

## **Response on behalf of Dr. Mohamed Haneef to the Submission of the Australian Federal Police to the Clarke Inquiry**

### **SOME OBSERVATIONS: AN INTRODUCTION**

- 1.1 The two previous submissions (“the submission”<sup>1</sup> and “supplementary submissions”<sup>2</sup>) lodged on behalf of Dr. Haneef focused on providing a detailed description of events surrounding the arrest, detention, charging, prosecution and exoneration of Dr. Haneef. They did not attempt to discuss, in any detail, the broader issues arising from the case.
- 1.2 Because of the nature of the material contained in the Australian Federal Police submission to the Clarke Inquiry (the AFP submission”<sup>3</sup>), this submission will also address broader themes.
- 1.3 We are very grateful for the opportunity to respond to the AFP submission, notwithstanding the fact that it was published the day after the deadline given to us to provide our supplementary submissions. However, there remains a concern that the late receipt of the AFP submission will make it very difficult for other agencies and community organisations to provide a response to the AFP submission.
- 1.4 The late publication of the AFP submission is particularly regrettable because, on our reading, it contains no revelation of sensitive material received from UK law enforcement authorities. In our discussions with the Inquiry<sup>4</sup> and in the Inquiry’s public statements<sup>5</sup> and the statements on behalf of the AFP<sup>6</sup>, the reason given for not releasing any form of redacted submission has been the AFP’s obligation to maintain the integrity of its relationship with overseas agencies and because of the ongoing trials in the UK. The references to UK material in the AFP submission appear to be

---

<sup>1</sup> Delivered in person to the Inquiry on 23 May 2007. See <http://www.haneefcaseinquiry.gov.au/www/inquiry/haneefcaseinquiry.nsf/Page/RWP14628B2902A7E152CA2574810022BC01>.

<sup>2</sup> Forwarded electronically to the Inquiry on Friday, 24 October 2008. At time of writing, the supplementary submissions have not been listed by the Inquiry. The physical paper copy of the supplementary submissions has been forwarded. We would also like to make a correction to that document. The reference to an AFP summary of the bail decision in footnote 295 should have been to a DPP summary of the bail decision.

<sup>3</sup> Available at <http://www.haneefcaseinquiry.gov.au/www/inquiry/haneefcaseinquiry.nsf/Page/RWP11B5B96CB E9F9ED1CA2574EB0002FDB4>.

<sup>4</sup> See, for example, letter from the Inquiry to Dr. Haneef’s lawyers dated 28 August 2008: appendix 1

<sup>5</sup> See <http://www.theaustralian.news.com.au/story/0,25197,24135326-2702,00.html>. See also the statement available of 25 July 2008 accessible at the Inquiry web site at <http://www.haneefcaseinquiry.gov.au/www/inquiry/haneefcaseinquiry.nsf/Page/Statements>.

<sup>6</sup> See [http://www.afp.gov.au/media\\_releases/national/2008/media\\_statement\\_from\\_commissioner\\_keelt\\_y](http://www.afp.gov.au/media_releases/national/2008/media_statement_from_commissioner_keelt_y) and [http://www.afp.gov.au/media\\_releases/national/2008/media\\_statement2](http://www.afp.gov.au/media_releases/national/2008/media_statement2). See also [http://livenews.com.au/articles/2008/08/04/AFP\\_not\\_able\\_to\\_release\\_Haneef\\_information\\_Keelty](http://livenews.com.au/articles/2008/08/04/AFP_not_able_to_release_Haneef_information_Keelty)

no more than confirmation that the AFP received information, which was already, otherwise, on the public record from the Metropolitan Police Service (“the MPS”).

- 1.5 The Inquiry should take note of the AFP submission. It reveals that, 15 months after the Dr. Haneef’s arrest, the AFP, remains unable to make an objective assessment of its own performance. It illustrates that the AFP is unable to acknowledge matters which were done poorly. The submission blames others for anything that went wrong. The submission is also important for what it fails to address. Examples of this conduct are set out below.
- 1.6 This submission will deal with the text of the AFP submission in detail. The headings will follow those of the AFP submission. References will be made to page numbers in the AFP submission. Where necessary, references will be made to particular paragraphs in the AFP submission. As the AFP submission paragraphs are not numbered, references to individual paragraphs will be by ordinal numbering as they occur in a particular section of the AFP submission.
- 1.7 While this submission will draw upon the analysis in the submission and the supplementary submissions, no attempt will be made to repeat, on a thorough going basis, the citations in the two earlier documents. Equally, no attempt will be made to cite the relevant passages in the submission and the supplementary submissions. This submission will assume that the reader is able to access the two earlier documents. In cases of particular importance, citations will be provided.

**THIS SUBMISSION                      Page 3**

- 2.1 In the fourth paragraph, the AFP submission continues its long standing claim that “a non-publication order in the UK” and other security classification has prevented the AFP from making information public.
- 2.2 The track record of the AFP in releasing information must cause those statements to be greeted with scepticism. After nearly 12 months since an application for freedom of information (“FOI”) was lodged with the AFP, the AFP has failed even to consider for release thousands of relevant documents.<sup>7</sup> When the solicitors for Dr. Haneef made an application to the Administrative Appeals Tribunal (“the AAT”), many documents and parts of documents which had previously been the subject of exemption claims were released even before the Tribunal made its decision.<sup>8</sup>
- 2.3 The failure to consider thousands of documents for FOI release even though the same documents must have been gone through carefully for the purpose of giving them to

---

<sup>7</sup> See Australian Government Solicitor letter dated 15 September 2008; and Maurice Blackburn letters dated 16 and 25 September 2008.

<sup>8</sup> The supplementary Submissions were based on the expanded releases of information based on the AAT application. The AFP FOI release (expanded form) was appendix 5 to the supplementary Submissions.

the Inquiry is a major failure to comply with the laws that impose accountability and transparency obligations on all government agencies.

- 2.4 The information which is released for the first time by the AFP in its submission carries no operational or security significance. It merely confirms that the organisation received certain documents that have been on the public record for months or longer. In some cases, it reveals when such information was received by the AFP. It is difficult to understand why there has been such a delay in releasing the submission.
- 2.5 During this case, it has often appeared that the AFP's reliance on secrecy classifications has been a stratagem. Such reliance has not prevented law enforcement sources from leaking "secret" information to major press outlets when it was felt tactically appropriate to do so.<sup>9</sup>
- 2.6 We are not aware that a copy of the non-publication order referred to in the AFP submission has been provided to Dr. Haneef's lawyers as part of the FOI process.
- 2.7 We would have expected that an organisation that claims to welcome transparency and accountability would use its resources and expertise to provide a submission that responded in detail to the issues concerning the AFP's conduct of the investigation that have been raised over the last sixteen months.

## **INTRODUCTION**                      **Pages 4 - 5**

- 3.1 In what is, in effect, an executive summary of the AFP submission, it might have been expected that the issues raised concerning the AFP's conduct of the investigation would have been outlined and addressed. It might have been expected that the summary would contain an acknowledgement of certain errors on the part of the organisation. It might also have been expected that the summary would contain a frank and objective self-assessment which would allow the organisation to renew and rebuild.
- 3.2 These expectations are not fulfilled.
- 3.3 Some more specific observations may be made.

---

<sup>9</sup> This occurred as recently as September 2008. See <http://www.news.com.au/couriermail/story/0,23739,24315827-952,00.html>. This information was withheld from Dr. Haneef until the eve of the AAT proceedings. The information was of no operational significance and its release appears calculated to further slander Dr. Ali and Dr. Haneef. It may not be coincidental that this leak appeared just 10 days after the AFP was forced by inquiries by Home Affairs Minister, Mr. Debus, to finally admit that Dr. Haneef was no longer a person of interest and that there was no evidence to suggest that Dr. Haneef was guilty of any criminal offence. See <http://www.theaustralian.news.com.au/story/0,25197,24264596-2702,00.html>.

- 3.4 In the fourth paragraph, the AFP submission refers to the highly complex and challenging nature of terrorism investigations. This, as an abstract and ideal description of some terrorism investigations, is true. Compared to many murder and rape and drug importation investigations, however, some terrorism investigations may be relatively simple. For example, the terrorist actions of Peter Lalor's miners at Eureka in 1854 were relatively simple to investigate. It is also true that any investigation of a crime after the event is much less complex than the intelligence gathering operations to detect crime before it occurs. One aspect of a terrorist event which makes it less difficult to investigate is the fact that it is normally a large scale public event that leaves a great deal of forensic evidence. Illicit drug production, by way of contrast, is a secret crime and is much more difficult to combat, without effective intelligence, even after the crime has been committed.
- 3.5 This description, in the AFP submission, of the nature of terrorism investigations provides a strong clue to how events transpired in the investigation of Dr. Haneef. When the AFP was requested to respond to a request from the MPS to try to locate a Dr. Mohamed Haneef, the task given to the AFP was, indeed, very simple. As an overseas doctor working in Australia, Dr. Haneef was very easy to locate.
- 3.6 Once Dr. Haneef was located, the task was still straight forward. He could be put under surveillance. The better course was probably to seek to interview him. All that was needed was a short briefing from the MPS as to why they thought there was some connection between Dr. Haneef and the attacks in the UK.<sup>10</sup> The theory could be quickly checked by asking Dr. Haneef questions. Dr. Haneef's answers, also, could have been relatively quickly checked for accuracy and honesty.
- 3.7 However, the AFP image of all terrorism investigations as "highly complex" meant that they spent time and resources chasing unsubstantiated suspicion. The organisation turned a routine task into a multi-million dollar, unnecessary exercise.
- 3.8 In the seventh paragraph, the AFP submission states that Dr. Haneef was the subject of an "arrest notice". To our knowledge, this is the first time that this term has been used in the context of Dr. Haneef. The National Counter Terrorism Committee incident update refers to the MPS requesting "assistance to locate the identified person, Mohamed Haneef, a Medical Practitioner, believe to be residing at 15/45 Pohlman Street, South Port, QLD".<sup>11</sup> This would suggest that an "arrest notice" is a newly coined but dramatic sounding term to describe a request to locate a person who may be of interest.
- 3.9 In the thirteenth paragraph, the AFP submission claims that there can be no allegations of corrupt behaviour or inappropriate use of force concerning the actions taken in respect of Dr. Haneef. The statement indicates a failure, on the part of the AFP, to recognise the seriousness of the matters which the AFP's own documents

---

<sup>10</sup> The mobile phone number used in September 2006 was provided very early. See AFP FOI release, folio 37.

<sup>11</sup> AFP FOI, folio 37.

raise. An obvious example involves the AFP's handling of the part 1C applications made between 3 and 13 July. The transcripts of short interviews with Dr. Haneef show a failure by AFP officers to explain to Dr. Haneef that he had a right to make submissions to Mr. Gordon who was hearing the part 1C applications. The officers proceeded to advise the magistrate that his rights had been explained to him. The officers also appear to have presented inaccurate, misleading and selective information to the magistrate. These are serious concerns. The law's traditional approach to orders which are obtained without the other party present requires a very high standard of fairness and accuracy on the part of the person seeking the order. Sir Isaac Isaacs discussed this duty when he said: "... it is the duty of the party asking for an injunction, ex parte, to bring under the notice of the Court all facts material to the determination of his right to that injunction, and it is no excuse for him to say that he was unaware of their importance. *Uberrima fidae* is required, and the party inducing the Court to act in the absence of the other party, **fails in his obligation unless he supplies the place of the absent party to the extent of bringing forward all the material facts which that party would presumably have brought forward in his defence to that application.**"<sup>12</sup> (Emphasis added.)

3.10 In the fourteenth paragraph, the AFP submission highlights its fundamental misunderstanding of the issues raised in this case. It states that, "What is at issue in this matter is the application of law and policy." It then suggests that the criticism directed against the AFP concerning its actions against Dr. Haneef are wholly the product of the "many in the community" who are opposed to Australia's terrorism laws. What the organisation does not understand is that the criticism is directed at the AFP's own failure to comply with the laws which the AFP claims to defend. The criticism also relates to the use by the AFP of those laws to achieve purposes for which they are not intended.

## **ROLE OF THE AFP Page 6.**

4.1 No comment is made on the generic statements going to the AFP's legislative and policy functions.

## **THE INTERNATIONAL LAW ENFORCEMENT ENVIRONMENT Pages 6-7**

5.1 The statements made in this section repeat the AFP's characterization of every single aspect of its work as being extraordinarily complex and difficult. In the case of Dr. Haneef, however, the AFP failed to recognise the simple task it was asked to carry out by the MPS. Similar comments are made above concerning the AFP's idealized conception of the tasks associated with investigating terrorism incidents, especially, where after the incident has occurred.<sup>13</sup>

5.2 In the eighth paragraph, the AFP submission refers to the MOU entered into with the MPS. The relationship with the MPS has been used by the AFP to justify its

---

<sup>12</sup> *Thomas A Edison Ltd. v Bullock* (1912) 15 CLR 679, 681-2.

<sup>13</sup> See paragraphs 3.5 – 3.8 of this response submission.

refusals and failures to release information under the Commonwealth FOI legislation and to prevent the Inquiry from releasing documents and testimony received by the Inquiry.

- 5.3 There are legitimate law enforcement, security and operational reasons why some information received from overseas police and security agencies should not be released to the public or persons particularly affected. However, security and law enforcement organisations have a vested interest in keeping information secret. Often, such organisations display poor judgment in deciding whether particular information is legitimately the subject of a claim of secrecy. There is also the danger of security organisations using their MOUs to assist one another to avoid legitimate scrutiny. Recent litigation shows British and United States agencies working together to keep evidence of torture by US authorities suppressed for as long as possible.<sup>14</sup> Claims to keep information secret at the behest of overseas agencies may constitute a danger to democratic processes and appropriate transparency of law enforcement and security agencies.

## **TERRORISM AS A CRIME            Pages 7 - 8**

- 6.1 This section repeats the description of terrorist investigation as always being unduly complex and difficult.
- 6.2 In the fifth and sixth paragraphs, the AFP submission discusses preventing unknown terrorist threats. The policing task faced by the AFP in this case was to check out the circumstances and bona fides of a person mentioned in dispatches. It was a simple and discrete task.
- 6.3 The fourth paragraph discusses the advantages to would be terrorists of modern communication technology. A further consequence, however, of modern communications technology is that everything a person does in life leaves many more traceable pieces of evidence than was the case in the past.
- 6.4 What is remarkable in the AFP investigation of Dr. Haneef is that anything that raised the slightest suspicion was pursued with the apparent belief that it would turn into proof positive that Dr. Haneef was a terrorist. On the other hand, evidence that exonerated Dr. Haneef was ignored and withheld. Examples of ignored exonerating evidence are the Webster phonecalls, the Kafeel email, the medical facts concerning Dr. Haneef's new born daughter and Dr. Haneef's brother's reminders that Dr. Haneef should leave his contact details with his employer, his landlord and the UK police.
- 6.5 Not only did the AFP, itself, ignore the exonerating material. The AFP withheld it from decision makers such as Mr. Gordon, Mr. Andrews and Ms. Payne.

---

<sup>14</sup> See *the Queen ex parte Binyam Mohamed v Secretary of State for Foreign and Commonwealth Affairs* [2008] EWHC 2048 and EWHC 2100, per Thomas LJ and Lloyd Jones J.

## **TERRORISM THREAT IN AUSTRALIA**

**Pages 8 -9**

- 7.1 In the third and sixth paragraphs, the AFP makes statements about the conviction of eight people for terrorism related offences. The sentencing process in the case referred to is yet to occur. In the circumstances, it is not appropriate to make comment in a public submission on the significance of that prosecution. In fact, this type of untimely comment has been criticised by the AFP itself on past occasions.
- 7.2 The section is, otherwise, irrelevant to the Inquiry's task.

## **THE AFP'S COUNTER TERRORISM PORTFOLIO Pages 9 -10**

- 8.1 The National Counter Terrorism Committee referred to in the second paragraph appears to be different to the National Counter Terrorism Committee referred to in previous documents. The DIAC submission and the FOI documents of the AFP relate to a whole of (Commonwealth) government committee that met daily during July. However, the National Counter Terrorism Committee referred to in the second paragraph appears to be a national and state government coordinating committee which meets twice a year. This can be seen from this extract from the relevant page of the web site of the Attorney-General's Department ("the AGD").<sup>15</sup> The National Counter Terrorism Committee referred to in the AFP FOI release and the DIAC submission may be a sub-committee of the broader inter-governmental committee.
- 8.2 The section is otherwise irrelevant to the Inquiry's investigation into the actions taken against Dr. Haneef.

## **INVESTIGATING TERRORISM**

**Pages 10 - 11**

- 9.1 This section repeats the description of terrorism policing as something that is always complex and difficult. While this may often be true, to believe that it is **always** true creates a potential for misjudgment.<sup>16</sup>
- 9.2 The fourth paragraph discusses the need to deal with "huge volumes of material". What is singular about the treatment of Dr. Haneef is the failure to deal properly with the very small volumes of material that were considered (by the AFP, itself) to be relevant. That material which was considered to give rise to suspicion was available, very early. Dr. Haneef, obviously, was always available to answer any questions. The choice was made to use it as a pretext to obtain detention orders rather than give Dr.

---

<sup>15</sup><http://www.ag.gov.au/agd/www/nationalsecurity.nsf/AllDocs/0C453B7326BEB74ACA256FAB0015F3BE?OpenDocument>.

<sup>16</sup> It should be pointed that this is not an explanation of all the actions concerning Dr. Haneef. The strategy adopted, very early on, by the National Counter Terrorism Committee and implemented by DIAC, the AFP and other agencies, namely, to cancel Dr. Haneef's visa, if and when it turned out that there was no evidence against him, cannot be explained in this way. This strategy seems to have a much more cynical basis. The strategy seems to have much more to do with political rather than law enforcement or security considerations.

Haneef the opportunity to explain. An example is the mistranslated chat room conversations.

- 9.3 The information which was exonerating of Dr. Haneef was kept from view or deliberately misrepresented. An example was the location of the mobile handset which was thought to be Dr. Haneef's.
- 9.4 In the seventh paragraph, the AFP submission states that terrorism investigations are subject to rigorous "judicial checks and balances at every step in the process". One of the singular lessons of this case is the way in which these checks and balances, in several very important instances, neither checked nor balanced the AFP's conduct of the case. This occurred with the part 1C hearings and with the material supplied to DIAC for visa cancellation purposes. Despite the fact that incomplete and misleading information was put before the bail magistrate, on that occasion, the safeguard of an independent and alert judiciary was effective.
- 9.5 We urge the Inquiry to recommend ways in which these checks and balances can regain their effectiveness.
- 9.6 In the eighth paragraph, the AFP submission states that it is not uncommon for terrorism investigations to take a long time. One concern about the war on terror and the values that it has promoted is that the common law aversion to innocent persons being prevented from conducting their lives is not being reflected by those who seem themselves as soldiers in that war. The concern about the 25 days that Dr. Haneef was detained (and the subsequent maintenance of the cancellation of his visa) is that, at no time, was there evidence to justify what was happening to Dr. Haneef.
- 9.7 The investigation of Dr. Haneef was not inherently complex. Any initial error such as the arrest of Dr. Haneef should have been rectified very quickly.

## **INTELLIGENCE Page11**

- 10.1 In the fourth paragraph, the AFP submission states that intelligence collected for national security purposes will not always amount to evidence.
- 10.2 That is accepted. While both law enforcement and intelligence organisations must apply rigour,<sup>17</sup> it is the case that the intelligence function can rely on information that may not be admissible in contested legal proceedings.
- 10.3 The touchstone in Dr. Haneef's case is that ASIO, the agency performing the intelligence function, concluded at all stages that there was not enough intelligence information to justify an adverse security assessment of Dr. Haneef.

---

<sup>17</sup> The intelligence agencies that complied with political pressure to provide governments with opinions that there were "weapons of mass destruction" in Iraq provide examples of lack of rigour at the intelligence level.

- 10.4 Consistently with the ASIO intelligence assessment, the AFP and the QPS and, ultimately, the DPP all concluded that was insufficient evidence to justify a criminal charge. Despite this, the AFP National Manager Counter Terrorism Domestic, Mr. Jabbour, decided, in consultation with his supervisors in Canberra, to charge Dr. Haneef with a criminal offence.
- 10.5 The AFP submission, in the fifth paragraph, speaks of the need to avoid unauthorised disclosure of intelligence information obtained from foreign agencies. As discussed earlier, there is an equally strong need to ensure that interaction with foreign law enforcement bodies does not facilitate Australian law enforcement agencies to avoid proper accountability.

### **TERRORISM LAWS      Pages 12 -14**

- 11.1 In the tenth paragraph, the AFP submission refers to police being under considerable time pressure. The submission uses the phrase “where an arrest occurs at an early point”.
- 11.2 It does not acknowledge, however, that the fundamental safeguard concerning part 1C Crimes Act is that part 1C may not be used unless a lawful arrest may be made. Since the material before the Inquiry discloses that the AFP officers who made the arrest did not have the reasonable grounds to support a belief that Dr. Haneef had committed a criminal offence, the complete use of part 1C was unlawful. This is not acknowledged in the AFP submission.
- 11.3 In the twelfth paragraph, the AFP submission points out that specified time is only available by order of a judicial officer. In the thirteenth paragraph, the AFP submission correctly points out that the judicial officer is obliged to have regard to submissions put forward by the arrested person or his legal representatives. The AFP submission fails to acknowledge that, as the short interviews with Dr. Haneef make clear, the AFP officers did not advise Dr. Haneef of his right to make submissions and actively discouraged him from attempting to do so.
- 11.4 The AFP submission, in the fourteenth paragraph, states that there is no upper limit to the amount of time that can be specified. In retrospect, the absence of an upper limit constituted a flaw in the safeguards contained in part 1C provisions. The Inquiry is urged to recommend amendment of part 1C to include an upper limit on the time that a person can be detained without being charged.
- 11.5 In the fifteenth paragraph, the AFP submission states that the judicial officer is not required to assess the guilt or innocence of the detainee. This ignores the fact that s.23CB(7) Crimes Act provides that the judicial officer may only make a specified time order if satisfied that the order would be appropriate. The factors which the judicial officer must consider are open ended. The phrase “any other relevant matters” is used to achieve this.

- 11.6 Since the detention (and the application) is legally founded upon a lawful arrest, whether or not there are reasonable grounds for the investigating officers to continue<sup>18</sup> to believe that the detainee committed the offence for which they were arrested is a relevant criterion in deciding whether a specified time order should be made. In Dr. Haneef's case, reasonable grounds did not exist to believe that he had committed the offence for which he was arrested. Accordingly, no order for specified time could have lawfully been made.
- 11.7 In fairness to Mr. Gordon, the AFP provided him with incomplete and inaccurate information. Therefore, it may have been difficult for Mr. Gordon to properly apply the statutory criteria.
- 11.8 In the eighteenth paragraph, the AFP submission states that, as a result of a review, the AFP has "placed further evidence on training in the operation of part 1C". Since the AFP submission, presumably approved at the highest management level and prepared with the assistance of AFP lawyers, displays a fundamental lack of understanding of the legislation, such training is likely to perpetuate the that lack of understanding among the AFP staff.

#### **EVENTS IN THE UK      Pages 14 - 15**

- 12.1 In the third paragraph, the AFP submission sets out details of five people arrested in the UK "in relation to the attacks". In the fourth dot point, the AFP acknowledges that Sabeel Ahmed, the person to whom Dr. Haneef gave his SIM card, was charged with "failing to disclose information relating to an act of terrorism". Mr. Andrews and Mr. Gordon were not told by the AFP that Sabeel Ahmed's actions were limited to this much less serious conduct.
- 12.2 For example, in the Simms document, dated 11 July 2007, the statement was made that Sabeel Ahmed had been "arrested for his alleged involvement in the terrorist attacks". The AFP submission does not acknowledge that Mr. Gordon was misled in this way by the Simms document.
- 12.3 In part A of the brief prepared for Mr. Andrews to cancel the visa, it was stated that seven persons [this included Sabeel Ahmed] had been arrested "on suspicion of being or having been concerned in the commission, preparation or instigation of an act of terrorism". The AFP submission does not acknowledge that Mr. Andrews was misled in this way.
- 12.4 However, the AFP submission goes on to acknowledge, publicly for the first time, the existence of the Kafeel email. In doing so, however, the AFP submission fails to present the information fairly and accurately. The submission states: "the Court heard that Dr. Sabeel Ahmed was sent an email by his brother Kafeel which indicated Kafeel's intentions prior to him driving a vehicle into Glasgow airport." The submission fails to state that the Court was satisfied that Sabeel had not

---

<sup>18</sup> See subs.3W(2) Crimes Act.

accessed the email prior to the Glasgow events happening.<sup>19</sup> The Court was also satisfied that the email showed conclusively that Sabeel Ahmed had no knowledge of the attacks and showed that he was not a member of the organisation that perpetrated the attacks.

### **THE ARREST OF DR. HANEEF Pages 15 - 18**

- 13.1 In the first paragraph, the AFP submission states that the MPS told the AFP that Dr. Haneef was suspected to be in Australia. The doctors who rang Sabeel Ahmed's mother with Tony Webster's number would have given Mr. Webster this information. The submission also states that the MPS told the AFP that there was a phone associated with Dr. Haneef "which had been identified in their investigation of the attacks". This confirms that, as discussed in the previous submissions on behalf of Dr. Haneef, the MPS did not suggest that Dr. Haneef was guilty of any criminal offence.
- 13.2 In the second paragraph, it is again stated that the UK authorities had issued an arrest notice. That document is not mentioned in any documents obtained by Dr. Haneef's lawyers.
- 13.3 In the fourth paragraph, it is stated that police identified Dr. Haneef's residence and placed it under surveillance. This is supported by notes contained in the AFP FOI release. By that time, however, the police should have been able to locate Dr. Haneef at his work. It is our understanding that the two doctors who spoke to Mr. Webster advised that Dr. Haneef would, very likely, be happy to answer any questions that police had for him. Dr. Haneef has always been willing to do that as his conduct in the interviews makes dramatically clear.
- 13.4 The sixth paragraph states that it was determined that Dr. Haneef should, if lawfully achievable, be prevented from travelling on the plane to India.
- 13.5 The AFP submission fails to answer relevant questions about the steps taken at that time. Why did the surveillance of Dr. Haneef's residence not cause him to be located? He passed back and forth a number of times. When was it discovered that Dr. Haneef was booked on the plane? The discovery should have occurred soon after the ticket was booked, not too long after 3.00pm. Presumably, the AFP had placed an airport alert and the airport computer would have identified Dr. Haneef as soon as his name appeared on the aircraft's passenger manifest. Why was no attempt made to ask Dr. Haneef to answer questions as soon as he arrived at the airport? Why was he not asked to postpone his trip for 24 hours so the AFP could ask him some questions? These issues are not addressed.

---

<sup>19</sup> See [http://www.thaindian.com/newsportal/world-news/indian-doctor-sentenced-for-glasgow-airport-bombing-bid\\_10037050.html](http://www.thaindian.com/newsportal/world-news/indian-doctor-sentenced-for-glasgow-airport-bombing-bid_10037050.html).

- 13.6 The seventh paragraph states that the AFP (presumably, this means senior officers not just Mr. Simms and Mr. Thompson) assessed the available evidence and decided that sufficient grounds existed for the arrest of Dr. Haneef.
- 13.7 The only evidence mentioned in the AFP submission (back in the first paragraph) is that there was a phone “associated with him which had been identified in their investigation of these attacks”. The AFP submission does not explain how that piece of evidence could have constituted reasonable grounds to believe that Dr. Haneef intentionally provided, to a terrorist organisation, resources that would help the terrorist organisation engage in terrorist activity knowing that the organisation was a terrorist organisation.<sup>20</sup>
- 13.8 For all the AFP knew, the phone could have been, quite innocently, provided to a relative for the remaining calls, twelve months earlier, when Dr. Haneef was leaving the country and had no further use for the phone. For all the AFP knew, the phone might have been located hundreds of kilometres from any terrorist incident in the possession of someone whose only involvement with the incident was that he was a brother of one of the perpetrators.
- 13.9 The AFP submission confirms that the arrest of Dr. Haneef was in breach of the requirements of s.3W Crimes Act that requires that there be a belief on reasonable grounds that Dr. Haneef had committed the offence for which he was being arrested.
- 13.10 In the ninth paragraph, it is stated that the arresting officer (Mr. Simms, presumably) formed the necessary belief and also a belief that proceeding by summons against Dr. Haneef was not appropriate in the circumstances. No one asked Dr. Haneef a single question before he was taken off. His request for a lawyer was then ignored **in breach of s.23G(2) Crimes Act**.

#### **EVIDENCE Pages 18 - 26**

- 14.1 Until the relevant documents are provided, it is not possible to identify the evidence which the AFP used to convince Mr. Porritt to advise that there was sufficient evidence to charge Dr. Haneef.
- 14.2 The first paragraph states that Dr. Haneef's intended departure raised considerable suspicion. Dr. Haneef was not given a chance to explain his intended departure prior to his arrest.
- 14.3 In the second paragraph, the AFP submission states that Dr. Haneef sought to leave Australia almost immediately after being notified of UK law enforcement interest in the SIM card. The AFP submission confirms why this should not have been thought suspicious. The seventh paragraph confirms that Dr. Haneef rang the hospital HR office at 10.00am enquiring “about parental leave stating that his wife

---

<sup>20</sup> This sentence paraphrases the offence for which Dr. Haneef was arrested.

had just had a baby in India and he wanted to see how long he could take off work”. Dr. Haneef told police that he rang the HR department about parental leave.<sup>21</sup> Confirmation that Dr. Haneef had made this call has not been mentioned in any public AFP document until now. This information appears not to have been given to Mr. Gordon; the National Counter Terrorism Committee; the minister for Immigration and Citizenship; or to Ms. Payne. It was not conveyed to the Federal Court.

**14.4 The call at 10.00am was before Dr. Haneef spoke to Dr. Ali; before he spoke to his brother; and before he spoke to Sabeel’s mother. It is the clear proof that Dr. Haneef intended to leave Australia to see his wife and daughter before he knew of any issue with the SIM card and, until 24 October 2008, the AFP withheld the fact that this information had been independently confirmed.**<sup>22</sup>

14.5 Going back to the second paragraph of the AFP submission, the exact timing of the various calls cannot be confirmed without the AFP releasing the electronic timing of Dr. Haneef’s calls taken from his phone. However, all of the available information suggests that Dr. Haneef’s recollection of a number of events occurring at about 2.30pm seems to be accurate.

14.6 It is now clear from the QPS FOI releases that Dr. Haneef saw Cathy Bosworth, the administration officer, “prior to 2.51pm”. Presumably, there is a document that allows Ms. Bosworth to correct her earlier estimate of 4.00-4.30pm. That document should be made available by the AFP.

14.7 It is known that Dr. Haneef first called Tony Webster on his mobile at 3.08pm. The AFP officers confirmed this during the first interview. It is clear that Dr. Haneef was keen to resolve any questions about his SIM card. It can be inferred that the call from Sabeel’s mother was shortly before this first call and after he had completed his leave forms with Ms. Bosworth. It is likely, however, that Dr. Haneef had some knowledge of some problem from about 2.30pm. The AFP should be able to provide these precise timings from the electronic phone records.

14.8 The call at 10.00am, however, makes the precise timings irrelevant because Dr. Haneef had already started pursuing leave before the “problem with your card” issue had arisen.

14.9 In the third paragraph, the AFP mentions the phone calls to Mr. Webster and the fact that Dr. Haneef had retained the note of Mr. Webster’s number, presumably, because he wanted to continue to try to contact him.

---

<sup>21</sup> Transcript of second interview, page 355.

<sup>22</sup> It is possible that, if they had tried, the AFP could also have confirmed Dr. Haneef’s statements that “cover” was not available to allow Dr. Haneef to take time off, a week earlier when the baby was born. The AFP has never indicated whether these inquiries were made. See transcript of first interview, page 72.

- 14.10 Even now, the AFP submission makes no acknowledgement that this was evidence **exonerating Dr. Haneef**. This key information was not passed on by the AFP to Mr. Gordon. The AFP submission does not answer the question whether this information was provided to Mr. Porritt for the purpose of his advice.
- 14.11 The fourth paragraph mentions the one way ticket. It does not mention the fact that, in the interview immediately after his arrest, Dr. Haneef told the police that it was his father-in-law who decided to buy the ticket. The AFP submission states that the AFP was suspicious because it did not make economic sense to buy a one way ticket.<sup>23</sup> However, buying a one way ticket did make economic sense to the father-in-law. It was he who was paying for another person's ticket.
- 14.12 The fifth paragraph states that the police were suspicious because Dr. Haneef had all his medical qualification documents with him at the airport. It is not clear when this suspicion arose because Dr. Haneef does not appear to have been asked any questions about it until the second interview had been proceeding for more than seven hours.<sup>24</sup> When the question was asked, Dr. Haneef said: "Just in case, normally, when I enter a country, I do carry all this and, sometimes, Customs Officials, they ask a lot of things and I carry them with me all the time". There was no follow up question.
- 14.13 In the sixth, seventh and eighth paragraphs of the AFP submission, the submission discusses the reasons given by Dr. Haneef for his seven day trip to India. The first discussion relates to the explanation given by Dr. Haneef, in his interview, immediately after his arrest. The paragraph mentions both Dr. Haneef's purpose of visiting his wife and the problem with the card.
- 14.14 The exchange that precedes the answer involves the police officers asking Dr. Haneef whether he agreed that he had been told that he had been arrested for supporting a terrorist organisation. Dr. Haneef insisted that that he has not supported a terrorist organisation.
- 14.15 In the paragraph quoted in the AFP submission, Dr. Haneef denied the allegation; explained his reason for visiting India; and tried to explain about the card. In the light of the phone calls Dr. Haneef had received that day, he correctly thought that the card was the cause of the misunderstanding which had led to his arrest. Note that Dr. Haneef mentioned both that his wife gave birth, "last week", which was true and that the baby was born in a caesarian operation, which was also true. He also mentioned that one of the doctor's [that is, Sabeel's] Mum called about the problem [with the card]. He also correctly mentioned that he had not been in the

---

<sup>23</sup> We have been told that tickets back from India to Australia are often heavily discounted. We have not been able to check this information. Our experience of Australian airlines in Australia does suggest, however, that issues such as whether one is trying to travel at peak times is as important as whether the ticket is single or return.

<sup>24</sup> Transcript of second interview, page 231.

- UK since last year. His estimation of the date that he left the UK as 25 July 2006 was very accurate.
- 14.16 In the seventh paragraph, the AFP confirms, for the first time, that Dr. Haneef had sought parental leave, that morning, prior to any news of a problem with his SIM card. The reference in the paragraph is to his wife having just had a baby. Until one sees the statement which was taken from the HR person who answered the phone and when it is known when the statement was taken, the reference to “just had” a baby cannot be given much weight. For example, if Dr. Haneef had said, “my wife has given birth and I want enquire about leave”, the clerk on the end of the phone may well have presumed and remembered that as “just had” a baby.
- 14.17 The second reference in the seventh paragraph is obviously to the statement of Ms. Bosworth. The paragraph says that the explanation given by Dr. Haneef was that his wife had to have “an emergency caesar” which was true and that, when Dr. Haneef was asked about how the baby was, he said that the baby had “a bit of jaundice”. The QPS notes show that Ms. Bosworth had at first recalled that the leave was applied for between 4 and 4.30pm. Ms Bosworth’s recollection of the conversation with Dr. Haneef may have left out some of the detail.
- 14.18 In the eighth paragraph, the AFP submission passes off information from Dr. Haneef as information that the AFP had, itself, obtained. Dr. Haneef, in the first interview, told police that the baby was born on 26 June. This is consistent with “last week” stated in the airport interview. The AFP submission implies that this fact was ascertained by its inquiries (in India) and was inconsistent with what Dr. Haneef had said.<sup>25</sup>
- 14.19 The eighth paragraph also states that Dr. Haneef’s associates were unaware of the medical emergency requiring Dr. Haneef’s return to India. The statement is based on a false proposition. Dr. Haneef was not going home because of a medical emergency. He was going home because he wanted to see his wife and new born child. His desire was made more urgent by the fact that Haniyah had been re-admitted to hospital. This was clear from the fact that he sought leave, a week earlier, but had not been able to get cover in a busy hospital.<sup>26</sup> This fact could have been checked by the AFP with one phonecall. Haniyah had gone back to hospital with jaundice. That could have been confirmed with one further phone call. The AFP submission does not explain why these basic checking processes were not carried out immediately.
- 14.20 The eighth paragraph goes on to state that one colleague told Dr. Haneef on 1 July, the Sunday, that he was going to India and Dr. Haneef did not say that he had travel plans of his own. At that stage, Dr. Haneef did not know whether he

---

<sup>25</sup> Mr. Simms had the same thing in paragraphs 24 – 26 of the statutory declaration in the Simms document.

<sup>26</sup> Transcript of first interview, page 72.

had cover and could take leave. So far as the baby's health was an extra concern, he was monitoring that with continuous calls to his wife.

- 14.21 The ninth paragraph cites part of the statement taken from Dr. Ali. This information has been withheld from FOI release, presumably, because it has national security implications and could prejudice trials in the UK.<sup>27</sup> It is difficult to understand how that basis for withholding the information could be sustained.
- 14.22 In the statement, Dr. Ali quotes Dr. Haneef as saying: "I don't know what has happened but there are some issues regarding my old card which I have left there and one of my friends is in custody, something like that. And he told, he also told me, my wife is also sick. I don't know what to do."
- 14.23 Dr. Ali is obviously struggling to remember the details of the conversation. The reference to the sick wife may well have to do with the fact that Haniyah was sick. But the conversation is no cause for suspicion. Dr. Haneef had already arranged his leave and, probably, by that time, his ticket had been confirmed by a phone call from Dr. Haneef's father-in-law. More importantly, Dr. Haneef had just spent half an hour trying to get through to Mr. Webster to find out what this problem with his card was, without success. This is probably when Dr. Ali gave Dr. Haneef a card to try to get through to Mr. Webster using a different method. There was nothing suspicious in Dr. Haneef being worried about the matters that had been communicated to him by Sabeel Ahmed's mother. Further, desperately trying to talk to the police is not usually the first action of a guilty person.
- 14.24 The tenth paragraph refers to the chat room conversation with Dr. Haneef's brother. It is to be remembered that Dr. Haneef's concerns, as expressed in his conversation with Dr. Ali, predated the chat room conversation. The pop up which allowed the brother to draw the connection between Sabeel's problems and the attacks in the UK, occurred a further hour and a quarter after the phone chat commenced. No doubt, however, Dr. Haneef's continuing inability to contact Mr. Webster<sup>28</sup> and straighten the matter out added to his concern.
- 14.25 The chat room conversation has been dealt with at length in the submission and the supplementary submissions. Only a few comments will be made here.
- 14.26 The translation used is the same translation used in the second record of interview. The AFP submission makes no acknowledgement that the translation was challenged as incorrect by Dr. Haneef when he was questioned about it. The AFP submission also does not acknowledge that Dr. Haneef was prevented, by the interviewers, from fully correcting the translation during the second interview.

---

<sup>27</sup> It appears to be part of the part B secret immigration documents briefed to Mr. Andrews. See AFP FOI release, folio 9.

<sup>28</sup> Dr. Haneef had tried again to call Mr. Webster during the early part of the chat conversation.

- 14.27 The AFP submission takes its first extract from the conversation one and one quarter hours into the conversation. It selects 12 lines. It then skips five lines in which Dr. Haneef and his brother talk about Sabeel's mother asking him to contact Tony Webster and Dr. Haneef says that he has not been able to get through.
- 14.28 Although the third extract contains the brother's urging that Dr. Haneef leave his contact details with the hospital, this is not acknowledged in the AFP submission.
- 14.29 In the eleventh paragraph, it is claimed that the AFP were suspicious because there was insufficient discussion of Hanayah's medical problems. By the time the AFP received the translation of the chat room conversation, the AFP officers had the benefit of what Dr. Haneef had told them in both the airport interview and the first interview. They had also interviewed Dr. Ali.
- 14.30 Therefore, the AFP knew that Dr. Haneef had, for legitimate reasons, been worried about the problem with his SIM card and his attempts to resolve it had been thwarted when Mr. Webster did not pick up the phone. They also knew that Dr. Haneef had been unable to get cover a week earlier. They knew he had enquired about parental leave earlier that day before any knowledge of the problem with the SIM card. They knew that he had received a worried call from his second cousin's mother suggesting that Dr. Haneef's card was causing his cousin problems; Dr. Haneef had arranged leave; his ticket had been booked and come by email; his airport transfer had been booked; and that he was waiting for it to arrive. That the two brothers discussed this matter of recent concern to both of them was no cause for suspicion.
- 14.31 It is significant that the AFP did not, when they first accessed the translated transcript of the chat conversation, make any attempt to ask Dr. Haneef any questions about this "suspicious conversation". Instead, they left Dr. Haneef in custody and continued to make applications to Mr. Gordon. If the conversation was of any real concern, it would be expected that Dr. Haneef would have been questioned about it as soon as possible.
- 14.32 The twelfth and thirteenth paragraphs return to the one way ticket. The submission states that it was suspicious that Dr. Haneef did not use his credit card to buy a return ticket and asked his father-in-law to buy it, instead. Dr. Haneef was not asked at any time why he did not buy the ticket with his credit card.
- 14.33 Paragraph 14 sets out Dr. Haneef's contact with Kafeel Ahmed and describes it as longstanding and ongoing. Eight contacts over three years are set out, the last a short chat conversation, three months earlier. Every aspect of the relationship was volunteered freely by Dr. Haneef and none of it was found to be inaccurate. For example, Dr. Haneef was not asked about any chat conversation with Kafeel other than the one he nominated.

- 14.34 The fifteenth paragraph deals with Dr. Haneef's relationship with Sabeel. These seven items had been volunteered by Dr. Haneef. They also were accurate. By the end of the first week, the AFP must have been aware of the Kafeel email. The AFP, therefore, would have known that Sabeel Ahmed was not a member of the group responsible for the UK attacks.
- 14.35 The sixteenth and seventeenth paragraphs deal with Bilal Abdulla and the contact dated to December 2006. The AFP submission acknowledges that Dr. Haneef explained that he received Bilal's details from Sabeel along with a number of others after Dr. Haneef had lost his mobile phone. The AFP submission does not acknowledge that the suspicion about the date of uploading had been allowed to fester in AFP minds because they did not bother to ask Dr. Haneef about it until 14 July 2007.
- 14.36 The eighteenth and nineteenth paragraphs contain matters which ensured that the AFP submission received wide media coverage with further damage to Dr. Haneef's reputation.<sup>29</sup>
- 14.37 The first item is a brochure found in Dr. Haneef's flat. No copies of the document have been received on FOI. It appears that no reference to the document is made in any of the material provided to the Minister for Immigration. It seems not to have been mentioned in any of the non-disclosed material put before Mr. Gordon. (There would be no basis not to disclose the material on FOI since, as a document found in Dr. Haneef's flat, no MPS or national security reasons would justify non-disclosure. This is particularly so since the nature of the document has been disclosed in this public submission.) Dr. Haneef was not questioned about the document.
- 14.38 It is surprising, to say the least, that a document which was not important enough to be the subject of a single question is now put forward as relevant evidence.
- 14.39 The second document is comprised by a number of audio files said to contain a militant view of jihad. The same comments are made with regard to this document. This appears to be the first time it has been referred to. It is submitted that there is nothing to suggest that it constituted evidence against Dr. Haneef.
- 14.40 Dr. Haneef has, at his first opportunity, responded publicly<sup>30</sup> to the aspersions cast by the AFP by referring to these documents for the first time in its submission.
- 14.41 The twentieth to twenty-fourth paragraphs focus on the chat conversation of 17 June 2007 between Sabeel and Dr. Haneef. The conversation confirms that Dr. Haneef had no knowledge that Kafeel was in Glasgow until that conversation. The

---

<sup>29</sup> See, for example, <http://www.news.com.au/dailytelegraph/story/0,22049,24543796-5001021,00.html>.

<sup>30</sup> See <http://www.smh.com.au/news/national/postcard-from-the-gulf-haneefs-new-life/2008/10/24/1224351548989.html>.

- AFP delayed asking Dr. Haneef any questions about this conversation until the continuous detention order strategy was no longer viable.
- 14.42 However, to make anything of this email, the AFP submission has to admit to knowledge of the Kafeel email, a subject that has been avoided in public until the date of this submission, 23 October 2008.
- 14.43 The twenty-fourth to twenty-fifth paragraphs deal with the Kafeel email.
- 14.44 The first thing to note is that the AFP submission does not state when the AFP became aware of the Kafeel email. This is an important omission.
- 14.45 The twenty-fifth paragraph states that an “uncritical face value acceptance of the [Kafeel email] would suggest that Dr. Sabeel Ahmed had no prior knowledge of the attacks because Kafeel Ahmed had actively kept them a secret from Dr. Sabeel Ahmed”.
- 14.46 First, one might reasonably assume that the UK Court which accepted Sabeel’s plea of guilty and sentenced him is not an uncritical reader. Also, the Court is unlikely to have accepted the document at face value without having considered the matter carefully with relevant assistance from the Crown. The Court accepted that the email proved that Sabeel Ahmed had no prior knowledge of the attacks and was not a member of any terrorist organisation.
- 14.47 Second, the AFP should have acknowledged the existence of the email as soon as it became aware of the document. It was a document which **exonerated the person to whom Dr. Haneef gave his SIM card of any involvement in or foreknowledge of the attacks in the UK.**
- 14.48 Third, there was no excuse for advising, as did the Simms document and the visa cancellation brief, that Sabeel Ahmed was charged with an offence involving active participation in terrorist attacks when that was untrue and the email showed that he had no such involvement.
- 14.49 Fourth, as part of the duty of the Crown to be impeccably fair, the email should have been provided to Dr. Haneef and his lawyers as soon as the AFP received knowledge of it. It was information relevant to the detention applications in that it was **exculpatory of Dr. Haneef and went to the issue of whether his arrest continued to be lawful.** There can be no justification for withholding that information.
- 14.50 Fifth, the duty arising on an ex parte application meant that that document should have been disclosed to Mr. Gordon. It appears that it was not so disclosed.
- 14.51 Sixth, the document should have been provided as part of the immigration brief.

- 14.52 Seventh, the DPP submission asserts that the Kafeel email was not included in the material briefed to Mr. Porritt. **It was essential that exculpatory information of this kind be provided to the DPP.** The failure to provide such important information means that any advice provided by the DPP was likely to be unreliable because relevant information had been withheld.
- 14.53 The contents of the Kafeel email should have been disclosed to the bail court.
- 14.54 The twenty-eighth and twenty-ninth paragraphs deal with the SIM card. The discussion seems to acknowledge, implicitly, that the giving of the SIM card to Sabeel Ahmed did not constitute evidence of any wrong doing on the part of Dr. Haneef.
- 14.55 The thirtieth to thirty-ninth paragraphs deal with “other relationships”. Dr. Haneef’s relationship with Dr. Ali and Dr. Haneef’s leaving of personal possessions with Dr. Haneef is mentioned. Dr. Ali was never arrested and never charged with any relevant offence. Dr. Haneef advised the police in the airport interview that he had left items with Dr. Ali. There was never any basis for suspicion concerning Dr. Haneef because he knew and associated with Dr. Ali.
- 14.56 The thirty-fifth paragraph makes an assertion about “telecommunications services which appeared to have been subscribed to in false details”. This matter was not the subject of any relevant questioning of Dr. Haneef. It is difficult to make any sense of this statement. We have received instructions from Dr. Haneef that he never used or provided any false information to obtain any mobile telephone number. He has used telephone cards readily able to be purchased at retail outlets in Australia to contact his family in India and his brother in law in the United Kingdom. If these are the telecommunications services to which the AFP submission refers, Dr. Haneef had no knowledge that they were “subscribed to in false details”. There was no reason for him to suspect anything of that kind. Dr. Haneef told the AFP in his interviews that he had used a purchased phone card of this kind and also told the AFP that Dr. Ali had provided him with a card to try to contact Mr. Webster. There is no reason to believe that the “telecommunications services” referred to in the AFP submission provided any basis to suspect Dr. Haneef of wrongdoing.
- 14.57 The AFP, through its submission, has set out the evidence which its officers considered relevant. The submission and the supplementary submissions provided on behalf of Dr. Haneef analysed the information available to the AFP based on the FOI releases; the submissions of other parties; and other sources of information. The AFP submission does not reveal anything of significance that was not considered in the submissions and the supplementary submissions.
- 14.58 The listing of “evidence” in the AFP submission confirms that the issues raised by Dr. Haneef’s lawyers in the two previous submissions were valid and continue to have weight. The listed evidence did not, at any time, provide a proper basis to

arrest Dr. Haneef or to continue to detain him. The “evidence” raised a number of minor issues that made it proper to contact Dr. Haneef to ask him to explain some matters which might have been unclear. The “evidence” did not, at any stage, go beyond that.

#### **THE DETENTION OF DR. HANEEF      Pages 26 - 28**

- 15.1 The first nine paragraphs provide a description of the applications made to Mr. Gordon. They fail to respond to the issues raised in the submission and the supplementary submissions.
- 15.2 The tenth paragraph refers to “the AFP position ... that the confidential material contained in the application should not be disclosed due to its highly sensitive nature”. It is submitted that the AFP position misunderstands the procedure and substantive basis of public interest immunity exemptions.
- 15.3 It is now clear that most if not all of the material was neither sensitive nor confidential. Most of it had come from Dr. Haneef.
- 15.4 The thirteenth to fifteenth paragraphs repeat the view that the AFP had no obligation to possess “admissible evidence sufficient to prove the offence which was under investigation”. As stated above, part 1C applications are dependant upon a lawful arrest. The part 1C applications, therefore, should not have proceeded if the AFP was not in possession of material which constituted reasonable grounds for a belief that Dr. Haneef had committed the offence for which he was arrested.
- 15.5 Therefore, the statement in the thirteenth paragraph that the AFP’s applications addressed the requirements of the legislation is incorrect. The AFP did not present their evidence accurately and fairly. The AFP did not have evidence which justified the arrest of Dr. Haneef pursuant to s.3W Crimes Act.
- 15.6 The AFP discussion of the detention applications does not address most of the issues which have been raised concerning those applications.

#### **THE CHARGING AND PROSECUTION OF DR. HANEEF      Pages 28 - 32**

- 16.1 The first four paragraphs set out the principles applying to consultation between the AFP and the DPP. The AFP failed in this matter to obtain early advice from the DPP.
- 16.2 The fifth to seventh paragraphs confirm that no substantive briefing of the DPP occurred until 12 July 2007. At that point, the AFP was concerned that a decision whether or not to charge Dr. Haneef would soon need to be made.

- 16.3 The eighth and eighteenth paragraphs refer to updated information concerning the location of the SIM card.
- 16.4 The ninth to fourteenth paragraphs appear to dispute aspects of the DPP submission about the atmosphere in which Mr. Porritt provided his advice. This submission cannot resolve that dispute. However, since there is a dispute whether the AFP or the DPP is responsible for the decision to charge Dr. Haneef, all documents relating to the advice given by the DPP should be released. Among the DPP allegations that pressure was imposed on the DPP officers, there is an allegation that the DPP officers were told that Dr. Haneef would leave the country if he were released. If that was said, it was untrue as Dr. Haneef always indicated his willingness to be available to answer questions if released.<sup>31</sup>
- 16.5 We would add a number of things, however. The fourteenth paragraph states that Mr. Jabbour was responsible for laying the charge. Normally, this would be done by the arresting officer. The AFP submission fails to explain why neither of the officers who were present at the arrest and who had conducted all of the interviews charged Dr. Haneef.
- 16.6 The AFP submission does not reveal which of his superiors at the Canberra office Mr. Jabbour telephoned. The AFP submission does not say what was said in that conversation. This is a crucial question. The persons to whom Mr. Jabbour spoke should also state whether they, themselves, had had other conversations either with other senior AFP officers; with officials in other agencies; or with Ministers of the Crown.
- 16.7 The AFP submission appears to confirm that Mr. Jabbour was the author of the assessment, which appears in the AFP files, that there was insufficient evidence to charge Dr. Haneef.
- 16.8 The DPP submission also appears to allege that the AFP attempted to shop for an opinion from a different DPP officer.<sup>32</sup> The AFP submission does not address this allegation.
- 16.9 Further, DPP management should have contacted the AFP when they discovered that Mr. Porritt had given an opinion that the charge was made out to the level supporting an arrest. The situation, although regrettable and apparently brought about by the pressure applied to Mr. Porritt, was retrievable at that stage as Dr. Haneef was not charged until the next morning.<sup>33</sup>

---

<sup>31</sup> DPP submission, paragraph 14.19. Unless, of course, Mr. Jabbour was referring to the whole of government proposal to cancel Dr. Haneef's visa.

<sup>32</sup> DPP submission, paragraph 14.42.

<sup>33</sup> See DPP submission, paragraphs 14.39 – 14.40.

- 16.10 The fifteenth and sixteenth paragraphs set out the DPP claim that the DPP opinion was the “catalyst for the initiation of the charge”. The statement is made that, if the AFP had ignored the DPP advice, it would have been “without precedent”.
- 16.11 This suggestion that the AFP was obliged to charge because of Mr. Porritt’s advice is inaccurate. Ms. Hogan, of the QPS, provided the obvious correct option in her discussions, namely, that further legal advice should be obtained.<sup>34</sup> A police officer should never charge a person if the police officer does not believe that the DPP guidelines concerning prosecution are not met. There should be admissible evidence to establish every element of the offence. There should be at least a reasonable prospect that a jury will convict the person of the offence.
- 16.12 Whatever form Mr. Porritt’s advice took, the AFP was not entitled to rely upon it if the brief was not a full and fair disclosure of the available evidence. Since the AFP does not appear to dispute that the Kafeel email was not briefed to Mr. Porritt, this condition was, obviously, not satisfied. In the circumstances, Mr. Jabbour and those who he spoke to can take no comfort from Mr. Porritt’s opinion.
- 16.13 The AFP submission also does not appear to dispute the DPP suggestion that Mr. Jabbour was asserting that the “holes in the evidence” would be filled with further investigations. Mr. Jabbour had no reasonable basis to make those assertions.
- 16.14 In the twenty-second paragraph, the AFP submission states that no AFP officer was in Court for the bail hearing.<sup>35</sup> The AFP submission makes the suggestion that this was normal conduct on the part of the AFP. In a matter of such importance, that the National Counter Terrorism Committee discussed it every day, it is inconceivable that the AFP believed that it was not necessary for someone to be in Court to instruct Mr. Porritt on a full-scale bail application.
- 16.15 The statement concerning the SIM card was published in the media in the reporting of the bail decision if not before. The AFP submission does not make it clear what the submission intends when it refers to when “the mistakes were raised in the media”. It is likely that the reference is to Raphael Epstein’s story on Friday, 20 July. The mistake should have been ascertained when the first media report appeared. A public statement should have issued, at that time, to correct the misinformation which had been presented to the court. This is especially so because the information went to the heart of the allegations against Dr. Haneef and was relied on heavily in the Crown’s argument.

---

<sup>34</sup> If this were to be done, it should have been done openly, with disclosure of the previous advice obtained and setting out the reservations felt with the advice that suggested laying a charge was open on the evidence.

<sup>35</sup> The DPP submission states that AFP officers from New South Wales instructed on the bail application. However, they knew nothing about the case and could provide no assistance. That should not have prevented those officers from taking detailed notes and reporting back to Mr. Jabbour. The email which passed between senior AFP officers, that day, indicated that someone had taken some notes of the hearing.

- 16.16 All of the evidence suggests that the AFP wanted to avoid the whole of government strategy that, if Dr. Haneef could not be charged, his visa should be cancelled and he should be removed from the country. The advice of Mr. McCarthy, the High Commissioner in New Delhi, that cancellation of the visa in those circumstances would cause a great deal of angst with the Indian government would have been known to the AFP. Charging Dr. Haneef was a better option than cancelling his visa at that stage. However, since Mr. Jabbour had gone on the record that he did not believe there was enough evidence to charge, a decision to charge could not be defended without some cloak of legitimacy. A DPP opinion that Dr. Haneef could be charged would provide that cloak. Eventually, though not without difficulty, the necessary cloth was obtained.

### **IMMIGRATION DECISIONS      Pages 33-34**

- 17.1 The first eight paragraphs set out some of the procedures involved in the AFP providing the cancellation brief to DIAC. The AFP submission confirms that the National Counter Terrorism Committee was aware of the events as they occurred and the strategy involved.
- 17.2 The submission does not attempt to face the issue that the information provided to DIAC was incomplete, selective and misleading.
- 17.3 The ninth and tenth paragraphs deal with the application for a criminal justice stay certificate. The AFP submission does not address the fact that Ms. Weldon was told by DIAC an hour before Mr. Andrews signed the papers that DIAC had decided to cancel the visa.
- 17.4 The AFP submission does not deal with the fact that Mr. Jabbour certified that Dr. Haneef was a danger to the public on 14 July (in the bail affidavit) while Mr. Prendergast certified on 16 July (with Mr. Jabbour's approval) that there was no evidence that Dr. Haneef was a danger to the Australian community.
- 17.5 The AFP submission does not deal with the question why, if the investigation was continuing into Dr. Haneef, the AFP did not seek a criminal justice stay certificate that would allow Dr. Haneef to remain in the country until the investigation was completed. This type of certificate was available even though the charge had been dropped.

### **CHANGES TO INFORMATION DURING INVESTIGATION      Pages 34 - 35**

- 18.1 The second to fifth paragraphs provide information as to when the AFP was given information by the MPS concerning a SIM card and a mobile phone handset. All records associated with the receipt of this information should now be made available since the information, itself, is no longer regarded as sensitive.

- 18.2 The claim that Mr. Porritt was advised on the morning of 14 July 2007 of the changed information concerning the SIM card appears to be contrary to the DPP submission (and, presumably, Mr. Porritt's evidence). All information including written and oral statements received by the Inquiry relating to this conflict of evidence should be released.
- 18.3 Questions remain about the accuracy of the claims in the AFP submission about when information was received. The Simms document makes it clear that the mobile phone handset was located with Sabeel. By that time, the AFP had Dr. Haneef's statements that he left his SIM card behind (and this is what he was eventually charged with). If the AFP had information, at that stage, that the SIM card was found in the possession of Kafeel in Glasgow, there is no sensible reason why Mr. Simms did not include that in the document he provided on 11 July to Mr. Gordon.
- 18.4 The sixth and seventh paragraphs deal with the residence of Dr. Haneef and Sabeel at 13 Bentley Road, Liverpool.
- 18.5 The AFP submission ignores the issue raised against the AFP on this question. The Simms document states that Dr. Haneef had said that he lived with both Kafeel and Sabeel at 13 Bentley Road Liverpool. This was incorrect. Dr. Haneef made it clear that he did not live with either brother at Bentley Road.
- 18.6 In part A of the Immigration brief, the AFP stated that Dr. Haneef had said that he lived with Sabeel at 13 Bentley Road, Liverpool. This was incorrect.
- 18.7 The two documents, one a statutory document, the other seeking to remove Dr. Haneef's visa, misquoted and misrepresented Dr. Haneef.
- 18.8 This issue is not addressed in the AFP submission.
- 18.9 The eighth to thirteenth paragraphs refer to reporting by media outlets that the AFP had written phone numbers and names in Dr. Haneef's diary. This was an error by those media outlets.
- 18.10 However, the error is understandable if one refers to the relevant transcript.<sup>36</sup> It appears that what was shown was a handwritten copy made by an investigating police officer of what was written in the back of the diary. On a reading of the transcript, however, it could easily have been another page of the diary or a number of photocopies of pages from the diary, one of which contained the police handwriting.
- 18.11 In the fourteenth to sixteenth paragraphs, there is something resembling an acknowledgement of an error made in the Simms document. The discussion concerns the statement in the Simms document that Dr. Haneef had given no

---

<sup>36</sup> See transcript of first interview, pages 119 – 122.

explanation for having a one way ticket. The submission states “[the Simms document] could have better reflected the situation if it stated ...” There is still no apology or even a statement of regret.

- 18.12 More importantly, however, even when appearing to acknowledge error, the AFP still do not understand the obligation upon any advocate and, especially, the Crown, to present information fairly.
- 18.13 The AFP officer should have provided the evidence as to the one way ticket and the evidence of the explanation. It was for the judicial officer to assess whether the explanation was reasonable or not. This goes to the essence of presenting information fairly.

#### **OTHER MATTERS            Page 36**

- 19.1 This short section confirms that both the Attorney-General and the National Counter Terrorism Committee were briefed by the AFP about the investigation concerning Dr. Haneef. The briefings of the Attorney-General should confirm that ASIO’s assessment that Dr. Haneef was not a security risk was informed with the best information that the AFP could offer as well as its own analysis. It is also likely that the views of the QPS were made known to the Attorney-General and the National Counter Terrorism Committee.

#### **MANAGEMENT OF THE INVESTIGATION    Pages 36 - 42**

- 20.1 The first sixteen paragraphs discuss the personnel allocated to the investigation and the way in which it was organised.
- 20.2 The fact that significant errors were made, despite the large number of staff, reinforces the comments made earlier that the AFP’s idea of what constitutes a terrorist organisation led to a failure to recognise that the investigation concerning Dr. Haneef was not complex and required a proper and fair analysis of the small amount of data that was relevant.
- 20.3 The seventeenth paragraph claims that the information given to investigators was sought to be verified and validated. This was done poorly at best. Even by the second interview, it did not appear that Dr. Haneef’s statements about his wife’s and daughter’s hospitalisation had been checked.
- 20.4 No attempt seems to have been made to check whether cover was available to allow Dr. Haneef to take leave, the day after his baby was born.
- 20.5 The Simms document provides the wrong version of Cathy Bosworth’s estimate as to the time when Dr. Haneef arranged leave. Why this occurred is not clear. Mr. Simms does not record the fact that Dr. Haneef had telephoned the HR department at 10.00, that morning.

- 20.6 The AFP appears not to have verified the details concerning Mr. Webster. It would have assisted the investigation greatly if this had been done. It would also have assuaged much of the suspicion held by the AFP.
- 20.7 The AFP appears not to have checked with Sabeel's mother as to what was said in her telephone calls with Dr. Haneef.
- 20.8 It also seems that there was very little effort made to contact Dr. Haneef's family in India to confirm his financial transactions.
- 20.9 The nineteenth to twenty-third paragraphs praise the MPS for its cooperation. In contrast, Mr. Porritt stated at the bail hearing that he was instructed by the AFP that there were delays in the investigation because the MPS had put the AFP's requirements on the backburner.
- 20.10 The actions of the AFP have the potential to reflect on the MPS. The AFP has attributed its refusal to release information to the requirements of the MPS. This is also the reason given by the AFP for preventing the Inquiry from releasing information. It is now clear that documents which have not been released include a brochure and some sound tapes found in Dr. Haneef's house. If in fact it was the insistence of the MPS which prevented those documents from being released, that insistence would appear to be unwarranted. It also seems unreasonable that the MPS would not allow the AFP to acknowledge that the AFP had received the Kafeel email when the whole of that email had already been tendered in a Court in London. It is unclear why the AFP is still prevented by the MPS from acknowledging when it received the Kafeel email.
- 20.11 According to the AFP submission, the MPS provided incorrect information that Dr. Haneef had used a particular phone in the UK in September 2006. The MPS gave incorrect information that Dr. Haneef had left a mobile handset with Sabeel. They gave incorrect information that a mobile phone handset belonging to Dr. Haneef had been found on Sabeel. They gave incorrect information that Dr. Haneef's SIM card was located with Kafeel. They then corrected the information about the SIM card but maintained the incorrect information about the handset. According to the AFP submission, after 11 days, the correct information was, finally, provided.<sup>37</sup>
- 20.12 The twenty-fourth to twenty-sixth paragraphs repeat earlier statements about accountability and checks and balances. For the reasons previously stated, the actions of the AFP caused important checks and balances to be inoperative.

---

<sup>37</sup> It is unclear at this stage what, if any, information was given to Mr. Andrews about where the SIM card was found. If information had been provided that the SIM card had been found with Kafeel when he was arrested, this was probably not corrected. This is because the AFP FOI documents indicate that the last update of the part A and part B documents occurred on Friday, 13 July 2007, before the MPS provided the correct information.

- 20.13 In the thirty-eighth paragraph, the AFP submission complains about inaccurate media reporting. Four examples are given in paragraphs forty-three and forty-four.
- 20.14 The first involves the reporting by Paula Doneman that the AFP was investigating Dr. Haneef's involvement in a ploy to blow up the Q1 building. That story could not have been provided by anyone other than law enforcement sources. It is very likely to have come from persons closely associated with Operation Rain. It is the case that Dr. Haneef was asked about a photograph of his wife and him in the vicinity of Q1. Of the large number of photographs on Dr Haneef's computer, this was one of less than twenty about which he was asked.
- 20.15 The second complaint of misreporting concerns police writing notes in the back of Dr. Haneef's diary. This seems to have been an honest mistake by the journalist concerned. It was certainly an interpretation of the recorded discussion which was open on a fair reading. No one from Dr. Haneef's legal team disputed the AFP correction of that misreporting.
- 20.16 The third subject mentioned was that the AFP was delaying provision of the transcript of the second record of interview. As it has turned out, the AFP failed to provide the five short transcripts until about a year after the interviews took place.<sup>38</sup>
- 20.17 As to the second record of interview, it was finally provided with a letter dated 8 August 2007. The interview took place on 13-14 July 2007. The obligation pursuant to part 1C Crimes Act is to provide the transcript within 7 days of its completion.
- 20.18 The transcript of the first interview was provided within a few days. The second interview went for a longer period of time. It is now known that the transcription was commenced before 3.45pm on 14 July 2007, the same day the interview was completed.<sup>39</sup> It was stated that other transcription work was put aside, as a matter of priority, and that the investigation team needed [the transcript] to analyse apparent inconsistencies in Dr. Haneef's answers in the interview. By this time, a charge had been laid and the preparation of a committal brief would have been required. Hundreds of staff were attached to the investigation. In those circumstances, a conservative estimate would suggest that the transcription would not have taken more than three days.

---

<sup>38</sup> This failure would appear in breach of the obligation in s.23V(2)(c) Crimes Act. The failure to provide the documents was contrary to an assurance that all relevant material had been provided. See letter by Mr. Jabbour to Ryan & Bosscher, solicitors, dated 21 September 2007, appendix 2 to this submission. Requests for an explanation for the failure to provide the documents until counsel assisting the Inquiry intervened have gone unanswered. See letter from Maurice Blackburn to Mr. Watson dated 23 July 2008, appendix 3 to this submission.

<sup>39</sup> AFP FOI release, page 271.

- 20.19 If the transcription was completed on 17 July 2007, the obligation to provide a copy of the document would have arisen on 25 July 2007. The document was not provided until after 8 August 2007, 14 days later.
- 20.20 In those circumstances, if the press reported that the AFP was delaying handing over the document, that was a fair inference from the known facts. At the time, the AFP made no attempt to explain the causes of the delay.
- 20.21 The fourth matter complained of is misreporting of the AFP's role in providing information to Mr. Andrews. It is difficult to know to what that complaint is addressed.
- 20.22 In the forty-sixth to forty-eighth paragraphs, the AFP complains of the release of the transcripts of Dr. Haneef's interviews. The Commissioner of the AFP made a disciplinary complaint concerning that matter. The action complained of was held not to amount to any form of unprofessional conduct or professional misconduct.
- 20.23 The release of that transcript may be seen in retrospect to have revealed the inaccurate and misleading nature of the information provided by the AFP to Mr. Gordon; to Ms. Payne in the bail court; and to Mr. Andrews who cancelled Dr. Haneef's visa.
- 20.24 Those failings were brought to the fore by the release of the transcript. No damage was done to any future trial because there was no future trial. In any event, if the matter had proceeded, the record of interview would have been publicly available at the committal hearing, an event that would have occurred much closer to the trial than the release of the transcript on 18 July 2007.

## **CONCLUSION      Pages 42 - 44**

- 21.1 The conclusion repeats many of the earlier statements in the AFP submission. It displays the inability of the organisation to reflect, objectively, upon its performance: its inability to acknowledge error and move forward.

### **THE CONCLUSION TO THIS SUBMISSION**

- 22.1 It should not be thought that the case of Dr. Haneef is one in which the freedom, good name and livelihood of one man was temporarily forfeited for the greater good of Australian society in the prosecution of the war on terror.
- 22.2 If anything is to be salvaged from a case in which an innocent man was vilified in the national and international media – it should that the following lesson has been learned.
- 22.3 When, for fourteen months, the expertise and resources of our front-line law enforcement agencies, the force of the courts and the power of the media are

relentlessly used in an attempt to turn a man, who has a most distant connection with a horrendous terrorist act, into a terrorist himself, Australia becomes an infinitely more dangerous place.

- 22.4 No matter what challenges terrorism poses, we must resist the temptation to put self interest before the national interest. We must face this threat in a clear-minded, principled manner.

**Stephen Keim SC**  
**Maurice Blackburn & Co**  
**27 October 2008**