

Hon. John Clarke QC
Clarke Inquiry
Computer Associates House
10 National Circuit
Barton ACT 2600

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May 21, 2008

Dear Mr. Clarke,

Extent of Inquiry in terms of the Powers of the AFP to Expose Australian Citizens to the Death Penalty

We refer to the inquiry involving the role of the Australian Federal Police (AFP) in the case of Dr. Mohamed Haneef (the Inquiry).

We note that the Terms of Reference of the Inquiry include the following:

- (a) *“the arrest, detention, charging, prosecution and release of Dr Haneef, the cancellation of his Australian visa and the issuing of a criminal justice stay certificate;*
- (b) *the administrative and operational procedures and arrangements of the Commonwealth and its agencies relevant to these matters;*
- (c) *the effectiveness of cooperation, coordination and interoperability between Commonwealth agencies and with state law enforcement agencies relating to these matters; and*
- (d) *having regard to (a), (b) and (c), any deficiencies in the relevant laws or administrative and operational procedures and arrangements of the Commonwealth and its agencies, including agency and interagency communication protocols and guidelines.”*

It is our view that paragraph (d) of the Inquiry Terms of Reference includes a consideration of the deficiencies in the relevant laws which are being used by the AFP to justify their actions in exposing Australian citizens to the Death Penalty.

We understand that although the Inquiry will mainly deal with the specifics of the conduct of the AFP in the case of Dr Mohamed Haneef, it is possible that the Inquiry will come into possession of information regarding the practice of providing information under the mutual assistance agreements and interagency communication protocols and guidelines between Australia and other countries. Our contention is that Australia is a party to agreements which deliberately expose Australian citizens to the death penalty. We ask that the Inquiry fully examine the issue of the

appropriateness of the AFP having the ability to do this in practice, particularly considering Australia's duties and obligations under international covenants concerning human rights.

We write to you as members of the Australians Against Capital Punishment ("AACP"). The main focus of our organisation is to oppose the death penalty and to use our efforts to have the death penalty abolished in countries where it now exists.

Our organisation is particularly concerned that the AFP under the "mutual assistance" agreements entered into with other countries has provided, and will continue to provide, information in circumstances where the ultimate outcome may be the imposition of the death penalty on Australian citizens. For example, we believe that the AFP has acted in this manner with its Indonesian counter-parts prior to the arrest of the nine Australian citizens (the so-called "Bali Nine"), a number of who are now on death-row. This practice is inconsistent with Australia's position which long ago condemned the death penalty. We believe that the ability of the AFP to take such action must be curbed in order for Australia to be able to maintain its standing as a country that is against the death penalty. Failure to do so may result in Australia being in breach of the various international human rights covenants to which it is a signatory.

We look forward to receiving confirmation from you that the Inquiry will include a consideration of the issues raised above.

We thank you for taking the time to read and consider this request. We also ask that you post our submission on the Inquiry website.

If there is any further information or representation you would seek from our organisation, we would be most willing to assist.

Yours faithfully

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