. Haneef obtained his seven days leave is not incredibly clear. There is no reason why it should be. Her mention of "jaundice" is significant, however, because it shows that Dr. Haneef had explained both about his wife giving birth and the baby (Haniyah) having been sick again after the birth.

- 4.134 It is clear, however, that, whatever the cause, another piece of incorrect information was given to Magistrate Gordon.
- 4.135 What is also clear is that Dr. Haneef's time line, created without any notes or any assistance from electronic records other than the times he called Mr. Webster, was extraordinarily accurate. If Mr. Jabbour had not realised that by the time he prepared his confidential affidavit, he should have done so by the time he decided to charge Dr. Haneef.
- 4.136 Mr. Jabbour went on to contradict Dr. Haneef's statements in two other ways. He said that Dr. Haneef had sought 10 days leave as opposed to 7 days. The handwritten notes suggest that this is what Ms. Bosworth may have said. It may also have been inaccurate as was her original estimate of time. He also stated that Dr. Haneef had [falsely] stated that he had to travel to India because his wife needed emergency medical attention (when it was Dr. Haneef's child who was re-admitted to hospital). This may also have resulted from a misunderstanding or recollection error by Ms. Bosworth.
- 4.137 It is only through the FOI release of the Queensland Police Service that Dr. Haneef has been given an opportunity to understand the source of these claims made by the AFP. The AFP have failed to provide access to any witness statements.

Sixth Application: 11 July 2007: Jabbour and the Man in Florida

- 4.138 Mr. Jabbour talks, for the first time, of a chat room conversation which took place on 16 June 2007.¹³² The conversation, which appears to be a couple of old mates joking, talks of doctors killing people¹³³ and planes in Florida being hijacked. The conversation is almost certainly that which is discussed with Dr. Haneef towards the end of the second interview.¹³⁴
- 4.139 By that time Mr. Simms could not be bothered to even read the conversation out. The person on the other end of a chat was a cousin, an IT engineer working in the US who liked to engage in a bit of "comedy".
- 4.140 This was another piece of information which the AFP had, at least, since 9 July but refused to ask questions about, preferring to use the material as an excuse to keep Dr. Haneef detained.

Sixth Application: 11 July 2007: Jabbour and the Mufeed

¹³² AFP FOI release, page 102. (See appendix 5)

¹³³ One does not have to be a cultural historian to know that asking a doctor, especially, a young doctor if he has killed anyone yet is joke that has been around for many years.

¹³⁴ Transcript of first interview, pages 373-4. Mr. Jabbour may have the date reference incorrect. (See appendix 8 of original submission of Dr Haneef)

- 4.141 Mr. Jabbour stated, very simply, that there were photos on Dr. Haneef's computer with individuals wearing green t-shirts with the word "Mufeed" written thereon.
- 4.142 This was misleading. The AFP knew that the Mufeed was an organisation by which older doctors assisted younger doctors to make their way.
- 4.143 Mr. Jabbour's affidavit, which appears not to have been used, shows Mr. Jabbour presenting wrong and misleading data in a manner similar to the other documents produced for part 1C detention applications.
- 4.144 No other document has been provided as prepared for the purpose of the part 1C applications.
- 4.145 The material analysed in the preceding paragraphs shows that the difficulties of the Simms document as analysed in the original submission on behalf of Dr. Haneef was not a one off event caused by having to produce a document which was not secret. The difficulties with presenting accurate and non-misleading information went right through the AFP process of obtaining orders from Mr. Gordon pursuant to part 1C.
- 4.146 The extra documents which have been analysed above also suggest that the request for extra detention time suffered a major flaw. Most of the new material put to Dr. Haneef in the second interview was in the hands of the AFP at least from early on 9 July 2007. The second interview could have been conducted at that time. This suggests that there was a greater desire on the part of the AFP to keep Dr. Haneef detained than a desire to conduct an effective interview. Such an approach would appear to be outside the spirit of Part 1C.
- 4.147 Although not apparently mentioned in the applications for part 1C orders, the chat conversation between Dr. Haneef and Sabeel Ahmed of 17 June was available to the AFP in English on 5 July 2007.¹³⁵ This conversation was obviously regarded as important by the AFP and was the subject of a number of questions in the second interview.¹³⁶

The Question No-one Asked After the First Interview: Was There Still a Reasonable Belief? Pages 27 - 34

- 5.1 One piece of further information received relates to the document prepared for the National Counter Terrorism Committee dated 3 July.¹³⁷ Of the information presented

¹³⁵ AFP FOI release, folio 53. (See appendix 5)

¹³⁶ Transcript of second interview, pages 374-377. (See appendix 29 of original submission of Dr Haneef)

¹³⁷ AFP FOI release, pages 37-41. (See appendix 5)

to this whole of government committee,¹³⁸ relating to the suspect, Dr. Mohamed Haneef, it is now known that a key entry was that Dr. Haneef had “transferred funds to his HSBC account in the UK on three separate occasions, from November 2006 through to June 2007, totaling over \$4,300”.

- 5.2 This key piece of information was rendered unsuspecting by Dr. Haneef's first interview.¹³⁹ The monies were the repayment of a loan to Dr. Haneef's brother-in-law for monies borrowed to pay for his sister's wedding.
- 5.3 If this were a key point in the suspicion held concerning Dr. Haneef, it should have evaporated by the end of this first interview.
- 5.4 It is now known, from Mr. Jabbour, that Dr. Haneef and not the UK authorities had provided the AFP with their first knowledge of the SIM card connection between Dr. Haneef and Sabeel Ahmed.¹⁴⁰ Mr. Jabbour appeared to regard that as a matter of increased suspicion. In fact, as was pointed out in the submission, Dr. Haneef's openness on this issue (and everything) in his interview should have caused the AFP officers to rethink their decision to arrest.¹⁴¹
- 5.5 At the time of the submission, Dr. Haneef's lawyers were unable to confirm the identity of Tony Webster the person who was believed by Dr. Haneef to be a police officer in the UK investigation. It was known to the arresting officers by 3 July that Dr. Haneef had attempted to telephone Mr. Webster on at least four occasions on 2 July 2007.¹⁴² The AFP have been very careful, in any public statement, about confirming the identity of Mr. Webster and the fact that Dr. Haneef had attempted to contact him. Dr. Haneef's attempts to contact Mr. Webster were not passed on to the magistrate hearing the part 1C applications.¹⁴³
- 5.6 Our inquiries suggest that Mr. Webster was probably a Scotland Yard officer who was seconded to Liverpool to investigate Sabeel Ahmed's connection with the attacks. After Sabeel Ahmed's arrest, two of his acquaintances, also medical doctors, became aware, through another acquaintance that Mr. Webster was inquiring about a Dr. Mohamed Haneef in connection with a phone card. These acquaintances contacted Mr. Webster to tell him that they knew Dr. Haneef and that he would, very likely, be happy to talk to Mr. Webster. They said that they did not have Dr. Haneef's contact details in Australia but that Dr. Sabeel's mother would have them. Mr.

¹³⁸ At the time of the submission in May, it was thought that this was some kind of national but internal committee of the AFP. Therefore, remarks made as to things being known to the senior ranks of the AFP based on minutes of or memos to that Committee can be applied to all levels of government or at least the departments represented on that Committee.

¹³⁹ Transcript of first interview, pages 51-58.

¹⁴⁰ AFP FOI release, page 101. (See appendix 5)

¹⁴¹ Submission on behalf of Dr. Haneef, paragraphs 5.19-5.22.

¹⁴² Transcript of first interview, page 107. (See appendix 8 of original submission of Dr Haneef)

¹⁴³ Note that the application of 9 July refers to Sabeel's mother having Dr. Haneef to “contact a specified officer in the UK”. See AFP FOI release, page 86. It seems to have been dropped from later documents prepared. (See appendix 5)

Webster gave these acquaintances his mobile phone number and they rang Sabeel's mother with the message and the number.

5.7 We understand that one of the doctors gave UK and Australian police statements to this effect.

5.8 We are urgently seeking documents to confirm this information.

5.9 If this information is correct, then Dr. Haneef's statement as to what he had been told by Sabeel's mother could have been confirmed very quickly. It is difficult to know why Dr. Haneef's actions in taking the earliest opportunity to answer any questions about his conduct were not passed on to Mr. Gordon and to all sections of the government including the Minister for Immigration.

The Wrong Test

5.10 The short interview transcripts, recently, made available throw valuable light upon the failure of anyone in the AFP to make a decision to release Dr. Haneef pursuant to s.3W Crimes Act.

5.11 In the interview of 5 July 2007, the interviewing officers make it clear that the AFP is applying the wrong test.

5.12 Mr. Simms says: "... it's absolutely vital and ... it's crucial that we determine ... one way or another, whether you're involved with these people in the United Kingdom or whether you're not".¹⁴⁴

5.13 Shortly thereafter, he repeats the test to be applied: "... if it comes to a point where we obviously investigate things to a point that we can say Mohamed's definitely not involved, and we are happy and can categorically say that, you will be released prior to the four day period".¹⁴⁵

5.14 It is clear from these references that the AFP was operating on the basis that s.3W allowed Dr. Haneef to be detained until it was overwhelmingly proved that he was innocent of any connection with terrorist actions in the UK.¹⁴⁶ This provides very clear evidence that the use of part 1C and the continued detention of Dr. Haneef was conducted on a false premise and a false understanding of s.3W Crimes Act and part 1C Crimes Act.

5.15 The failure of the AFP to release Dr. Haneef after the first interview has not been satisfactorily explained. In fact, recently obtained material (that was in possession of the AFP since July 2007) indicates that the AFP were operating on a legal premise

¹⁴⁴ Transcript of electronic interview, 4.15pm 5 July 2007, page 3. (See appendix 6)

¹⁴⁵ Transcript of electronic interview, 4.15pm 5 July 2007, page 4. (See appendix 6)

¹⁴⁶ The exact opposite of the presumption to which the AFP Commissioner and government ministers were paying lip service at the time, namely, that Dr. Haneef was innocent until proven guilty.

that was wrong. This indicates that the AFP failed to ask itself the relevant questions required by s.3W(2) Crimes Act.

The Simms Document: Nine Days After the Arrest: pages 35 - 53

- 6.1 It is not intended to discuss this document in detail. In these supplementary submissions, further comment has been integrated into the discussion of the part 1C Crimes Act applications, more generally.
- 6.2 An assumption was made, however, in the submission¹⁴⁷ which should be corrected.
- 6.3 The assumption was that, because there was no suggestion by counsel on behalf of the AFP that there was further material, all relevant information was included in Mr. Simms' application and statutory declaration.¹⁴⁸ It is now known that Mr. Jabbour had prepared a confidential statutory declaration for that same application that was not tendered and that Mr. Jabbour's document contained material that had been previously provided to Mr. Gordon.¹⁴⁹ Mr. Jabbour's document has been discussed elsewhere in these submissions in a discussion of the part 1C applications.
- 6.4 It was stated in the submission that there was no information available as to when the AFP became aware of the two exculpatory pieces of information: that the SIM card was not found in the burning jeep at Glasgow and that Kafeel Ahmed had sent his brother an email which showed that Sabeel had no foreknowledge of the attacks.¹⁵⁰
- 6.5 It is a singular aspect of the four and a half months that have passed since the submission was lodged that the public record remains no clearer. The AFP have refused to provide any public explanation of the issues raised in the submission. The Inquiry has not released any information contained in the AFP submission to the Inquiry. At the time of writing, the public record as to the state of knowledge of the AFP on these matters remains unamended.
- 6.6 There is, however, an interesting reference to "email – prisoner Number 5. Needed" in notes made by Ms. Hogan of the QPS on 4 July 2007. This note appears to have been made shortly after a teleconference with UK authorities. Prisoner number 5 is likely to be either Sabeel or Kafeel Ahmed, more probably the former. This can be seen by the language in annex 2 in the immigration documents served on Dr. Haneef to advise him of the cancellation of his visa.¹⁵¹

¹⁴⁷ Submission on behalf of Dr. Haneef, paragraph 6.3.

¹⁴⁸ The existence of a further "affidavit" was noted however in footnote 133 in the submission.

¹⁴⁹ See AFP FOI release, pages 96-109 for Mr. Jabbour's document. (See appendix 5)

¹⁵⁰ Submission on behalf of Dr. Haneef, paragraphs 6.5-6.8.

¹⁵¹ These documents were appendix 28 to Dr Haneef's original submission. See statements like "he is related to two of the suspects who are brothers, hereafter referred to as suspect 2 and suspect 5" and later "he resided with the suspect 5 at 13 Bentley Road, Liverpool" and "he visited suspect 2 at Cambridge".

- 6.7 While the submission and these supplementary submissions have referred to the email from Kafeel Ahmed to his brother, it was obtained from Sabeel's computer. For Ms. Hogan to refer to it as the "Sabeel email" is not necessarily illogical.
- 6.8 The whole extract from the notes of 4 July 2007 reads as follows: "5pm Teleconference with UK. Peter Crozier/Sue King/ Chris. Dr. Napier – just came back in. Haneef has mobile off another DR¹⁵² in Perth. Clearly a lie.¹⁵³ Email Prisoner Number 5. Needed. Any Australian Phones. Email Contact. Images of those arrested. Confirm if trained at same hospital. Have any been trained at Rochester."¹⁵⁴
- 6.9 Obviously, the inference that the "Email – Prisoner Number 5" is a reference to the email from Kafeel to his brother is not the only possible inference from those rather sparsely written notes. Most of the references in that list, however, do seem to refer back to the teleconference with UK police officers.
- 6.10 If the AFP and QPS officers were told, however, that an important email was in the process of being obtained from Sabeel's computer on 4 July 2007, it is likely that its contents would have been available to Australian authorities within a short period of time, thereafter.
- 6.11 If that is the case, the AFP must explain why the existence of the email was not disclosed to the Courts and the Government Ministers. In particular, why its exonerating contents were not used to ensure Dr. Haneef's immediate release and clearance of his name.
- 6.12 An assumption was made in the submission¹⁵⁵ that it was Mr. Webster who had telephoned Sabeel's mother. It is now understood, as set out above, that a doctor acquaintance of Sabeel spoke to Mr. Webster and was given Mr. Webster's number to pass on to Sabeel's Mum to pass on, with a request to call, to Dr. Haneef.
- 6.13 The statement is made in the submission that the AFP had 18 hours to contact Dr. Haneef from their first being contacted by UK police about Dr. Haneef.¹⁵⁶ Later information makes a suggestion that the AFP were contacted on the previous day, Sunday, 1 June 2007.¹⁵⁷ The note is non-contemporaneous and may be inaccurate.
- 6.14 The submission commented on Mr. Simms' statement that Dr. Haneef's computer suggested a possible link between Dr. Haneef and the suspect, Bilal Abdulla.¹⁵⁸ If the Bilal or Bilab, an Iraqi doctor, that Dr. Haneef had met, briefly, in Cambridge in 2004 is in fact Bilal Abdulla, the suspect, the connection (and the information which would

¹⁵² "doctor".

¹⁵³ There is no suggestion that Dr. Haneef claimed to have his mobile from any doctor in Perth. It is likely that the allegation of lie was aimed at the informant for that piece of information.

¹⁵⁴ QPS FOI review release, page 135. (See appendix 7)

¹⁵⁵ Submission on behalf of Dr. Haneef, paragraph 6.29.

¹⁵⁶ Submission on behalf of Dr. Haneef, paragraph 6.30.

¹⁵⁷ AFP FOI release, folio 62. (See appendix 5)

¹⁵⁸ Submission on behalf of Dr. Haneef, paragraph 6.65.

or would not connect it with the suspect) was freely provided by Dr. Haneef, not contained in information seized from Dr. Haneef's computer.

- 6.15 As in discussed in these supplementary submissions in respect of the part 1C applications, generally, the AFP had found a reference to Dr. Bilal in Dr. Haneef's contacts. There was a minor concern because the date of the entry appeared to be December 2006 and not some time in 2004.
- 6.16 However, when Dr. Haneef finally got a chance to answer questions about this matter, the connection was explained by Dr. Haneef ruining his phone in salt water and obtaining an Outlook Contacts Distribution List by email from Sabeel.
- 6.17 As is discussed elsewhere, this was a good example of the AFP harboring suspicions by detaining Dr. Haneef rather than allowing Dr. Haneef to put the issue to rest by asking him the relevant question. This contact with Bilal ceased to be an issue after the question was put to Dr. Haneef in the second interview.
- 6.18 The comment was made in the submission that Mr. Simms' actions and the contents of the Simms document were very likely known to senior AFP counter-terrorism officers.¹⁵⁹ This was based on National Counter Terrorism Committee documents. Since that committee was a whole of government body, the comments can be expanded to other departments who were attending or receiving the minutes of the National Counter Terrorism Committee.
- 6.19 The comments with regard to the Simms document do, as has been discussed above, need to be adjusted slightly in the light of information received since the submission was delivered.
- 6.20 However, the issues raised remain very relevant and important. In some cases, they are more acute. In particular, the AFP has done nothing to explain publicly the issues raised by the analysis of the Simms document contained in the submission.

The Second Record of Interview and the Decision to Charge: pages 54 - 78

Correcting an Error

- 7.1 In discussing, in the submissions, how the Attorney-General and the DPP were instructed (at paragraphs 7.119 and following), an assumption was made as to the nature of an MAR. It was speculated that the MAR and the statement of facts provided to the DPP may have been the same document.

¹⁵⁹ Submission on behalf of Dr. Haneef, paragraph 6.72.

7.2 However, it is now clear that “MAR” stands for a “Mutual Assistance Request”, a document intended to be sent to the Indian government.¹⁶⁰ It follows that the interaction with the Attorney-General on 11 July 2007 had nothing to do with briefing the office of the CDPP for advice on whether to charge Dr. Haneef. It seems, however, that a Sara Cronan of the CDPP was availed of to assist with the MAR preparation.¹⁶¹

The AFP Comes on Board

7.3 In the submissions, it was stated that the subsequent decision of the Commonwealth DPP to discontinue the proceedings was something that could be used as a touchstone to assess the validity of the decision to charge.¹⁶²

7.4 Such considerations can now be informed by the decision of the AFP, itself, that after another 13 months of investigation, they also have concluded that there is no evidence to suggest that Dr. Haneef has committed any criminal offence.¹⁶³

7.5 If another 13 months of active investigation resulted in there being no evidence to charge, one wonders how the pool of data at the time of the charge was sufficient to support the decision which was made.

Contact with the Commonwealth DPP

7.6 The submission refers to evidence that contact with the DPP had occurred at least as early as 11 July 2007. The DPP submission to the Inquiry makes it clear that there was a plethora of early contact with the first contact being initiated by the DPP on 3 July 2007.¹⁶⁴ What is also noticeable from that submission is that the AFP did not welcome or utilise offers of assistance by the DPP. The officers of the DPP were not given any kind of substantive briefing for the purpose of giving advice as to possible charges until the afternoon of 12 July 2007.¹⁶⁵ This delay appears to be in breach of the spirit and text of the Memorandum of Understanding between the DPP and AFP.¹⁶⁶

The Outlook Files

7.7 Reference was made to questions about the Outlook contacts files in the submission.¹⁶⁷

¹⁶⁰ See AFP FOI release, folio 232, the entry for 8.53am. (See appendix 5)

¹⁶¹ See AFP FOI release, folio 233 and 234. (See appendix 5)

¹⁶² Submission on behalf of Dr. Haneef, paragraph 7.8.

¹⁶³ See <http://www.news.com.au/story/0,23599,24261886-2,00.html>. (See appendix 12)

¹⁶⁴ Submission of the Commonwealth DPP to the Inquiry, paragraph 13.3.

¹⁶⁵ Submission of the Commonwealth DPP to the Inquiry, paragraph 14.5.

¹⁶⁶ Submission of the Commonwealth DPP to the Inquiry, paragraphs 9.4-9.13.

¹⁶⁷ Submission on behalf of Dr. Haneef, paragraphs 7.37 – 7.38.

- 7.8 The point was made that, while this information had come from Dr. Haneef's computer, Dr. Haneef had provided his relevant passwords and it was unlikely that 11 days of detention were justified before Dr. Haneef was asked about these matters.
- 7.9 This suspicion has been confirmed. As has been discussed above in the context of the applications for detention time pursuant to part 1C Crimes Act, the AFP had the information concerning the Outlook files at least by 9 July.
- 7.10 What was not evident from a reading of the second interview transcript was the fact that it was the entry for a Dr. Bilal which had excited the interest in the contacts files.
- 7.11 As is discussed above, there was a simple explanation for the date shown as the date on which the data had been entered into Dr. Haneef's computer, namely, that his phone had been damaged and Sabeel had emailed him a distribution list of UK doctors.
- 7.12 As was suspected at the time of the original submission, the questioning about the contacts files was delayed for at least four days after the AFP had the data to conduct the questioning. As it was, there was no follow up questions. The whole matter could have been settled much earlier if the AFP had not looked to delay questioning Dr. Haneef by using part 1C detention time orders.

Hospital Visits

- 7.13 The submission on behalf of Dr. Haneef quoted his answers in the second record of interview as to times when his wife, Firdous Arshiya and his baby daughter, Haniyah, were admitted to and discharged from hospital.
- 7.14 Dr. Haneef's lawyers have sent to the Inquiry copies of medical records from the relevant hospitals in India. They are not made an appendix to these supplementary submissions because they contain private personal information.
- 7.15 However, the documents show the following.
- 7.16 Ms. Arshiya's child was due on 29 July 2007.¹⁶⁸
- 7.17 Ms. Arshiya was admitted to hospital on 25 June 2007 as Dr. Haneef had said.¹⁶⁹

¹⁶⁸ This might explain why it was alleged by police officers that some people at the hospital thought the baby might come in July and some in August. If it had gone three days over term, August would have been the birth month. See transcript of second record of interview, pages 356-7. This information about the belief of Dr. Haneef's acquaintances at the hospital had been known since 5 July 2007. See AFL FOI release, folio 57. This is another example of the AFP choosing to detain Dr. Haneef rather than ask him the questions which their investigations had raised. (See appendix 5)

¹⁶⁹ Transcript of second record of interview, page 285. (See appendix 29 of original submission of Dr Haneef)

- 7.18 Ms. Arshiya was discharged from hospital on 29 June 2008 as Dr. Haneef had said.¹⁷⁰ Haniyah was admitted to the Bangalore Hospital on 30 June. Dr. Haneef was unsure whether it was one or two days after the discharge of mother and baby from the Apollo Hospital.¹⁷¹
- 7.19 The records show that Haniyah was discharged from hospital 2 July, the day that Dr. Haneef was arrested. She had, therefore, been in hospital for two days.
- 7.20 In considering each of these events, it is important to remember that there is a time delay between Brisbane and Bangalore of four and a half hours.

One Way Ticket

- 7.21 Dr. Haneef has been the subject of much innuendo about the fact that he was travelling on a one way ticket. (It also seems that the AFP had much trouble distinguishing his father in law, whose surname was Ahmed, from Dr. Haneef's second cousins on his mother's side who had the same surname.)
- 7.22 It was pointed out in the submission that Dr. Haneef's explanation in the second interview concerning the nature of the ticket was mistranscribed making his explanation unintelligible.¹⁷²
- 7.23 It has since been revealed that, in Dr. Haneef's interview, immediately after his arrest, he gave a very clear explanation that it was his father-in-law's idea (after all, the father-in-law was being asked to pay) that a one way ticket be obtained.
- 7.24 The exchange went as follows: "Mr. Thompson: Why is it only a one way ticket? Dr. Haneef: Well ... he said, I book it for one way now and then we arrange something from there so. Mr. Thompson: So your father-in-law said this? Dr. Haneef: Yeah."¹⁷³
- 7.25 It is surprising that the one way ticket was relied upon at all after that first conversation. In contrast, however, in an effort to justify the arrest, the one way ticket was trumpeted in talking points given to government spokespersons and, as a result, was repeatedly conveyed to the public.¹⁷⁴

¹⁷⁰ Transcript of second record of interview, page 286. (Dr. Haneef was unsure of the date but said it was on the Friday which was 29 June 2007. (See appendix 29 of original submission of Dr Haneef)

¹⁷¹ Transcript of second record of interview, page 286. (See appendix 29 of original submission of Dr Haneef)

¹⁷² Submission on behalf of Dr. Haneef, paragraph 7.56.

¹⁷³ Transcript of electronic interview, 11.05pm. 2 July 2007, page 23. (See appendix 1)

¹⁷⁴ See this report of statements by Attorney-General, Phillip Ruddock.: <http://www.bloomberg.com/apps/news?pid=20601087&sid=aJzMqOPrvMNY&refer=home> . Also see QPS FOI release, pages 12, 43 and 49. the last is part of a transcript of the AFP Commissioner's press conference after Dr. Haneef was charged on 14 July 2007. The one way ticket was trotted out to strengthen the appearance of the validity of the decision to charge. (See appendices 12 and 13)

Chatting with my Brother

- 7.26 As has been pointed out above (in the discussion of the part 1C applications) in these supplementary submissions, the translation of Dr. Haneef's chat room conversation with his brother was available from 5 July 2007.
- 7.27 The AFP case notes reveal that the person brought in to translate the chat room conversation was Queensland police officer, Constable Hafiz Mayar.¹⁷⁵ It seems, however, that Mr. Mayar had translated the conversation and brought it to the attention of the investigation by 6.52pm on the same day.¹⁷⁶
- 7.28 Dr. Haneef's lawyers have received a copy of the chat log from the Inquiry. Dr. Haneef has provided a translation together with some notes on context.
- 7.29 The significance of a proper contextual translation of the conversation has been discussed earlier in these supplementary submissions. The points made in the submission¹⁷⁷ appear stronger in the light of Dr. Haneef's translation.
- 7.30 It is now clear that the AFP had many days in which they could have supplied Dr. Haneef with a copy of the chat log and asked him to provide a proper translation. By delaying the questioning and then, in the interview, not allowing Dr. Haneef a proper opportunity to point out the errors in the translation, Dr. Haneef was denied the chance to allay the suspicion held concerning him.
- 7.31 This is even more reprehensible in the light of the fact that the conversation (in its mis-translated form) continued to be used against Dr. Haneef to cancel his visa and was selectively released to the public by Mr. Andrews.

Decision to Charge: the Timing

- 7.32 The submission stated that the earliest mention in the available documents of the decision to charge was at 8.10am on 14 July 2007.¹⁷⁸
- 7.33 Further documents from the AFP indicate that Gold Coast Hospital senior staff were advised that Dr. Haneef was charged prior to 7.40am on 14 July 2007.¹⁷⁹
- 7.34 The QPS submission to the Inquiry states that Dr. Haneef was charged at the watchhouse at 7.41am on 14 July 2007.¹⁸⁰ The same submission conveys a contradictory note in a later paragraph where it says, at the conclusion of the

¹⁷⁵ AFL FOI release, folios 59-60. (See appendix 4)

¹⁷⁶ AFL FOI release, folio 60. (See appendix 4)

¹⁷⁷ Submission on behalf of Dr. Haneef, paragraphs 7.62 – 7.69.

¹⁷⁸ Submission on behalf of Dr. Haneef, paragraph 7.83.

¹⁷⁹ AFL FOI release, page 267. (See appendix 4)

¹⁸⁰ Submission of QPS, page 7.

- interview,¹⁸¹ Dr. Haneef was charged by Senior Investigating Officer, AFP¹⁸² and conveyed to the watchhouse.¹⁸³
- 7.35 It is clear from subsequent discussion that some discussions took place before Mr. Jabbour announced “his” decision.
- 7.36 However, no good timeline exists of the period between 4.42am and about 7.30am.

The Decision to Charge: internal opinion

- 7.37 The submissions drew on a number of indicators which indicated that the decision to charge Dr. Haneef was based on a paucity of justifying evidence.¹⁸⁴
- 7.38 Further FOI releases confirm that the prevailing internal view was that there was insufficient evidence to charge. This arises from a document called “Review of Evidence” which is, probably, part of (or a document produced shortly after) the situation report dated 10 July 2007.¹⁸⁵ The review of evidence¹⁸⁶ states:
- “Having reviewed the material in possession of the investigation team at this stage and assessed that against the offences outlined above, I do not believe that I currently have sufficient evidence to charge [Dr. Haneef]”.
- 7.39 The identity of the author is important. The fact that the author is reviewing the whole of the evidence suggests that the author is Mr. Jabbour (Senior Investigating Officer) of the investigating team or someone more senior. The likelihood that it is Mr. Jabbour is increased by the fact that he is one person who is, either, quoted in the first person in the AFP files or cited as making assessments based on the whole of the evidence.¹⁸⁷
- 7.40 The opinion as at 11 July is significant. By that time, the AFP had received most, if not all, of the material that they considered of greatest forensic importance.
- 7.41 For example, large parts of the document which was tendered to Mr. Gordon in support of the specified time application have been provided.¹⁸⁸
- 7.42 This document shows some concern about certain bank transfers by Dr. Haneef.¹⁸⁹ The document also shows that the AFP had a translation of Dr. Haneef's chat

181 The second interview was terminated, without warning, at 4.42am. See page 378 of the transcript.
 182 Ramzi Jabbour.
 183 Submission of QPS, page 7.
 184 See, for example, paragraph 7.105 and following.
 185 See AFP FOI release, folio 110. (See appendix 5)
 186 See AFP FOI release, folio 121. (See appendix 5)
 187 See AFP FOI release, folios 145 and 245. (See appendix 5)
 188 See AFP FOI release, folio 82. (See appendix 5)
 189 See AFP FOI release, folio 84 - 85. (See appendix 5)

- room conversation with his brother.¹⁹⁰ The Outlook appointments inclusion of a number for “Bilal” was available with an allegation that this was inconsistent with Dr. Haneef’s first record of interview.¹⁹¹
- 7.43 Further, the classified affidavit of Mr. Jabbour prepared for the hearing on 11 July (but not used) sets out similar material as well a conversation with a colleague in the United States.¹⁹² Mr. Jabbour also refers to a photograph of individuals wearing Mufeed t-shirts. A chat between Dr. Haneef and Sabeel Ahmed of 17 June was available by 5 July 2007.¹⁹³
- 7.44 Most of these matters were raised with Dr. Haneef during the second record of interview. They turned out, in the light of Dr. Haneef’s explanations, to be inconsequential. However, the fact that these matters were in the possession of Mr. Jabbour or Mr. Simms by 11 July, at the latest, suggests that no further evidence of significance was obtained between the recording of the opinion (that there was not “sufficient evidence to charge [Dr. Haneef]”) and the decision to charge Dr. Haneef in the early hours of Saturday, 14 July 2007.
- 7.45 Dr. Haneef’s explanations in the second record of interview should have strengthened the opinion that there was not sufficient evidence to charge. The decision to charge becomes more questionable given that there was strong internal opinion that there was not sufficient evidence. If the author of the review at folio 121 was, in fact, Mr. Jabbour, Mr. Jabbour would need to explain his decision to charge in light of his earlier expressed opinions.

The Views of Other Agencies: ASIO

- 7.46 In a submission shorn of security sensitive information,¹⁹⁴ ASIO states that it participated in whole of government meetings¹⁹⁵ concerning Dr. Haneef. It did not assess Dr. Haneef as a threat to security and did not have grounds to issue an adverse security assessment. By 11 July 2007, ASIO provided a written advice to the Government and to various agencies that it had no information linking Dr. Haneef to any involvement in, or foreknowledge of the UK terror acts. Equally, it had no information to suggest that Dr. Haneef was undertaking planning for a terrorist attack in Australia or overseas.¹⁹⁶
- 7.47 This information also appears to have been given in written form to the Attorney-General, Mr. Ruddock, ASIO’s responsible minister.¹⁹⁷

¹⁹⁰ See AFP FOI release, folio 86-7. (See appendix 5)

¹⁹¹ See AFP FOI release, folio 89. (See appendix 5)

¹⁹² See AFP FOI release, folio 102-103. (See appendix 5)

¹⁹³ AFP FOI release, page 53. (See appendix 5)

¹⁹⁴ Unclassified Submission of Australian Security Intelligence Organisation (“ASIO”) to the Clarke Inquiry (“ASIO Submission”), page 1.

¹⁹⁵ Presumably, the meetings of the National Counter Terrorism Committee.

¹⁹⁶ ASIO submission, pages 2-3.

¹⁹⁷ ASIO submission, page 3.

- 7.48 The press has reported conflicting statements (in the one interview) from the AFP Commissioner concerning the ASIO submission with Mr. Keelty saying both that ASIO did and did not have the same information as the AFP.¹⁹⁸
- 7.49 The FOI documents reveal some contact between the AFP and ASIO.¹⁹⁹ At 6.46am on 9 July 2007, Mr. Matus reported that hard copies of IARs (presumably intelligence assessment reports) had been provided to ASIO and to the Queensland Police Service.²⁰⁰
- 7.50 At 5.50 pm on the same day, the AFP received a “Liaison Timeline – Mohamed Haneef” from ASIO which was distributed in hard copy (including to some Queensland Police officers) and uploaded to the AFP system.²⁰¹ Another IAR was provided to ASIO on 11 July 2007.²⁰²
- 7.51 These entries suggest considerable interaction and sharing of information between the AFP and ASIO.

Views of Other Agencies: Queensland Police

- 7.52 At folio 269 of the AFP FOI release, a very economical recording is made of the events of the preceding night and morning. The entry states:
- “... at the conclusion of the record of interview with [Dr. Haneef], SIO Ramzi Jabbour and Gayle Hogan²⁰³ discussed the weight of evidence available. SIO Jabbour then made a decision to charge [Dr. Haneef] ...”
- 7.53 The submission of the Queensland Police Service to the Clarke Inquiry (“the QPS submission”) paints a more detailed and quite different picture.
- 7.54 After Mr. Porritt of the CDP, on the afternoon of 13 July 2007, provided his advice in writing, there was a meeting which included Mr. Jabbour, Ms. Hogan, Detective Superintendent Prunty of the MPS, and Mr. Rendina, a legal officer of the AFP. At that meeting Ms. Hogan advised that, if it were her decision, she would seek further legal advice before charging Dr. Haneef.²⁰⁴

¹⁹⁸ See <http://www.brisbanetimes.com.au/news/national/afp-withholds-haneef-submission/2008/08/04/1217701982747.html>. (See appendix 14)

¹⁹⁹ Of course, if ASIO was present at meetings of the National Counter Terrorism Committee, it would have received regular briefings on the progress of the investigation, as would have other agencies.

²⁰⁰ AFP FOI release, folio 220. (See appendix 5)

²⁰¹ AFP FOI release, folio 226. (See appendix 5)

²⁰² AFP FOI release, folio 232. (See appendix 5)

²⁰³ Detective Superintendent Hogan was the ranking Queensland Police officer engaged in the investigation.

²⁰⁴ QPS submission, paragraphs 3.4 and 3.5.

- 7.55 Later that afternoon, another meeting took place involving Mr. Jabbour, Ms. Hogan, Ms. Prunty and Detective Chief Superintendent Barnett of Queensland Police. Mr. Porritt's opinion was discussed but a systematic assessment of the strength and sufficiency of the evidence was carried out. This time, both Mr. Barnett and Ms. Hogan expressed a clear view that the elements of the proposed charge could not be proved.²⁰⁵
- 7.56 On the morning of Saturday, 14 July 2007, a meeting took place involving Mr. Jabbour, Ms. Hogan and a group of other AFP and QPS officers. The group comprised every police officer who had taken part in or monitored the second interview with Dr. Haneef. The results of the interview were discussed. Ms. Hogan reiterated her view there was insufficient evidence including taking into account the results of the interview. She then briefed Mr. Barnett by phone who endorsed and shared her view as to the insufficiency of the evidence to prove the charge. Ms. Hogan then told Mr. Jabbour that it was the view of the QPS that there was insufficient evidence to support a charge against Dr. Haneef.²⁰⁶
- 7.57 Mr. Jabbour then rang senior AFP management in Ms. Hogan's presence. Ms. Hogan heard Mr. Jabbour advise his management that the QPS view was that there was insufficient evidence to charge Dr. Haneef. Mr. Jabbour then advised Ms. Hogan that he was going to charge Dr. Haneef.²⁰⁷
- 7.58 It is submitted that there is no reason to disbelieve Ms. Hogan's version of events. It is inherently more plausible than the very short hand account in the AFP FOI release at page 269.²⁰⁸
- 7.59 The QPS submission is also supported by what appear to be Ms. Hogan's notes. The inability to date the entries makes it difficult to relate the notes, precisely, to the discussions with Mr. Jabbour.
- 7.60 Ms. Hogan's supervisor appears to have been Chief Superintendent Ross Barnett who had responsibility for supervising the QPS operational involvement in Operation Rain.²⁰⁹
- 7.61 Some of the notes reflect communications either to or from Mr. Barnett. One entry states: "Ross/ Nothing so far indicates prior knowledge or involvement".²¹⁰

²⁰⁵ QPS submission, paragraphs 3.6 and 3.7.

²⁰⁶ QPS submission, paragraphs 2.8, 2.9 and 3.8 – 3.11.

²⁰⁷ QPS submission, paragraphs 3.12 and 3.13.

²⁰⁸ It is noted that the entry is made at 10.10am on 14 July. This is when Mr. Jabbour as charging officer should have been at the bail hearing ensuring that the prosecutor made no mistakes about where the SIM card was found.

²⁰⁹ QPS submission, paragraph 3.3. The given name "Ross" does not appear in the QPS submission. However, news reports from 2007 indicate that given name. See <http://www.smh.com.au/news/national/new-development-in-gang-torture-case/2007/12/09/1197135265911.html> . (See appendix 15)

²¹⁰ QPS original FOI release, page 2. (See appendix 13)

- 7.62 Another note shows disappointment with the ability to obtain advice from the DPP: “Tomorrow: 1. DPP advise nowhere near”.²¹¹
- 7.63 The next entry indicates further interchange between Ms. Hogan and Mr. Barnett: “Ross/ essential element of charge is missing”.²¹² These entries may not have occurred within minutes of each other because they come from different folios and are divided by notes relating to other cases in which Ms. Hogan was involved.
- 7.64 The next entry concerns one of the discussions of 13 or 14 July. It reads: “Discussed with R²¹³ GP²¹⁴ and Ross at length. I wouldn’t charge and why. Concerns re Clive’s advice [unintelligible]. Is it on solid ground? If he tells us to go ahead as I think he is leaning to. Really feel uncomfortable as there is no fall backs. For example, [word exempt from disclosure] provided to them”.²¹⁵
- 7.65 The note appears to be a note of the conversation which took place after DPP officer, Mr. Clive Porritt, provided his advice on the afternoon of 13 July 2007.²¹⁶
- 7.66 Another note, dated 8 July 2007, which may or may not be in Ms. Hogan’s writing, appears to be minutes of a management briefing meeting chaired by Mr. Jabbour. ASIO appears to be represented as Police Intelligence. The whole note reads as follows: “3.05pm. Management Briefing. CT Manager Ramzi Jabbour (Chair). ASIO - .Adam Simms Situation Haneef. Intell – Steve. [Dr. Haneef] admitted links – provided plausible explanation. Intell in charting process established links. IAR²¹⁷ on Doctors – comfortable [Doctor’s] have been spoken to - . Looking from BOE²¹⁸ (prosecution) can say no evidence. Prosecution more off shore.”²¹⁹ This analysis is very similar to that appearing (a day or two later) in the AFP files in which an assessment comes to the conclusion that there is no basis to charge Dr. Haneef with any offence.²²⁰

211 QPS original FOI release, page 3. (See appendix 13)

212 QPS original FOI release, page 4. (See appendix 13)

213 Ramzi Jabbour is the suggested reading.

214 Query whether this Detective Superintendent John Prunty, a Scotland Yard detective seconded to the AFP as a counter-terrorism adviser in January 2007. See <http://www.anzfs2008.org.au/content/view/83/65/>. The hand written initials do not suggest “MR”, the initials of Michael Rendina, AFP legal officer. Note that Mr. Prunty does not appear to be the Scotland Yard officer who arrived to assist with the investigation on 5 July. That officer was a woman. (See appendix 16) Also, see AFP FOI release, folio 43 (appendix 5). That officer’s name was Detective Superintendent Lawrence.

215 QPS original FOI release, page 5. (See appendix 13)

216 See QPS submission, paragraphs 3.4 - 3.5.

217 Intelligence Assessment Reports.

218 Brief of evidence.

219 QPS original FOI release, page 6. (See appendix 13)

220 See AFP FOI release, folio 121. This entry is discussed above under the heading “The Decision to Charge: internal opinion” (See appendix 5)

- 7.67 This note appears to evidence that a very high level meeting involving ASIO and Mr. Jabbour and senior AFP and QPS officers came to a consensus that there was no evidence against Dr. Haneef.
- 7.68 Another note likely also to be from 13 July states: “High level discussion. – CDPP considering position. [Some undisclosed information follows.] – I disagree.”
- 7.69 All of these notes suggest that senior police officers had carefully considered the results of the investigations that had been carried and concluded that there was no evidence that Dr. Haneef had done anything wrong. In normal policing circumstances, the target of such an investigation would be released (if in custody) and, certainly, would not be charged with an offence.
- 7.70 The AFP must explain why this did not occur and what other circumstances operated to cause Dr. Haneef to be charged and detained for a further 19 days until the DPP stepped in.
- 7.71 Even with the very helpful QPS submission and file notes, however, there are other questions unanswered. The missing voices are those of the rank and file police officers. What did Mr. Simms and Mr. Thompson say in the discussions? They had made the arrest. They had conducted all the interviews. Did they agree with Ms. Hogan? Did they in fact refuse to charge Dr. Haneef on the ground that the evidence did not support the charge? Certainly, they do not appear to have stayed around once the interview was completed and any suggestion was made that Dr. Haneef would not be set free. They were not in court, the next day.
- 7.72 Also missing, perhaps, is the voice of the officer who carried out the review of available evidence on Tuesday, four days earlier, and concluded “I do not have sufficient evidence to charge [Dr. Haneef]”. If that were Mr. Jabbour, he must explain what evidence changed his opinion. If that is another officer, the Inquiry should investigate whether that officer’s input was heard.
- 7.73 Another pressing question is why Mr. Jabbour rang his senior management. He was the senior officer on the ground. He was apprised of all the evidence. If he were to charge, against the advice of his fellow senior officers on the ground,²²¹ he must have had a very strong conviction about his view of “the weight of the evidence available”. An honest and strong conviction to that effect would have needed no bolstering from senior management. Mr. Jabbour must answer why he felt it necessary to ring senior management.
- 7.74 There are questions also why the case note is so economical. Does Mr. Jabbour disagree with Ms. Hogan’s recounting of the events? One might have expected a file note that set out the discussions whether all officers agreed or not. If there were disagreements, one would have expected a detailed file note which set out the discussions and Mr. Jabbour’s reasons as to why he was so convinced of the

²²¹ And, it would appear, the arresting and interviewing officers and ASIO.

adequacy of the evidence. One might also have expected the phone call to senior management and its content to be documented.

- 7.75 The Inquiry is urged to obtain a very clear picture of the events and discussions and motivations involved in that decision making process.

The Views of Other Agencies: the Commonwealth DPP

- 7.76 In the submission, the position of the DPP had to be inferred from documents that did not directly set out to express the view of the DPP about the evidence.²²² Much more information is now available from the DPP submission to the Inquiry.
- 7.77 The events are now directly addressed by the DPP submission to the Inquiry. Put simply, the AFP managed to obtain from a DPP officer an opinion with which, it would seem, no officer associated with the investigation, whether from the AFP, ASIO or the QPS agreed. The interest, therefore, is in how this happened and, ultimately, why it happened.
- 7.78 It is not intended to canvass the matters that are dealt with in the DPP submission in any detail. The submission does provide a very detailed account of the events based in a large part on file notes. A few of those file notes have been provided by the DPP on FOI release.²²³ Some observations will, however, be made.
- 7.79 The AFP seem to have deliberately avoided DPP input into their processes (except for certain investigative steps) from 2 July until 4.45pm on Thursday, 12 July 2007.²²⁴ In a matter which the AFP obviously found complex and which was the subject of daily public comment by the AFP Commissioner, the Attorney-General and the Prime Minister, this is extraordinary. It is also not compliant with the spirit or the letter of the guidelines and understandings on which the two organisations are supposed to operate and cooperate.²²⁵ The inference is open that the AFP did not welcome legal oversight of its conduct of this matter.
- 7.80 The corollary of keeping the DPP at arms length for 10 days is that the AFP was able to place the DPP officers under extraordinary pressure by requiring advice within a very short period of time. As it were, a fake crisis was imposed, especially, when one factors in the fact that AFP, QPS and ASIO opinion was that there was no case against Dr. Haneef.²²⁶

²²² See submission on behalf of Dr. Haneef, paragraphs 7.110 – 7.128.

²²³ The documents received by FOI release from the DPP are appendix 17 to these supplementary submissions.

²²⁴ DPP submission, paragraphs 12.1 – 14.3.

²²⁵ The documents which set out the applicable rules are discussed in detail in the DPP submission.

²²⁶ DPP submission, paragraphs 14.4 and following including, for example, 14.5.

- 7.81 The identity of the AFP officer who briefed the DPP officers on 12 July 2007 is important in the light of the opinions of the case expressed by officers, previously.²²⁷
- 7.82 The 48 page briefing paper provided to the DPP has not been released on FOI by either the AFP or the DPP. The contents of that document will indicate the degree of professionalism and objectivity with which the AFP sought legal advice.²²⁸ It will also throw light on the extent to which it was legitimate for AFP officers to place any reliance on the advice which Mr. Porritt, eventually and reluctantly, gave. It is submitted that the briefing paper is likely to have contained the same misleading and inaccurate information provide to Mr. Gordon in applications made pursuant to part 1C Crimes Act. In those circumstances, it would not have been legitimate for the AFP to place any reliance on the opinion obtained.
- 7.83 Aspects of the inadequate nature of the briefing can be concluded from the fact that the DPP officer was not provided with the first record of interview.²²⁹ It is very likely the case that the DPP were not even made aware that there were five other interviews available, including Dr. Haneef's comments immediately after his arrest. Those comments of Dr. Haneef, it is submitted, are particularly articulate as to his innocent state of mind as he explains, without any opportunity for forethought, the reasons for his travel and the relevance of the phone call he had received from Sabeel Ahmed's mother. The airport interview contained information which would have been very relevant to Mr. Porritt's task.
- 7.84 Another crucial item that was not provided to the DPP was the email from Kafeel Ahmed to his brother Sabeel which exonerated Sabeel of any foreknowledge of the UK attacks and, *a fortiori*, cleared Dr. Haneef. This is stated in code in the DPP submission when it says: "No information was provided to the CDDP officers in relation to the material contained on the laptop computer seized in the United Kingdom belonging to Sabeel Ahmed".²³⁰ The fact that the single most relevant piece of information was not provided to the lawyers providing the AFP with advice strips that advice of all legitimacy so far as it was relied on by the AFP to justify charging Dr. Haneef with an offence.
- 7.85 The failure to provide relevant information to the lawyers who were to provide crucial advice also raises questions about the bona fides of the AFP in seeking that advice.
- 7.86 The DPP submission outlined the intolerable position that Mr. Porritt and Ms. Curnow were placed in by being located at AFP headquarters and being told that the decision was required urgently.²³¹ The AFP had no proper basis for saying Dr.

²²⁷ See DPP submission, paragraph 14.7
²²⁸ DPP submission, paragraph 14.8.
²²⁹ DPP submission, paragraph 14.15.
²³⁰ DPP submission, paragraph 14.14.
²³¹ DPP submission, paragraphs 14.17 – 14.19.

- Haneef would leave the country if released.²³² Mr. Russo had made it clear on 5 July 2007 before Mr. Gordon that Dr. Haneef was happy to attend to be asked questions at any time.²³³ He had been fully cooperative from before his arrest when he made every effort to contact Mr. Webster.
- 7.87 It is submitted that senior DPP management should have recognised the impossible situation in which the two officers were being placed at the time of the 3.20pm phone call²³⁴ and should have acted to ensure that they did not go back to AFP headquarters and that senior officers attended to ensure that any advice was given in an unpressured atmosphere. That failure to recognise and act is a contributing cause to the misunderstandings that followed.
- 7.88 The nine line advice that Mr. Porritt provided shortly before 5.41pm on 13 July 2007 should be released so that the public can make their own opinions about the legal advice on which the AFP relied when their own clear view was that there was no evidence on which to base a charge.²³⁵
- 7.89 The statement by Mr. Prendergast that the gaps in the evidence would be filled was misleading at best.²³⁶ It is difficult to believe that Mr. Prendergast could have believed what he said to the DPP officers.
- 7.90 However, the whole process of obtaining legal advice to do something that was not supported by evidence or law reflects badly on all concerned. The circumstances in which the advice was obtained make the AFP decision to charge Dr. Haneef more rather than less culpable.

The Bail Application: A Weak Case and a Misplaced SIM Card: pages 79 - 93

- 8.1 The submission dealt with the bail application in considerable detail.²³⁷ The DPP submission adds some detail that was not apparent from the available documents at the time the submission was prepared.²³⁸ These supplementary submissions will seek only to comment on a couple of matters arising from the DPP submission.
- 8.2 Something of importance to note from the DPP submission is that no attempt was made to properly brief or instruct Mr. Porritt. The AFP officers who attended Court were fresh from New South Wales and knew nothing about the case.²³⁹ This is inexcusable in normal circumstances. In the circumstances of this case, it is intolerable. Mr. Jabbour, who had taken upon himself the responsibility to make the

²³² See DPP submission, paragraph 14.19.

²³³ See affidavit of Peter Russo sworn 11 July 2007. (See appendix 17)

²³⁴ DPP submission, paragraph 14.19.

²³⁵ DPP submission, paragraph 14.34.

²³⁶ DPP submission, paragraph 14.30.

²³⁷ Submission on behalf of Dr. Haneef, paragraphs 8.1 – 8.84.

²³⁸ DPP submission, paragraphs 15.1 – 15.13.

²³⁹ DPP submission, paragraph 15.3.

decision to charge against the advice of his peers, should have been front and centre to ensure that Mr. Porritt had every bit of relevant information that he needed.

8.3 If Mr. Jabbour was called away by sudden illness or a national emergency, then he should have ensured that his competent deputies attended who had at least the same amount of knowledge as he did. That no proper briefing document was prepared and no person with relevant knowledge was present to instruct is a very poor reflection upon Mr. Jabbour and the AFP generally.

8.4 Technical explanations have been given as to why Mr. Porritt may have misunderstood his instructions from a couple of days earlier to explain why the information with regard to the location of the SIM card was wrong. In truth and fairness, no responsibility can attach to Mr. Porritt. It was wholly the responsibility of the police who brought the charge to ensure that what the counsel for the Crown said to the Court was absolutely correct and supported by the evidence. The AFP and Mr. Jabbour abandoned their responsibility. By doing that, they caused the Court to be misled.

8.5 The second matter to notice from the DPP submission is the fact that no one said anything to Mr. Porritt about what he said about the SIM card until Raphael Epstein broke the story on 20 July, six days later.²⁴⁰

8.6 This again reflects unfavourably upon Mr. Jabbour and the AFP. Placing the DPP officer in a position where it was inevitable that he would mislead the Court on some matters, they did nothing to rectify the matter until the press broke the story.

8.7 Since the submission was lodged, the AFP have continued to fail to explain why the Court was misled. The public still does not know why no one spoke to Mr. Porritt after the press reported what he had said about the SIM card being found in the Jeep.²⁴¹ The public does not know whether the UK authorities told the AFP the wrong information and never corrected it.²⁴² The public does not know whether the AFP had been told the wrong information which had been corrected but that Mr. Porritt had been originally briefed by some one who had not received the update. Or did the AFP never know where the SIM card was found? It is extraordinary that these matters have not been publicly clarified.

²⁴⁰ DPP submission, paragraph 15.9.

²⁴¹ For example, see <http://www.news.com.au/couriermail/story/0,23739,22081582-952,00.html>, a report of the bail decision on the Monday. (See appendix 18)

²⁴² This seems unlikely. Both Mr. Morrish and Mr. Simms spoke of a handset that had been located on Sabeel Ahmed at the time of his arrest. Although there is no specific reference to SIM card, per se, it seems very likely that the information from the MPS on which those statements were based concerned a mobile phone handset which contained Dr. Haneef's old SIM card. Any belief that the SIM was found in the burning jeep at Glasgow would be ruled out by that information. See AFP FOI release, folio 139 (paragraph g) and Simms document, statutory declaration, page 2 (paragraph g). (see appendix 5)

Visa Cancellation: pages 94 – 113

Options for Detention

- 9.1 At paragraph 9.13 of the submission, reference is made to discussion of options between AFP and QPS officers. The note is made that the minutes of those discussions were not provided. That discussion included Ms. Hogan and Mr. Jabbour.²⁴³ The briefing paper as to options is, very probably, the paper provided to the National Counter Terrorism Committee for its meeting of 5 July.²⁴⁴
- 9.2 There is now plenty of evidence that the option of cancelling Dr. Haneef's visa was a mainstream policy option for the relevant agencies involved from very early on. For example, the Department of Immigration and Citizenship ("DIAC") state that DIAC commenced contingency planning for this option following the National Counter Terrorism Committee meeting on 3 July.²⁴⁵
- 9.3 The level at which ministers were aware of the cancellation intentions may be seen from a string of emails passing on 10 July.²⁴⁶ The chain commences with Zena Armstrong in Department of Foreign Affairs and Trade ("DFAT") conveying the concern of the High Commissioner to India about likely Indian reaction to plans to drop the charge and cancel Dr. Haneef's visa. Ms. Irwin from PMC states that the concerns were discussed at a meeting that day. The same email has the foreign minister, Mr. Downer, suggesting that "if the court refused to allow more downtime that there be a couple of days grace, during which it is to be hoped that [Dr. Haneef] himself sees the writing on the wall and leave Australia voluntarily". Ms. Armstrong conveys the views of Mr. Prendergast of the AFP that the AFP "wishes to proceed but wants to manage carefully the timing of when we tell GoI²⁴⁷ so they don't turn off the tap prematurely ...". The email stream appears to have reached high level officials in a number of departments indicating that the visa cancellation option was known across government including by ministers as early as 10 July. Dr. Haneef's departure either by "visa revocation/removal scenario" or by "his own decision" seems to be anticipated by DFAT and PMC as at 13 July 2007.²⁴⁸
- 9.4 While this has implications for the way in which the *Migration Act* was used as a substitute for law enforcement when no evidence of wrongdoing existed, it also has implications for the lack of professionalism displayed by the DIAC officers in preparing the brief for their Minister. If, like the DPP, DIAC had been foisted with responsibility at the last moment, there might have been some excuse for not carefully gathering a variety of agency views across government. The fact that

²⁴³ See AFP FOI release, folio 45. (See appendix 5)

²⁴⁴ See AFP FOI release, folios 49-51. (See appendix 5)

²⁴⁵ DIAC submission, paragraph 14.

²⁴⁶ PMC FOI, third interim release, document 32. (see appendix 19)

²⁴⁷ Government of India.

²⁴⁸ PMC FOI, fourth interim release, document 14. (see appendix 20)

- they were aware of the possibility of planning from 3 July removes that excuse. The brief that was sent to Mr. Andrews by Mr. White must be judged against that background. The same comments may be made about Mr. Andrews' failure to demand a better brief on which he was planning to act. Did the words, "What does ASIO think about this fellow?" ever cross Mr. Andrew's lips.
- 9.5 The mainstream nature of the cancellation option may be seen from the fact that the QPS documents contain references dated 5 and 6 July 2007 to the fact that the AFP was preparing a cancellation brief.
- 9.6 On 5 July,²⁴⁹ the note reads²⁵⁰:
- "The AFP is preparing a submission to the Minister for Immigration for the possible cancellation of the Visas for [name not disclosed]²⁵¹ and [Dr. Haneef] in the event that all other law enforcement options are exhausted. Depending on the duration of the investigation period, other law enforcement options may be exhausted as early as midday Friday 6 July 2007."
- 9.7 On 6 July,²⁵² the note reads²⁵³
- "The AFP is preparing a submission to the Minister for Immigration for the possible cancellation of the Visas for [name deleted] and [Dr. Haneef] in the event that all other law enforcement options are exhausted."
- 9.8 An even earlier document refers to a detention order expiring at 11.20pm on 5 July 2007. it goes on to state:²⁵⁴
- "The AFP is preparing a submission to the Minister for Immigration for the possible cancellation of the Visas for [Dr. Asif Ali]²⁵⁵ and [Dr. Haneef] in the event that all other law enforcement options are exhausted."
- 9.9 If these references are in fact taken from National Counter Terrorism Committee documents, then DIAC would have had plenty of warning that a brief was coming. Since ASIO was expressing contrary views about Dr. Haneef at that time, DIAC would have had plenty of time to digest the fact that it might be sensible to ensure that their Minister received a balanced briefing including information from ASIO.²⁵⁶

²⁴⁹ QPS FOI review release, page 8. (see appendix 7)

²⁵⁰ The document may be a memorandum prepared by the AFP and the QPS for the National Counter Terrorism Committee. Compare the format of the page with the AFP FOI release at folio 41. (see appendix 5)

²⁵¹ Query whether this was Dr. Ali.

²⁵² QPS FOI review release, page 7. (see appendix 7)

²⁵³ This also appears as if it may be a memorandum prepared for the National Counter Terrorism Committee.

²⁵⁴ QPS FOI review release, page 65. See preceding page of release for the tell tale formatting that suggests National Counter Terrorism Committee memo. (see appendix 7)

²⁵⁵ This time, the name of the other person is not deleted as exempt.

²⁵⁶ An email of Rebecca Irwin of PMC indicates that PMC, AFP, ASIO and DIAC were scheduled to have a telephone linkup at 8.30am on Friday, 13 July 2007. This leaves very little likelihood that

- 9.10 Mr. White attended a teleconference of the National Counter Terrorism Committee on the morning of 13 July 2007.²⁵⁷
- 9.11 The documents also suggest that the AFP prepared a number of briefing documents for the National Counter Terrorism Committee. However, very few of them have been included in the AFP FOI process. No adequate explanation has been provided why those documents were not provided.
- 9.12 The AFP thought the cancellation of visa option important enough, as at 11.19pm on 5 July 2007 to tell their man in India, Dick Moses about it.²⁵⁸

Unusual Course of Action

- 9.13 At paragraph 9.37 of the submissions, two officers were recorded as discussing the status of Dr. Haneef's visa. It is now clear that, at about 8.10am on 14 July 2007, Federal Agent Shane Meaker of the AFP stated, very clearly, that a person's visa would not normally be cancelled "as a result of criminal charges being laid". The DIAC officer who agreed with that proposition was DIAC Manager of Compliance in Brisbane, Jason Dean.²⁵⁹
- 9.14 This reinforces the very unusual course of action that was embarked upon by the AFP and implemented by DIAC and its Minister to keep Dr. Haneef in custody by cancelling his work visa.
- 9.15 In addition to the discussions which are discussed at paragraph 9.39 of the submission, two AFP officers, Meaker and Muller, were heading to court that Saturday afternoon to detain Dr. Haneef in the event that bail was granted and the Immigration Minister cancelled the visa.²⁶⁰ It seems that both the AFP and the Minister were primed to move.
- 9.16 The statements of Mr. Meaker and Mr. Dean may be contrasted with the blithe statement of the DIAC submission. From 3 July, DIAC went about planning for visa cancellation "consistent with its portfolio responsibilities for non-citizens who may be in breach of Australia's immigration law".²⁶¹ There does not appear

the ASIO view on Dr. Haneef was not communicated to the AFP, DIAC and PMC on the day that decisions were being made about Dr. Haneef's future and the AFP were putting their finishing touches on the visa cancellation brief. See PMC, FOI, second interim release, document 5. (appendix 21) See similar scheduled linkups for 11 and 12 July 2007 in emails of Ms. Irwin dated 10 July 2007, PMC FOI, fourth interim release, document 26. (see appendix 22)

²⁵⁷ DIAC FOI release, folio 62, document 53, Zoe Clarke email, (OCD 2007/21070). (see appendix 23)

²⁵⁸ See extracts from email of Stephanie Taylor in AFP FOI release (appendix 5) commencing at page 61 with relevant reference at page 63.

²⁵⁹ See AFP FOI release, folio 266. (See appendix 5)

²⁶⁰ See AFP FOI release, folio 270. (See appendix 5)

²⁶¹ DIAC submission, paragraph 14.

to be any self-questioning in the Department submission of the appropriateness of using the powers under the Migration Act in the midst of law enforcement proceedings, especially, when the Court had decided that the individual in question might safely be permitted to go free.²⁶²

- 9.17 If it were obvious that this was an unusual action to officers Meaker and Deane on 14 July, it is strange that it was not even discussed by the DIAC submission which was many months in the making.²⁶³

Timing of Cancellation

- 9.18 The timing of the decision by Mr. Andrews to cancel the visa is not entirely clear from the available documents. What is clear, however, is that officers in the AFP were aware that the final decision had been made before documents were faxed to Brisbane for service on Dr. Haneef. Justice Spender, based on the time shown on facsimile markings of the document served on Dr. Haneef, placed the decision prior to 1.22pm.²⁶⁴
- 9.19 However, it is now clear that officers within the AFP were passing on the information that DIAC had decided to cancel the visa as an event that would definitely occur at 1.13pm at the latest.²⁶⁵
- 9.20 The DIAC submission asserts that the Minister made his decision to cancel the visa at about 1.00pm.²⁶⁶
- 9.21 However, the times provided in the DIAC submission are not necessarily reliable. There is evidence that the signed decision documents were facsimiled at 1.22pm.²⁶⁷ However, the DIAC submission has Mr. Andrews' conducting a media conference at 1.15pm, that day.²⁶⁸ Mr. Russo's recollection is that the press conference (which was broadcast live) commenced after 1.45pm.²⁶⁹ Justice Spender made a finding to that effect.²⁷⁰ This is supported by the time shown (1.45pm) on the Media Monitors copy of the transcript of the Minister's press conference contained in the FOI release of the Attorney-General's Department.²⁷¹

²⁶² Especially, see the self-congratulatory tone at paragraph 99.

²⁶³ It is noticeable that the DIAC submission was not produced for some months. Dr. Haneef's lawyers had been given an intimation that even one week's extension from the original due date was unlikely to be renewed.

²⁶⁴ *Haneef v Minister for Immigration and Citizenship* [2007] FCA 1273 at paragraph 116.

²⁶⁵ See AFP FOI release, folios 178 and 276. (See appendix 5)

²⁶⁶ DIAC submission, paragraph 17.

²⁶⁷ As asserted in DIAC submission, paragraph 50. See facsimile markings on documents served on Dr. Haneef discussed above. One wonders why 22 minutes would elapse for that facsimile to be sent.

²⁶⁸ DIAC submission, paragraph 67.

²⁶⁹ Affidavit of Peter Samuel Russo filed in the Federal Court on 23 July 2007, paragraph 14. (See appendix 24)

²⁷⁰ (2007) 96 ALD 368, paragraph 117.

²⁷¹ AGD FOI release (pages not numbered). (See appendix 25)

Using the Migration Act

- 9.22 The email of Mr. Craig of 5.22 pm on Saturday, 14 July left little doubt that the visa would be cancelled if bail were granted: “contingencies are in place ... as per arrangements today”.²⁷²
- 9.23 The AFP officers acted with similar certainty on the morning of 16 July. Four AFP officers, Craig, Ellis, Meaker and Muller, were all at the watchhouse from 10.50am (ten minutes before Ms. Payne handed down her decision according to AFP documents²⁷³). They told the watchhouse staff that they were there “in case advice relevant to [Dr. Haneef] was forwarded to the watchhouse by DIAC”.²⁷⁴
- 9.24 There is further evidence indicating that the Minister’s decision was a fait accompli before he officially made the decision. A case note of 16 July records that a decision was made at 12 noon to request a Criminal Justice Stay Certificate. This was after DIAC advised that they were cancelling Dr. Haneef’s visa, that day.²⁷⁵ Any pretence that Mr. Andrews had not already made his decision well before he signed the papers is simply not supported by the contemporary documentation brought into existence on Saturday 14 and Monday 16 July.

Part A and Part B Received by DIAC

- 9.25 The Submission²⁷⁶ referred to receipt of the part A and part B documents on 8 July 2007 based on DIAC FOI documents.
- 9.26 This is confirmed by the DIAC submission.²⁷⁷
- 9.27 The DIAC submission indicates that the brief based on these documents had reached the Minister’s Chief of Staff by Tuesday, 10 July 2007.²⁷⁸

PDO or visa cancellation: putting the pieces in place

- 9.28 The submission contained a time line of events transpiring between the AFP, DIAC and Mr. Andrews’ office.²⁷⁹
- 9.29 The DIAC submission confirms at least the outlines of this reconstruction from DIAC documents. The DIAC submission confirms that a DIAC brief went to the

²⁷² See AFP FOI release, folios 283 – 285. (See appendix 5)

²⁷³ See AFP FOI release, folio 295: 11.00am. (See appendix 5)

²⁷⁴ See AFP FOI release, folio 291. (See appendix 5)

²⁷⁵ See AFP FOI release, folio 295. (See appendix 5)

²⁷⁶ Submission on behalf of Dr. Haneef at paragraph 9.15.

²⁷⁷ DIAC submission, paragraph 42.

²⁷⁸ DIAC submission, paragraph 43.

²⁷⁹ Submission on behalf of Dr. Haneef at paragraphs 9.17 – 9.35.

Minister's office on Friday, 13 July and that further material was received from the AFP, that day.²⁸⁰

If he gets Bail, we'll Use the Migration Act

- 9.30 In the submission,²⁸¹ reference was made to a document, dated 14 July 2007,²⁸² which purported to direct the Brisbane Watchhouse Keeper to hold Dr. Haneef as a suspected unlawful non-citizen.
- 9.31 Although the AFP FOI releases did not further assist, a signed copy of the document forms part of the QPS FOI release. The document is further discussed below.²⁸³

Putting the Pieces Back in Place

- 9.32 The submission discusses the email stream which passed between various AFP officers on the afternoon of 14 July 2007.²⁸⁴
- 9.33 The DIAC submission attempts to paraphrase that email.²⁸⁵ The submission states: "DIAC's view is that the AFP's email of 16 July 2007 which stated that 'contingencies ... are in place' refers to AFP contingency planning. DIAC was not aware of the terms of such planning at that time or at any point prior to the Minister's decision to cancel Dr. Haneef's visa. DIAC was not involved with any contingency planning by the AFP. The former Minister was not briefed by DIAC on AFP contingency planning, as it was not relevant to any of the considerations that he was likely to take into account in making the visa cancellation decision."
- 9.34 The paragraph seems to ignore the evidence contained in the AFP files.²⁸⁶ The entry for 2.08pm, that afternoon, shows that Mr. Morrish, AFP acting manager, counter terrorism domestic, was liaising with DIAC personnel. DIAC is quoted as saying that they would seek to place Dr. Haneef in Villawood pending a review of his visa. DIAC had also advised that they would be seeking the AFP to assist DIAC in their role as Immigration Officers under the Migration Act to take Dr. Haneef into custody for the purpose of passing him to DIAC.
- 9.35 Unless the statements in the AFP file entry are false, this provides evidence that some DIAC personnel, apparently with authority, were engaging in contingency planning with the AFP.²⁸⁷ It also suggests that the DIAC submission is

²⁸⁰ DIAC submission, paragraph 45.

²⁸¹ Submission on behalf of Dr. Haneef at paragraph 9.43.

²⁸² AFP FOI release, page 35. (see appendix 5)

²⁸³ QPS original FOI release, page 8. (See appendix 13)

²⁸⁴ Submission on behalf of Dr. Haneef at paragraphs 9.44 – 9.50.

²⁸⁵ DIAC submission, paragraph 83.

²⁸⁶ AFP FOI release, page 270. (see appendix 5)

²⁸⁷ The sources of the information may be able to be gleaned from AFP FOI release, page 173.

inadequately researched or DIAC officers have not been truthful when asked about these matters.

- 9.36 There is also the document dated 14 July 2007 signed by Anne Gollschewski alleging that Dr. Haneef was an unlawful non-citizen.²⁸⁸ The QPS copy contains fax markings for 2.26pm on 16 July but that is a facsimile from the watchhouse. There are no markings to indicate when it was received from the watchhouse. There is no reason for that document to be dated 14 July unless there were plans to cancel the visa on that day in the event that bail was granted.
- 9.37 The statement in the DIAC submission²⁸⁹ lacks credibility for another reason. The AFP could not do anything more concerning “containing [Dr. Haneef] and detaining him under the Migration Act”²⁹⁰ than send the part A and part B documents which had been amended and sent on the previous day. The contingencies put in place, logically, required cooperation from DIAC itself or the Minister’s office or both.
- 9.38 The email was sent at 5.22pm on Saturday, 14 July 2007. The “as per arrangements today” are very likely referring to the discussions recorded by the AFP file entry at 2.08pm, that same day.²⁹¹
- 9.39 These documents suggest that, despite the lengthy time taken to produce the DIAC submission, it remains a very superficial examination of the events relevant to the Inquiry.

And So On to Cancel the Visa

- 9.40 The timing of the decision to cancel the visa has been discussed above under the heading “Timing of the Cancellation”.
- 9.41 It is important, in respect of that timing to note that an AFP officer, Kylie Weldon, noted that DIAC had advised the AFP that they were cancelling the visa prior to 12.00 noon on the day the visa was cancelled, a full hour at least before DIAC claims that Mr. Andrews made his decision.²⁹²

Examining the Cancellation Documents

- 9.42 In the light of the QPS and ASIO submissions to the Inquiry, it is now very noticeable that Mr. White and Ms. Clark’s briefing documents make no reference to the ASIO assessment that Dr. Haneef was not a security threat.

²⁸⁸ QPS FOI original release, page 8. (See appendix 13)

²⁸⁹ DIAC submission, paragraph 83.

²⁹⁰ See email at AFP FOI release, pages 283-5. (see appendix 5)

²⁹¹ AFP FOI release, page 270. (see appendix 5)

²⁹² AFP FOI release, page 295. (see appendix 5)

9.43 As well as contradicting the AFP brief on association and character, the ASIO assessment was, probably, the most relevant document to the question of national interest since it went to the heart of whether Dr. Haneef, a person who a magistrate considered was not an escape risk, was a threat to national security.

9.44 ASIO stated:²⁹³

“ASIO Participated in whole of government meetings in relation to Dr. Haneef. ASIO’s consistent advice to these meetings was that, based on available information, ASIO did not assess Dr. Haneef as a threat to security and did not have grounds to issue an adverse security assessment. In the early days of the investigation, ASIO nevertheless considered that further investigation of Dr. Haneef was warranted.”

9.45 The DIAC submission states:²⁹⁴

“The Department of Prime Minister and Cabinet (PM & C) is the convener of the National Counter Terrorism Committee (NCTC), the key Commonwealth/State/Territory co-ordination body on counter-terrorism issues. DIAC is not a regular member of the NCTC but may be co-opted ... Deliberations of the NCTC are subject to national security considerations.

DIAC was initially co-opted on 2 July 2007 to attend the NCTC meetings ... There was non discussion of Dr. Haneef in that first meeting. DIAC’s role gradually expanded to providing immigration advice in participation with the whole of government approach to managing Dr. Haneef’s case.

During the period from Monday 2 July 2007 through to Thursday 12 July 2007, DIAC officers attended a number of NCTC meetings. DIAC has separately provided confidential details of those meetings to the Inquiry ...

In addition to those meetings, DIAC participated fully in inter-agency Operational Briefings and Key Issues Briefings convened by PM & C on weekdays between 11 July and 27 July. To the best of DIAC’s knowledge, no formal minutes were kept for these teleconferences.”

9.46 It seems very likely that the whole of government meetings referred to in the ASIO submissions are the meetings of the National Counter Terrorism Committee referred to in the DIAC submission.

9.47 It seems inevitable, therefore, that the DIAC officers were aware of the ASIO assessment that Dr. Haneef was not a threat to national security.

9.48 The ASIO submission went on to state:

“In a written advice issued to the Government and various agencies on 11 July 2007, ASIO reported that, while it continued to progress its inquiries, it did not have information to indicate that Dr. Haneef had any involvement in, or foreknowledge of, the UK terror attacks. Nor was there any information that Dr. Haneef was undertaking planning for a terrorist attack in Australia or overseas.

²⁹³ ASIO submission, part II.

²⁹⁴ DIAC submission, paragraphs 92 and following.

ASIO, through the National Threat Assessment Centre, issued several Threat Assessments concerning the potential threat to security posed by Dr. Haneef. Those Threat Assessments consistently indicated that there was no information indicating any specific, credible terrorist threat in Australia linked to the attacks in the UK. As such, there was no basis for varying the terrorist threat level in Australia.

ASIO also provided written submissions to the then Attorney-General, the Hon Philip Ruddock MP. These submissions updated the Hon Philip Ruddock on ASIO's assessments of intelligence and its assessments of information in media reporting."

- 9.49 Since the written advice of 11 July falls within the period that DIAC participated in the National Counter Terrorism Committee, it is very likely that DIAC officers were among the Agency personnel that received the written assessment of that date that stated that Dr. Haneef was not any kind of security risk. There is no evidence to suggest that the contents of that assessment formed any part of the material relied on by the Minister in the cancellation decision.
- 9.50 The Attorney-General's Department ("the AGD") has provided a very short submission.²⁹⁵ The submission makes it clear that the role of the AGD was one of information dissemination. The Coordination Centre of the AGD is described in the following terms:²⁹⁶

"... the Centre played a coordinating role in disseminating information about the attempted attack against Glasgow Airport and the arrest, detention and charging of Dr. Haneef. It did not have any analytical or decision-making role in those matters."

²⁹⁵ The submission contains a number of debatable propositions about the state of the law including an extraordinarily wide proposition that no "evidence in criminal proceedings" may be publicly released without court approval. See page 5. It is not the intention of these supplementary submissions to debate those propositions unless they are, otherwise, relevant to finding the truth concerning the action taken against Dr. Haneef. It may be observed, however, that at page 5, the submission sets out 9 points on which Magistrate Payne made her finding that there were exceptional circumstances in the argument before her. Reference to the bail decision indicates that the list in the submission is not entirely accurate and misses some of the nuances in the decision including her honour's observations on the strength of the case. For example, the submission misstates and breaks up the first ground: "no direct association with any terrorist organisation" is conveyed as "not a member of a terrorist organisation". That the mental element was recklessness becomes a second ground in the AGD submission. That the resource was merely a SIM card (part of her honour's first basis) is ignored completely. Another ground: that the SIM card was not used in any terrorist attack (apart from being found in the burning Jeep) was ignored completely in the AGD submission. Another aspect of her honour's reasoning: that Dr. Haneef was a member of the Australian College of Physicians was translated by the AGD submission into "a student member of the medical profession". This is not just poor summarising of a magistrate's decision by the author of the submission. **In fact, the misreading of the magistrate's reasons is taken word for word from an AFP summary of those same reasons circulated in emails on the day the decision was handed down. It is unfortunate that the Department, under whose aegis the Inquiry was established (the law department of the Commonwealth), can not be bothered to read the case on which it is commenting. This is particularly so when the submission goes on to criticise the magistrate's decision as being outside the mainstream and not following higher court authority.** For the AFP summary of the reasons, see email of Rebecca Irwin to James Fox, PMC FOI second interim release, document 39. (see appendix 26)

²⁹⁶ AGD submission, paragraph 2(a).

9.51 The Security Law Branch of the AGD had an even more important role in providing information.²⁹⁷ The submission states:

“Departmental officers participated in a number of inter-agency meetings and telephone discussions which were held to ensure there was proper awareness within government of what was happening in relation to Dr. Haneef. The role of these departmental officers was to ensure that any discussion about legal aspects of the case, including periods of investigative detention and the policy objectives of the legislation, were properly addressed.”

9.52 In the light of that information, it would seem almost certain that relevant DIAC officers and the Minister, Mr. Andrews, would have been briefed about the contents of and aware of the opinions of ASIO concerning Dr. Haneef. If Mr. Andrews did not hear of this information because Mr. White and Ms. Clark failed to pass it on, it is still very likely that he would have been personally advised by the Attorney-General, himself, or by his personal staff. This would have, particularly, applied to the written assessments provided by ASIO directly to the Attorney-General.

9.53 Not only were the matters concerning Dr. Haneef matters in which the whole of government including the Prime Minister took an interest, they were matters upon which the Attorney-General spoke publicly on most days during the period from 3 July to after 16 July when the visa was cancelled.

The Facts in Mr. White’s Issues Paper

9.54 The importance of the ASIO assessment is discussed in the preceding section of these supplementary submissions. It is in this issues paper that one might have expected that material to appear. Mr. White, as the senior briefing officer, had a duty to do more than just pass on a brief from the AFP that was inaccurate, misleading, or one sided. DIAC must have been aware that another important agency, ASIO, had an opinion that was contrary, in an important respect, to the brief supplied by the AFP.

9.55 One clue as to why no one, apparently, advised Mr. Andrews in the cancellation documents of the ASIO opinion comes from an AGD DIAC DFAT Options paper prepared in respect of Dr. Haneef. The paper expressly considered a situation where there was no evidence that would justify either a criminal charge or an adverse security assessment. The answer was: visa cancellation pursuant to s.501(6) Migration Act. The paper stated: “The Minister may be reluctant to use his national interest power where both the AFP and ASIO have indicated that there was insufficient information to establish that this person was a national security threat”.²⁹⁸

²⁹⁷ AGD submission, paragraph 2(b).

²⁹⁸ DIAC FOI release, documents 10-17 at page 10. (See appendix 27)

- 9.56 A file note attached to an email of 13 July 2007 of DIAC officer, Eliza Bateman, put the AGD Options paper into effect.²⁹⁹ Any exercise of the s.501(6) option was conditional upon the AFP not having enough evidence to charge and ASIO not issuing an adverse security assessment. Although the decision to charge Dr. Haneef put the trigger off until bail was granted on Monday 16 July, it seems clear that all concerned in the cancellation decision were premising their actions on knowledge that ASIO had no adverse views concerning Dr. Haneef. This understanding seems to have been shared by all agencies who attended National Counter Terrorism Committee.
- 9.57 Confirmation that a broad array of agencies were party to the plan to use cancellation of Dr. Haneef's visa as a means of dealing with him in the absence of evidence suggesting that he was either a security risk or had committed any criminal offence is confirmed by Mr. White's briefing of Opposition spokesperson, Tony Burke.³⁰⁰ The note of the briefing has Mr. White saying that the "decision to advance the s501 submission was taken in the context of the whole of government National Counter Terrorism Committee forum". Mr. White also said that he took the decision to advance the submission and that it was done at midday on 16 July 2007".
- 9.58 When one takes into account that AFP officer, Kylie Weldon, was told before midday on 16 July "by DIAC that they were cancelling the visa",³⁰¹ Mr. White must have been assured that Mr. Andrews would definitely cancel the visa at a time that the government considered opportune. As the AFP email discussions on the Saturday had indicated, the AFP officers thought the immediate aftermath of a successful bail application by Dr. Haneef was opportune. Press reports also indicate that Mr. Andrews and Mr. White had several meetings with the Prime Minister that morning including in the Prime Minister's office.³⁰² It would seem that cancelling Dr. Haneef's visa had indeed become a whole of government decision.
- 9.59 One might also have expected in the briefing note mention of the fact that was known to Mr. Meaker and Mr. Dean, namely, that it was unusual to cancel a visa because someone was "charged" with a criminal offence.³⁰³

The AFP Brief (part A)

- 9.60 The misleading information referred to in the submission³⁰⁴ about Dr. Haneef's one way ticket is compounded by the fact that Dr. Haneef had given the full

²⁹⁹ DIAC FOI release, document 54, folios 94-95, (OCD2007/21073). (See appendix 28)

³⁰⁰ DIAC FOI release, document 154, folios 429-430, (000065). (See appendix 29)

³⁰¹ AFP FOI release, folio 295. (see appendix 5)

³⁰² <http://www.theaustralian.news.com.au/story/0,25197,24001849-5013404,00.html> (See appendix 30)

³⁰³ AFP FOI Release, folio 266. (see appendix 5)

³⁰⁴ Submission on behalf of Dr. Haneef, paragraph 9.84.

- explanation about the ticket in the interview, immediately, after the arrest.³⁰⁵ It appears that the contents of that interview may have been completely ignored by the AFP analysts.
- 9.61 The misleading presentation of the information about Dr. Haneef taking leave³⁰⁶ is now compounded by the fact that the person to whom Dr. Haneef spoke when taking leave, Cathy Bosworth, had corroborated Dr. Haneef on the crucial subject of the time at which he obtained the leave approval from her.³⁰⁷ It also seems clear, from the QPS notes of Ms. Bosworth's recollection, that Dr. Haneef explained the circumstances concerning both his wife and Haniyah when he spoke to Ms. Bosworth.
- 9.62 The part A section of the brief should have been updated to give the Minister a proper briefing upon the contents of the bail decision. This was an independent assessment of the best evidence the AFP could put forward. While this was a matter that the DIAC officers should have ensured went before the Minister, their failure was no excuse for the AFP not to amend the brief to ensure that it was balanced and fair.
- 9.63 The same things apply with even greater force to the opinion of the DPP officer (based on flawed instructions as it was); the QPS (which disagreed fundamentally with the actions of the AFP to charge) and the ASIO assessment (which was of fundamental importance).
- 9.64 The AFP should also have ensured that the brief provided contained the AFP opinion that there was not enough evidence to charge Dr. Haneef.
- 9.65 Part A of the brief remains an indictment of the AFP officers who wrote and approved it; the DIAC officers who accepted it as adequate and used it to brief their Minister; and the Minister who acted upon without asking for a proper briefing on the bail decision and the ASIO opinion, the existence of both of which he must have been aware.

The Part B information: top secret

- 9.66 The submission contained a lengthy attempt to reconstruct the part B information based on the circumstantial evidence going to its contents.³⁰⁸
- 9.67 There is now some more direct evidence going to the contents of part B.
- 9.68 The AFP FOI release refers to four separate versions of the part B documents all dated 11 July 2007.³⁰⁹ Because the final version was finalised (amendments by

³⁰⁵ Transcript of electronic interview, 11.05pm, 2 July 2007, page 23. (see appendix 1)

³⁰⁶ Submission on behalf of Dr. Haneef, paragraph 9.85.

³⁰⁷ QPS FOI review release, page 158. (see appendix 7)

³⁰⁸ Submission on behalf of Dr. Haneef, paragraphs 9.95 – 9.121.

- Mr. Jabbour and Mr. Morrish) on 13 July 2007,³¹⁰ there will have been some alterations to the versions (partially) provided.
- 9.69 Paragraphs 1-19 on the first three pages are said to be information provided by the United Kingdom MPS Counter Terrorism Command. Some of this information may relate to Dr. Haneef and be information similar to information previously released such as the claim that Dr. Haneef had used a phone number belonging to Sabeel Ahmed in September 2006.³¹¹
- 9.70 Most of the information is likely to relate to details of the attacks in London and Glasgow. Since there has been no information connecting Dr. Haneef with any involvement in or prior knowledge of those events, that information was irrelevant to any decision concerning Dr. Haneef's temporary work visa.
- 9.71 Paragraph 20 of the part B material includes "classified" information that Dr. Haneef had provided. It is difficult to understand how information freely provided by Dr. Haneef could be withheld from him so that he was prevented from knowing that part of the case against him.
- 9.72 The first piece of information was the fact that Sabeel and Kafeel Ahmed were his second cousins on his maternal side. This information was in fact contained in the open part A document served on Dr. Haneef.³¹²
- 9.73 The second piece of information is that Dr. Ali "is an associate of Dr. Haneef who also works at the Gold Coast Hospital". There is no basis for this information not to have been disclosed.
- 9.74 The third piece of information is that Dr. Haneef gave his car and unit keys to Dr. Ali for safe keeping. Again, there was no basis for that information to be withheld from Dr. Haneef.
- 9.75 The next three paragraphs related to information found in Dr. Haneef's possession. The two items mentioned are Dr. Haneef's diary and the address of Kafeel in Belfast. The second is the information that, on 10 October 2005, Dr. Haneef paid 960 pounds to Kafeel being money being delivered to Dr. Haneef's family in India.
- 9.76 There was no basis for either of these pieces of information being withheld from Dr. Haneef. The information was not incriminating in any way and had been fully explained in the first and second interviews. The AFP had had 14 days to

³⁰⁹ AFP FOI Release, folios 4-15 (this is not described as a draft); 19-29; 252 - 262; and 307-318 (the last three are referred to as drafts and are thought to be similar in content). (see appendix 5)

³¹⁰ AFP FOI Release, folio 305. (see appendix 5)

³¹¹ AFP FOI Release, folio 37. That information was of course wrong since Dr. Haneef was not in the UK at that time. (see appendix 5)

³¹² Paragraph 11, second dot point.

check out Dr. Haneef's answers with regard to both matters and had found no discrepancy.

- 9.77 The next eight paragraphs related to Dr. Ali. The first piece of information was that Dr. Ali had a computer. This is not extraordinary. The second piece of information was that Dr. Haneef's computer was found with Dr. Ali. This also was not extraordinary since Dr. Haneef told police that he had given Dr. Ali his keys so that Dr. Ali could look after his computer.
- 9.78 The third piece of information related to images found on Dr. Ali's computer. Dr. Ali's computer had images of vehicles, vehicle interiors and the insides of boot compartments. Dr. Ali may have been thinking of buying a car. If Dr. Ali had been questioned about those images, he must have given a satisfactory explanation because no action has been taken against him concerning any connection with the UK attacks or connection to Kafeel and Sabeel Ahmed.
- 9.79 The next piece of information related to Dr. Ali's computer having images of the scene of the Glasgow attack and forensic police attending the scene. This may mean no more than that Dr. Ali accessed news items relating to those attacks as did most Australians with computers at that time. In any event, Dr. Ali was never arrested or detained concerning anything to do with terrorism.
- 9.80 Last, the part B document contained extracts of what Dr. Ali said in his interview. The information covered two pages of the part B document. Since anything relevant would have been put to Dr. Haneef during his second interview, none of that information is likely to have involved anything detrimental to Dr. Haneef. In fact, it is likely to confirm many of Dr. Haneef's answers in his interviews.
- 9.81 The last paragraph confirmed that Dr. Ali was free to go and had not been charged with any offence.
- 9.82 None of the information relating to Dr. Ali should have been withheld from Dr. Haneef. None of it could have assisted Mr. Andrews in his decision to cancel Dr. Haneef's passport.
- 9.83 The next three paragraphs concerned Dr. Haneef's chat room conversation with his brother.
- 9.84 The next four paragraphs relate to the material taken from Dr. Haneef's computer. The paragraphs are very similar in their content to the material contained in the "confidential affidavit" by Mr. Jabbour.³¹³
- 9.85 The chat room conversation is set out in terms almost identical with Mr. Jabbour's paraphrase.³¹⁴ For reasons stated previously, the translation is wrong and

³¹³ AFP FOI Release, folios 96-109. (see appendix 5)

³¹⁴ AFP FOI Release, folios 100 – 101. (see appendix 5)

misleading. Any suspicion attaching to Dr. Haneef from that conversation is solely because the AFP refused to ask Dr. Haneef questions about the conversation and to give him a proper opportunity to provide an accurate translation.

- 9.86 The second item mentioned is the photo with men wearing shirts embossed with the name “Mufeed”. There was never any excuse for the AFP to treat the Mufeed organisation as giving rise to any suspicion.³¹⁵
- 9.87 The third item relates to the doctor “Bilal” and the entry in the contacts showing a date as 16 December 2006. This was able to be fully explained by Dr. Haneef when he was finally asked about it.
- 9.88 None of these items which relate to Dr. Haneef’s computer should have been withheld from him as being a reason why his visa was cancelled. Each had been canvassed with him in an interview. He was entitled, pursuant to part 1C Crimes Act, to a copy of the transcript of that interview.
- 9.89 The next entry in part B was headed “summary”. Only two paragraphs are available. They read as follows:
- AFP investigators suspect that the internet conversation between Dr. Haneef and his brother ... may be evidence of [Dr. Haneef’s] awareness of the conspiracy to plan and prepare the acts of terrorism in London and Glasgow.
- AFP investigators consider [Dr. Haneef’s] attempted urgent departure from Australia, on a one-way ticket, for a purpose which appears to be a false pretext, to be highly suspicious and may reflect [Dr. Haneef’s] awareness of the conspiracy to plan the acts of terrorism in London and Glasgow”.
- 9.90 These two paragraphs are potent symbols of the treatment that Dr. Haneef received in Australia at the hands of Australian authorities.
- 9.91 The conversation had been translated and available since 5 July 2007.³¹⁶ Dr. Haneef had been imprisoned for a further 8 days before the AFP deigned to ask him about the conversation.
- 9.92 Three days after the translation had been obtained, Mr. Jabbour, one of the two senior AFP officers who approved those paragraphs, had chaired a conference with Ms. Hogan of QPS, someone from ASIO, the arresting officer, Mr. Simms, and Steve from AFP intelligence.³¹⁷ Ms. Hogan’s notes of that conversation had recorded that Dr. Haneef had admitted any links he had with UK suspects and had given plausible explanations for those links. Ms. Hogan recorded the conclusions

³¹⁵ **The following is a link to that part of the organisation’s web site which deals with assisting junior doctors: <http://www.mufeed.org/Juniordoctors.htm>.**

³¹⁶ AFL FOI release, folio 60. (See appendix 5)

³¹⁷ Ms. Hogan’s notes at QPS review FOI release, page 157. (see appendix 7)

at the end of the discussion to the following effect: “Looking from the perspective of a prosecution brief of evidence, one can say that there is no evidence”.

- 9.93 It was unfair and irresponsible to claim that police had any basis to suspect that Dr. Haneef had any awareness ahead of time of the attacks in the UK. This was particularly the case when, at the time that Mr. Jabbour approved those comments, Dr. Haneef had not been given any opportunity to comment on the conversation, its content, or the reliability of the translation.
- 9.94 It was even more irresponsible for the AFP (and Mr. White and Ms. Clark) to allow those comments to be part of the secret brief after Dr. Haneef had challenged the interpretation and the translation when, in the second interview, he was finally given a restricted chance to answer questions about the chat room conversation.
- 9.95 There was no false pretext for Dr. Haneef's trip to Bangalore. Everything he said about his wife having a child born on 26 June and the child going back into hospital was true. His quite spontaneous answers to questions on these subjects had been confirmed in a most meaningful way by Ms. Bosworth, the hospital administrator.
- 9.96 Second, immediately after his arrest, Dr. Haneef had explained that it was his father-in-law's choice (the father-in-law was footing the bill) to buy a one way ticket. The police always had the email from the travel agency which confirmed Dr. Haneef's statements in this regard.
- 9.97 The paragraph about the one way ticket giving rise to suspicion about foreknowledge of the attacks in the UK was even less justified than the paragraph which preceded it.
- 9.98 The part B documents, so far as they have been unveiled, show that the attempt at reconstruction of those documents in the submission was close to the mark.
- 9.99 The part B documents, so far as they have been unveiled, show a misuse of s.503A Migration Act to withhold information of no security importance or sensitivity from the person whose right to work and live in Australia was under attack.
- 9.100 The part B documents, so far as they have been unveiled, show that the 12 days of detention without charge had been misused to prevent Dr. Haneef from doing the one thing he always made clear he wanted to do: answer any questions the authorities had of him so that he could clear his name.
- 9.101 The part B documents, so far as they have been unveiled, show that the part B information provided by the AFP and DIAC to the Minister was inaccurate,

selective, unfair and misleading. It calls for accountability from every officer who was responsible for the document's production.

One Further Thing: No Criminal Justice Stay Visa

- 9.102 The submission pointed out that the application by Mr. Prendergast for a Criminal Justice Stay Certificate certified that Dr. Haneef did not constitute any threat to the Australian community.
- 9.103 The two factors specified in s.158 Migration Act for the issue of a Criminal Justice Stay Visa are the safety of individuals and people generally and any other matters the Minister considers relevant. A Criminal Justice Stay Visa, if issued, would have allowed Dr. Haneef to stay in the community while he waited for the trial of his charge to come on. (It would have restored the benefit of the successful bail application which had been stripped from him.) In providing his briefing note, Mr. White made no reference to Mr. Prendergast's views in the application for the certificate.³¹⁸
- 9.104 In setting out relevant factors, the only negative matter raised was a political one: the grant of a Criminal Justice Stay Visa might be perceived by the community to inconsistent with Mr. Andrews' decision to cancel the visa in the first place. It is submitted that a purely political factor like that is not a relevant factor in a decision where a person's liberty is concerned.
- 9.105 However, Mr. White recommended against a Criminal Justice Stay Visa for Dr. Haneef and the minister followed the recommendation. It is submitted that this decision, like the original decision to cancel the visa, was inappropriate and wrong.

The Misinformation Campaign: pages 114 - 127

- 10.1 One aspect of the misinformation campaign against Dr. Haneef was brought to an end.
- 10.2 On 29 August 2008, James Watson, special counsel for the AFP, sent a letter which said:

“The Australian Federal Police has recently informed the Attorney-General and the Minister for Home Affairs that Dr. Haneef is no longer a person of interest. The AFP has concluded its active inquiries, although some long standing overseas inquiries are yet to be fully resolved. At the present time, there is insufficient evidence to institute proceedings against Dr. Haneef for any criminal offence.” (Emphasis added.)

³¹⁸ DIAC FOI release, document 265, folios 375-376. (See appendix 31)

- 10.3 This was a particularly ungracious way to end a 15 month episode during which there was not, at any time, a scintilla of evidence that Dr. Haneef had committed any wrong.
- 10.4 It was a particularly ungracious way to end an episode which had caused great stress to Dr. Haneef and his family and disrupted his medical career and made it untenable for him to return to the country in which he had chosen to advance his career and which he had chosen to serve with his considerable medical skills.
- 10.5 It was a particularly ungracious way to end an episode during which Dr. Haneef had done nothing other than try to answer whatever questions authorities had for him so that he could clear his name and return to his family and his duties.
- 10.6 There was no apology. There was no statement of regret. There was no expression of good wishes for Dr. Haneef and his family that they might enjoy returning to their lives which had been disrupted by the fifteen month investigation.
- 10.7 Even the way in which the letter of clearance stated the insufficiency of evidence expressly in the present tense seemed calculated to achieve one last smear upon the reputation of Dr. Haneef and his family.
- 10.8 The letter was a disappointing way to advise the end of an investigation.

Concluding Statement: page 128

- 10.9 As with the submission, the main purpose of these supplementary submissions has been to assist the Inquiry to discover the truth of the events by which Dr. Haneef's life was disrupted and his reputation across the world trashed so that, as long as he lives, his name will be remembered as being associated with terrorism.
- 10.10 It has not been the purpose of these submissions to canvass the institutional and legislative change which is required. It is noted, however, that the Inquiry has received a number of excellent submissions which address these matters and they are commended to the Inquiry.
- 10.11 The Inquiry is urged, however, to recommend a process by which the Commonwealth may seek to address the injury suffered by Dr. Haneef and his family and vindicate their reputation.

10.12 The Inquiry is urged to explore and recommend a way by which Dr. Haneef and his family may be brought somewhere back to the situation they were in at 11.05 pm on 2 July 2007 so that they may attempt to start their young lives again.

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