

OUR REF: PSR:CT:  
YOUR REF:

RYAN & BOSSCHER HOUSE  
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24 July 2007

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Commonwealth Director of  
Public Prosecutions  
19<sup>th</sup> Floor, MLC Court  
15 Adelaide Street  
BRISBANE QLD 4000

“BY HAND DELIVERY”

Attention: Mr Clive Porritt / Mr. Glen Rice

Dear Colleagues,

**RE: AUSTRALIAN FEDERAL POLICE v MOHAMED HANEEF  
APPLICATIONS FOR S83 JUSTICES ACT 1886 DIRECTIONS HEARING**

We **enclose** herewith an application for a directions hearing pursuant to section 83A *Justices Act 1886* seeking a ruling that the offence charged does not amount to an offence known to law, and that, in the absence of a prosecution application to amend, seeking an order that the charge be dismissed or struck out. We also **enclose** herewith an outline of submissions. Both the application and the outline of submissions have been filed in the Magistrates Court at Brisbane on even date.

We propose to list the matter for mention on Friday, 27 July 2007, and, in the continued absence of an application to amend the charge, list the matter for a directions hearing on the date of the committal mention. If you do propose to seek to amend the charge, please kindly advise of your intention to do so, and the amendment you seek to make by close of business Thursday, 26 July 2007.

We look forward to your early advice as to same so as to avoid the need to prepare for an active hearing and to ensure that Court time is not unnecessarily allocated for the purposes of that hearing.

Yours faithfully,  
RYAN & BOSSCHER, LAWYERS

PETER RUSSO  
Partner

E-mail: [peter russo@ryanbosscher.com.au](mailto:peter russo@ryanbosscher.com.au)

enc (2)

**IN THE MAGISTRATES COURT AT BRISBANE**

*In the matter of an application for a directions hearing pursuant to section 83A Justices Act (Qld)*  
1886

**AUSTRALIAN FEDERAL POLICE v MOHAMED HANEEF**

1. The Court is requested to give a ruling that the charge, as laid, does not amount to an offence known to law, and, in the absence of any application to amend the charge, ought to be dismissed or struck out.
2. Section 83A(3) *Justices Act 1886* permits a party to apply to a court for a direction hearing. Section 83A(5) provides that a "magistrate may give a direction he or she is entitled to make at law about any aspect of the conduct of the proceeding ...". The power in section 83A was inserted into the *Justices Act 1886* in 2002 in order to provide a Magistrate with a similar power to that given to the District and Supreme Courts in section 592A (now s590AA) of the *Criminal Code*. (See explanatory memorandum to *Criminal Law Amendment Bill 2002*, page 15)
3. The phrase "any aspect of the conduct of the proceeding" in s83A(5) should be construed to include a power to give a ruling as to a matter of law.
4. In *R v Gesa; Ex parte A-G* [2001] 2 Qd R 72, the Court of Appeal stated, in the context of a discussion as to the meaning to be given to conduct of the trial" that the section should not be given a narrow interpretation. Although there are some clear differences between section 83A *Justices Act 1886* and section 590AA of the *Criminal Code*, it is submitted that section 83A should not be construed narrowly and that the words "magistrate may give a direction he or she is entitled to make at law about any aspect of the conduct of the proceeding" includes the power to give the rulings sought.
5. Mohamed Haneef is charged with the following:

On or about the 25<sup>th</sup> of July 2006 in the United Kingdom, Mohamed HANEEF did, contrary to section 102.7(2) of the Criminal Code (Cth) intentionally provide resources, namely a subscriber information module (SIM) card to a terrorist organisation

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Outline of Submissions on behalf of the Applicant

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consisting of a group of persons including Sabeel AHMED and Kafel AHMED, being reckless as to whether the organisation was a terrorist organisation.

6. The charge, as laid, is defective in that it does not allege an essential element of the offence. Section 102.7(2) of the *Criminal Code (Cth)* provides as follows:

A person commits an offence if:

- (a) the person intentionally provides to an organisation support or resources that **would help the organisation engage in an activity described in paragraph (a) of the definition of terrorist organisation** in this Division; and
- (b) the organisation is a terrorist organisation; and
- (c) the person is reckless as to whether the organisation is a terrorist organisation. **(bold added)**

7. The words in bold constitute an element of the offence. (The "missing element"). No such allegation appears in the charge as laid against Mohamed Haneef.

8. Section 47(1) of the *Justices Act 1886* relevantly provides that the "description of any offence in the words of the Act ... creating the offence, or in similar words, shall be sufficient in law."

9. Given that the charge misses an element of the offence, the charge does not contain a description sufficient in law.

10. In the absence of an application to amend the charge to properly reflect the offence creating provision, there is no offence known to law before the Court and the charge, as laid, should be dismissed or struck out.

S. Keim SC  
Counsel for Mohamed Haneef

K. Mellifont  
24 July 2007

**QUEENSLAND**

*Justices Act (Qld) 1886*

**APPLICATION FOR DIRECTIONS HEARING PURSUANT TO SECTION 83A  
JUSTICES ACT 1886**

TO:	The Presiding Magistrate Magistrates Court at Brisbane
And	Commonwealth Director of Public Prosecutions Level 19 MLC Court Ann Street BRISBANE

**IN THE MATTER OF AUSTRALIAN FEDERAL POLICE and MOHAMED HANEEF**

WHEREAS Mohamed Haneef is charged, by way of bench charge, with the following:

On or about the 25<sup>th</sup> of July 2006 in the United Kingdom, Mohamed HANEEF did, contrary to section 102.7(2) of the Criminal Code (Cth) intentionally provide resources, namely a subscriber information module (SIM) card to a terrorist organisation consisting of a group of persons including Sabeel AHMED and Kafeel AHMED, being reckless as to whether the organisation was a terrorist organisation.

Mohamed Haneef hereby gives notice that an application for a directions hearing is made pursuant to section 83A of the Justices Act 1886 for an order by the presiding Magistrate that the charge be dismissed on the ground that the charge, as laid, does not amount to an offence known to law.

The application is sought to be made on \_\_\_\_\_ at 9.30 am at the Magistrates Court Number \_\_\_\_ at Brisbane.

Signed: .....  
Peter Samuel Russo, Solicitor for Mohamed Haneef  
Ryan & Bosscher Solicitors  
331 George Street  
BRISBANE 4000.

Date: 24 July 2007.



# DPP

Commonwealth Director of Public Prosecutions  
Brisbane Office

Your reference: PSR:K/VJ:CT:07/16977

Our reference: QC07101167A

24 July 2007

Ryan & Bosscher Lawyers  
331 George Street  
BRISBANE Q 4000

Attention: Peter Russo

**By Hand**

Dear Sir

**Mohammed HANEEF  
Alleged offence against the *Criminal Code* (Cth)**

I refer to your letter, received today, in which you state that you propose to list your client's matter for mention on Friday 27 July. You enclosed with your letter a form of application for a directions hearing and an outline of submissions.

We note that the proposed directions hearing arises from your examination of the charge. Independently of your examination of the charge, and before we received your letter, we had decided that at the next mention of the matter (on 31 August) we would seek to amend the charge (by adding the underlined portion) so that it reads as follows:

On or about the 25<sup>th</sup> of July 2006 in the United Kingdom, Mohamed HANEEF did, contrary to section 102.7(2) of the *Criminal Code* (Cth) intentionally provide resources, namely a subscriber information module (SIM) card, to a terrorist organisation consisting of a group of persons including Sabeel AHMED and Kafael AHMED, being reckless as to whether the organisation was a terrorist organisation, and that resource would help the organisation engage in an activity described in paragraph (a) of the definition of terrorist organisation in Division 102 of the *Criminal Code* (Cth).

In view of the matter's already being listed for mention on 31 August, we do not consider that a mention of the matter on Friday 27 July, or a directions hearing, is necessary, or would be an effective use of court time.

Yours faithfully

Clive Porritt  
Assistant Director

L - Ryan & Bosscher - 070724

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SPECIALISING IN CRIMINAL DEFENCE

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CAIRNS

PARRAMATTA

OUR REF:  
YOUR REF:

25 July 2007

Commonwealth Director of  
Public Prosecutions  
Level 19, 15 Adelaide Street  
BRISBANE QLD 4000

**FAXED**

BY FACSIMILE TRANSMISSION  
(07) 3224 9627

Attention: Mr Clive Porritt

Dear Sir,

RE: **MOHAMED HANEEF**

We refer to your letter dated the 24<sup>th</sup> day of July 2007. We note that your stated pre-existing intention to amend the charge has not been communicated to the defense prior to 23 July 2007.

The matter has been listed for mention on Friday, the 27<sup>th</sup> day of July 2007. We do not object to your proposed amendment and believe this course of action should occur sooner rather than later.

Our position is that the mention on 27 July 2007 should remain as listed to allow your office to inform the court of the amendment to the existing charge. Would you kindly provide our office with a copy of the amended charge sheet prior to close of business on 26 July 2007.

Yours faithfully,  
RYAN & BOSSCHER, LAWYERS

*Peter Russo*

PETER RUSSO  
Partner

E-mail: [peter russo@ryanbosscher.com.au](mailto:peter russo@ryanbosscher.com.au)



Michael Bosscher

Acc. Spec. (Crim.)

Peter Shields

Acc. Spec. (Crim.)

Andrew Moloney

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Andrew McGinness

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Penny White

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John Jacob

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Specialist Accreditation  
NSW Law Society

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CAIRNS

PARRAMATTA

OUR REF: PSR:KVJ  
YOUR REF:

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26 July 2007

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Commonwealth Director of Public Prosecutions  
Level 19, 15 Adelaide Street  
MLC Court  
BRISBANE QLD 4000

Attention: Clive Porritt, Assistant Director

By hand

Dear Sir

**AUSTRALIAN FEDERAL POLICE v MOHAMED HANEEF**  
**REQUEST FOR PARTICULARISATION OF THE OFFENCE**

We refer to the offence as proposed to be amended by your office, that is:

On or about the 25<sup>th</sup> of July 2006 in the United Kingdom, Mohamed HANEEF did, contrary to section 102.7(2) of the Criminal Code (Cth) intentionally provide resources, namely a subscriber information module (SIM) card to a terrorist organisation consisting of a group of persons including Sabeel AHMED and Kafeel AHMED, being reckless as to whether the organisation was a terrorist organisation, and that resource would help the organisation engage in an activity described in paragraph (a) of the definition of terrorist organisation in Division 102 of the Criminal Code (Cth).



**Michael Bosscher**

Acc. Spec. (Crim.)

**Peter Shields**

Acc. Spec. (Crim.)

**Andrew Moloney**

Acc. Spec. (Crim.)

**Andrew McGinness**

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**Penny White**

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Specialist Accreditation  
NSW Law Society

**Michael Bosscher**

Acc. Spec. (Crim.)

**Mitchell Cavanagh**

Acc. Spec. (Crim.)

In respect of the offence, we request that you provide particulars of the following elements:

1. **“Organisation”**: What is the body corporate or unincorporated body<sup>1</sup> which is alleged to constitute the organisation?

2. **“Terrorist organisation”**: Particularise “terrorist organisation”. That is, how is it alleged that the organisation falls within (a) or (b) of the definition of terrorist organisation in s102.1?<sup>2</sup>

i. If (b), what is the organisation specified by the regulations for the purposes of the paragraph?

ii. If (a), is it said that the organisation was:

Engaged in the doing of a terrorist act; or  
Preparing the doing of a terrorist act; or  
Planning the doing of a terrorist act; or  
Assisting in the doing of a terrorist act; or  
Fostering the doing of a terrorist act?

And, is it said that the organisation was doing so directly or indirectly?

And, what aspect of the definition of “terrorist act” is relied on? That is, which subsection or subsections of the definition of terrorist act in s100.1 is relied on?

And, what is the terrorist act alleged?

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<sup>1</sup> As per definition in s100.1 Criminal Code.

<sup>2</sup> This should not be construed as a request for the evidence to be stated – it is, as should be clear, a request for particulars only.

3. **“Resources”**: The charge reads “resources”, but specifies only a “subscriber information module”. We presume resources to be a typographical error. However, if we are wrong in this presumption, what are the “resources”?

4. **“Help ..organisation to engage in ..activity..”** In respect of the element “would help the organisation to engage in an activity described in paragraph (a) of the definition of terrorist organisation in this Division”, please particularise the “help” and the “activity” referred to in this part of the charge.

5. **“Reckless”**: With respect to the allegation that Haneef was “reckless as to whether the organisation was a terrorist organisation”, please particularise whether section 5.4(1) or section 5.4(2) *Criminal Code Act* of the definition of “recklessness” is relied on?

i. If 5.4(1), what is the circumstance of which Haneef is said to have been “aware of a substantial risk” that it existed or will exist;<sup>3</sup>

And: what are the circumstances said to be known to Haneef from which it is alleged that it was unjustifiable that Haneef took the risk;<sup>4</sup>

ii. If 5.4(2), what is the result to which Haneef is said to have been “aware of a substantial risk” that the result will occur;<sup>5</sup>

And: what are the circumstances said to be known to Haneef from which it alleged that it was unjustifiable to take the risk?<sup>6</sup>

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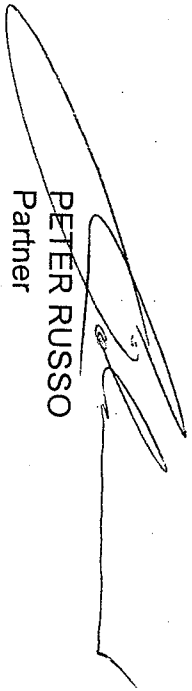
<sup>3</sup> See 5.4(1)(a).

<sup>4</sup> See 5.4(1)(b).

<sup>5</sup> See s5.4(2)(a).

We acknowledge that provision of particulars may not be mandatory in respect of committal proceedings. However, we submit that, in this case, they ought be provided in the interests of justice.

Yours faithfully,  
RYAN & BOSSCHER LAWYERS



PETER RUSSO  
Partner

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<sup>6</sup> See s5.4(2)(b).