

## **1. INTRODUCTION – Executive Summary & Submissions Related to Process**

- 1.1 The Queensland Police Service (QPS) has indicated its willingness to assist the Clarke Inquiry and provides the following submission in response to the Inquiry's terms of reference in this regard. Further, the QPS has provided relevant documents as requested by the Inquiry.
- 1.2 Every effort has been made by the QPS to provide a clear and informed submission. From the outset, the QPS would submit that there has been a long history of cooperation and success between law enforcement agencies at the national and state levels in achieving respective goals in a fair way that promotes community confidence in policing and more generally, government.
- 1.3 Quite properly the risk associated with acts of terrorism has been reflected in legislation that recognises that the consequences of a terrorist act on Australian soil are significant and everything possible should be done to prevent that occurring. This legalisation reflects the need to prevent and to intervene in the early stages of terrorism related behaviour as an appropriate response to the level of threat or risk created by terrorism.
- 1.4 The QPS view is that the context of terrorism, the consequences of it, and the types of offences related to it, should be at the forefront of any assessment of the actions of law enforcement agencies which have the difficult task of preventing terrorism. The Inquiry, in the QPS view, may wish to consider the acceptance in the broader community of the distinction between a routine criminal investigation and the need for decisive action and intervention at a much earlier stage in a potential terrorism activity.
- 1.5 Having said this, the QPS acknowledges that there are lessons to be learnt. The QPS would submit that this was one of the very few major investigations of this type conducted within Australia since various governments across the world responded to the issue of terrorism with a range of legislative responses following the events of 2001. This submission will make suggestions for improvements through the continued development of cooperative processes under the auspices of the National Counter Terrorism Committee (NCTC) including:
  - a) continued development of interoperability of Information and Communication Technology (ICT) systems between jurisdictions;
  - b) continued use and development of standardised joint intelligence processes; and

- c) continued development of the role of investigation support, in particular the use of major incident rooms and their role in investigations at the operational, tactical and strategic levels.
- 1.6 The QPS provided support and acted in cooperation with the AFP by providing intelligence, forensic, and tasked investigative support. The QPS viewed the strategic investigative plan of the Senior Investigating Officer, AFP as sound. However, implementation of this plan was diminished at times by the investigative structure used in the early stages of the operation.
- 1.7 In terms of charging Dr. Haneef with 'Provide Support to a Terrorist Organisation', s. 102.7 of the *Criminal Code (Commonwealth) 1995*, the QPS, based on what was known to it at the time, provided advice to the AFP that the QPS was of the view there was insufficient evidence to support a charge against Dr. Haneef.
- 1.8 The QPS has experienced, on numerous occasions, informed minds differing on the test to prosecute, whether on issues of sufficiency of evidence or public interest. In a general sense, this experience is well documented.
- 1.9 Given the limited time available for the development of this document and the fact that the overwhelming majority of investigative documents are the property of the AFP, this submission will make a number of general points that may require access to specific documents held by the AFP if officers are to provide direct examples of their observations or to refresh their memories. Specific examples will be provided where available, but without recourse to detailed documentation held by the AFP. Such documents have not been sought by the QPS and accordingly, senior officers have relied in part on their memory of events.
- 1.10 The Inquiry might wish to examine some of the general issues, opinions or observations offered in this submission at a later date. With this in mind, and having regard to the legal basis on which the Inquiry has been established, the QPS would submit that the best possible method of conducting interviews with its officers is to:
- a) provide notice of the issues to be examined or analysed, preferably through prior notice of questions or specific topics to be addressed; and
  - b) publish only those issues or general comments that would necessarily and clearly inform public knowledge; the QPS would prefer that any publication of interviews occur after all interviews were completed so that all information could be placed in context.

- 1.11 The QPS understands that there may be considerable or significant evidence or material placed before the Inquiry after this initial submission is provided. The QPS would ask for the opportunity to comment on any recommendations by the Inquiry about proposed legislative, operational, administrative or resourcing issues that may affect the business of the QPS or that may be critical of the QPS. The QPS aim in this regard would be to provide relevant information so that the Hon Mr Clarke is fully informed prior to his final report being completed.

## **2. Terms of Reference (A)**

### **The arrest, detention, charging, prosecution and release of Dr Haneef, the cancellation of his Australian visa and the issuing of criminal justice stay certificate.**

#### **1. ARREST**

##### **Background**

- 1.1 At the time of the arrest of Dr. Haneef, the QPS had, and currently still has, two officers seconded to the Joint Counter Terrorism Team, Brisbane. These officers, who are Detective Sergeants, whilst substantive employees of the QPS, are governed by, and work within, the legislative, operational and administrative structure of the AFP. This secondment is subject to a memorandum of understanding (MOU) between the AFP and the QPS, which commenced in 2003. The MOU (at section 5.2) provides that these “secondees will be sworn in as special members of the AFP”. These officers had been sworn as special members of the AFP.
- 1.2 The MOU acknowledges the need for collaboration and resource sharing between agencies during major investigations, including terrorism related matters.
- 1.3 On 2 July 2007, the AFP advised the QPS that investigations had commenced by the Joint Counter Terrorism Team, Brisbane in Queensland as a result of information received from the United Kingdom regarding a number of incidents which had occurred in the United Kingdom since 29 June 2007. The incidents in the United Kingdom consisted of the location of two unexploded vehicle-borne improvised explosive devices in the Central London area on 29 June 2007 and on 30 June 2007, and a third device being driven into the Glasgow Airport Terminal, Scotland. The information related to a person of interest, Dr. Mohamed Haneef. It was established that Dr. Haneef had a residential address at Southport in Queensland.
- 1.4 Later that day the QPS was advised by the AFP of the arrest and detention of Dr. Haneef under the provisions of section 3W *Crimes Act 1914* by members of the Joint Counter Terrorism Team at the Brisbane International Airport. One of the officers involved in the arrest of Dr. Haneef at the Brisbane Airport is a Qld police officer who is a special member of the AFP, attached to the Joint Counter Terrorism Team, Brisbane. The investigation was identified as ‘Operation Rain’ and QPS assistance was requested.

- 1.5 The provisions of the MOU were used by the AFP and the QPS during Operation Rain. The QPS believes the current MOU meets the needs and requirements of the QPS.

### **QPS Submission**

- 1.6 As the officer involved in the arrest was seconded as a special member of the AFP, was under the direction and control of the AFP and was using Commonwealth powers, the QPS submits that the initial arrest of Dr. Haneef is a matter for the AFP and therefore beyond the scope of the QPS submission.

## **2. DETENTION**

### **Background**

- 2.1 The AFP led Operation Rain which had both a national and international focus. The AFP used the structure and resources of the Queensland Joint Counter Terrorism Team, as well as its other national assets. Consistent with its lead agency status the operation proceeded under the administrative, operational and legal control of the AFP. The Senior Investigating Officer was the AFP Commander for Counter Terrorism (Domestic). As the AFP was lead agency, the Senior Investigating Officer, AFP was in charge of the investigation.
- 2.2 The Senior Investigating Officer was the primary decision maker on investigation matters within the scope of the investigation. The command structure was developed with a senior QPS officer (Detective Superintendent Hogan) initially supporting the Investigation Coordinator of the AFP, who was the Superintendent, AFP, Joint Counter Terrorism Team, Brisbane.
- 2.3 After a few days Detective Superintendent Hogan from the QPS was subsequently appointed to the role of Investigation Coordinator in charge of all investigations within Queensland. This officer reported to the Senior Investigating Officer, Operation Rain, AFP.
- 2.4 The AFP Investigation Coordinator performed the national coordination role, reporting to the Senior Investigating Officer, Operation Rain, AFP.
- 2.5 The command structure was adjusted by the QPS Investigation Coordinator in consultation with the Senior Investigating Officer. This led to AFP and QPS officers performing various roles according to skill levels.

- 2.6 The QPS understanding of its role during Operation Rain was:
- a) to provide investigative support and specialist assistance as required to the AFP in relation to Queensland based inquiries; and
  - b) to conduct investigations aimed at identifying and preventing any terrorism related activity in Queensland, including a continuous assessment and analysis of the threat environment.
- 2.7 The QPS response was coordinated by QPS State Crime Operations Command which has the responsibility to investigate state based terrorism offences. The QPS resource contribution varied throughout the investigation but essentially consisted of in excess of 200 specialist investigators, intelligence, forensics, surveillance, security intelligence, intelligence analysis, forensic computer analysis, forensic accountants, linguists and administrative support personnel over a six week period.
- 2.8 On 13 and 14 July 2007 Dr. Haneef was interviewed regarding potential criminal/terrorist-related offences at State Crime Operations Command, QPS Headquarters, Brisbane. The interview was conducted by Detective Sergeant Simms (QPS officer seconded to the Joint Counter Terrorism Team & special member of the AFP) and Federal Agent Thompson (Joint Counter Terrorism Team, Brisbane). Dr. Haneef's solicitor, Mr. Russo, was also present during the interview. Prior to the commencement of the interview an interview plan was compiled by the interviewing officers.
- 2.9 The interview was monitored by Detective Sergeant Timms (QPS officer seconded to the Joint Counter Terrorism Team & special member of the AFP), Federal Agent Dart, AFP and Detective Inspector Weir, QPS. Also present in the monitoring room at varying times were Senior Investigating Officer, Jabbour, AFP and Detective Superintendent Hogan, QPS.
- 2.10 Entries related to the QPS custody index and other documents related to the detention of Dr. Haneef at the Brisbane Watchhouse or in the custody of the QPS have been provided to the Inquiry. The following provides a summary of the custody or detention of Dr. Haneef by QPS officers or within QPS premises/facilities:
- a) at about 0045hrs on 4 July 2007 Dr. Haneef was transported by AFP officers and Detective Sergeant Hampson of the QPS from the AFP Northern Headquarters, Wharf St, Brisbane to the QPS Brisbane Watchhouse, Garrick St, Brisbane;
  - b) advice from the AFP concerning authorities for time suspension pursuant to section 23CB(2) of the *Crimes Act (Commonwealth)* were provided to the QPS at the following times; 0100hrs on 4

July 2007, 1905hrs on 5 July 2007, 1805hrs on 9 July 2007, 2036hrs on 11 July 2007;

- c) at 1535hrs on 13 July 2007 at the Brisbane Watchhouse Dr. Haneef was released into the custody of AFP officers;
- d) at 0735hrs on 14 July 2007 Dr. Haneef was returned to QPS custody at the Brisbane Watchhouse by the Senior Investigating Officer, AFP;
- e) at 0741hrs on 14 July 2007 Dr. Haneef was charged at the Brisbane Watchhouse;
- f) at 0930hrs on 14 July 2007 Dr. Haneef attended Court and was remanded in custody;
- g) a request was provided to the QPS Brisbane Watchhouse by the Department of Immigration at 1700hrs on 16 July 2007;
- h) on 17 July 2007 Dr. Haneef appeared in Court, but was held in QPS custody at the direction of the Department of Immigration; and
- i) at 1014hrs on 18 July 2007 Dr. Haneef was transported to the Arthur Gorrie Correctional Centre and then held in custody by the Department of Corrective Services, Queensland.

### **3. CHARGING**

- 3.1 After the conclusion of the interview on 14 July 2007 Dr. Haneef was charged by the Senior Investigating Officer, AFP and conveyed to the Brisbane Watchhouse.
- 3.2 Dr. Haneef was charged, and a prosecution commenced by the AFP, for the offence of 'Provide Support to a Terrorist Organisation', section 102.7 of the *Criminal Code (Commonwealth) 1995*.
- 3.3 Detective Chief Superintendent Barnett of the QPS State Crime Operations Command had the responsibility for overseeing the QPS operations conducted during Operation Rain which were being managed by Detective Superintendent Hogan. From 6 July 2007 Detective Chief Superintendent Barnett attended all significant briefings and decision-making forums and discussed operational developments and issues with the Senior Investigating Officer, AFP. The Senior Investigating Officer, AFP regularly sought his input on operational strategies and priorities.
- 3.4 After Mr. Porritt of the Office of Commonwealth Director of Public Prosecutions had provided his opinion on charging Dr. Haneef in

writing and left the AFP office on the afternoon of Friday 13 July 2007, a meeting was held between the Senior Investigating Officer Jabbour, AFP the UK Liaison Officer Detective Superintendent Prunty of the Metropolitan Police Service, London, Mr. Rendina a legal officer from the AFP, and Detective Superintendent Hogan, QPS. An AFP officer, Federal Agent Gear was also present and took notes.

- 3.5 Detective Superintendent Hogan advised those present that if it was her decision she would seek further legal advice before charging Dr. Haneef.
- 3.6 Later on the afternoon of Friday 13 July 2007 a meeting was held at the AFP Northern Headquarters, Brisbane involving the Senior Investigating Officer Jabbour, Detective Chief Superintendent Barnett, Detective Superintendent Hogan and the UK Liaison Officer, Detective Superintendent Prunty. At this meeting the strength and sufficiency of admissible evidence to support a charge against Dr. Haneef under the Commonwealth legislation was assessed. Also discussed in this context were the contents of a written opinion on that issue provided by Mr. Porritt of the Office of the Commonwealth Director of Public Prosecutions.
- 3.7 As a result of that review Detective Chief Superintendent Barnett and Detective Superintendent Hogan expressed a clear view that they did not believe that all relevant elements of the proposed charge could be proven at that time. It was acknowledged by the QPS representatives that their position could be influenced by the results of the interview of Dr. Haneef being conducted that evening through to the morning of 14 July 2007.
- 3.8 On the morning of Saturday 14 July 2007 Detective Superintendent Hogan recalls a discussion that took place between officers attached to the Joint Counter Terrorism Team. Detective Superintendent Hogan recalls that the following officers were present at this discussion: Senior Investigating Officer Jabbour, AFP; Detective Inspector Weir, QPS; federal agents Thompson and Dart; and QPS officers who were special members of the AFP, Detective Sergeants Simms and Timms.
- 3.9 Detective Superintendent Hogan recalls that the discussions involved inconsistencies in some of the statements Dr. Haneef had made; that claims Dr. Haneef had made were plausible and required further clarification or inquiries to be made in the UK and India to provide a clearer picture. Detective Superintendent Hogan recalls that during this discussion she reiterated the QPS view that there was insufficient evidence to charge.
- 3.10 On the morning of Saturday 14 July 2007 Detective Superintendent Hogan briefed Detective Chief Superintendent Barnett by telephone on the outcome of the extended interview with Dr. Haneef. Based on that briefing Detective Chief Superintendent Barnett and Detective

Superintendent Hogan re-affirmed their shared view on the deficit of admissible evidence and Barnett instructed Hogan to re-state the QPS position to the Senior Investigating Officer, AFP.

- 3.11 Detective Superintendent Hogan recalls then having a discussion with Senior Investigating Officer, Jabbour and advising him that in the QPS view, based on what was known to the QPS at that time, there was insufficient evidence to support a charge against Dr. Haneef.
- 3.12 Detective Superintendent Hogan was present when Senior Investigating Officer, Jabbour had a telephone conversation with his senior AFP management and heard Senior Investigating Officer Jabbour articulate during that conversation that the QPS view was that there was insufficient evidence to charge Dr. Haneef.
- 3.13 Detective Superintendent Hogan was then advised by Senior Investigating Officer Jabbour that he was going to charge Dr. Haneef.
- 3.14 A short time later Detective Superintendent Hogan confirmed to Detective Chief Superintendent Barnett that she had advised Senior Investigating Officer Jabbour of the QPS position that there was insufficient evidence to charge Dr. Haneef based on what the QPS knew at that time.

#### **QPS Submission**

- 3.15 The QPS acknowledges that the AFP, as the lead investigation agency, had the responsibility to make the final decision whether to charge and prosecute Dr. Haneef.
- 3.16 The QPS has experienced, on numerous occasions, informed minds differing on the test to prosecute, whether on issues of sufficiency of evidence or public interest. In a general sense, this experience is well documented.

#### **4. PROSECUTION, RELEASE, CANCELLATION OF VISA & ISSUE OF CRIMINAL JUSTICE STAY CERTIFICATE**

- 4.1 On 27 July 2007 the Commonwealth Director of Public Prosecutions reviewed the case against Dr. Haneef. After review and, as the QPS understands it, based on all available evidence, the charge of 'Provide Support to a Terrorist Organisation' was withdrawn.
- 4.2 Immediately following the decision not to pursue the prosecution of the terrorism charge against Dr. Haneef, the Minister for Immigration revoked Dr. Haneef's visa. Dr. Haneef was then detained under

Commonwealth Immigration laws. The cancellation of Dr. Haneef's visa and the issuing of the criminal justice stay certificate were decisions made outside the scope of QPS involvement.

4.3 On 28 July 2007 Dr. Haneef left Australia for India.

#### **QPS Submission**

4.4 Other than the advice provided above, Queensland had no involvement in this process. These issues are beyond the jurisdiction or legislative scheme of Queensland; responsibility for these issues rests with the Commonwealth.

### **3. Terms of Reference (B)**

**The administrative and operational procedures and arrangements of the Commonwealth and its agencies relevant to these matters.**

#### **1. ADMINISTRATIVE – OPERATIONAL PROCEEDINGS & ARRANGEMENTS**

- 1.1 To separate administrative and operational arrangements in this instance is, in the QPS opinion, inherently difficult. It is the QPS view that these issues are inextricably interwoven.
- 1.2 While it is clear that administrative arrangements need to be in place to deal with operational problems or issues, it is impossible, in the QPS experience, to have administrative arrangements that foreshadow every operational possibility without the establishment of costly and extensive procedures that may do little to overcome issues of perceived maladministration.
- 1.3 Having said this, the QPS acknowledges that improved administrative and operational arrangements might be suggested. These suggestions, in the QPS view, need to be carefully costed and analysed to show whether they will effectively solve any perceived problem or weakness in current arrangements.
- 1.4 The QPS would argue that there are sufficient mechanisms in place at the national and state levels, coupled with sufficient legal remedies, for any suggested improvements to be placed before the current intergovernmental bodies and processes for implementation.
- 1.5 To provide context, the QPS is of the view that the terms of reference provided at (C), are also inextricably interwoven with (B), and that better use of current arrangements could well have resulted in an improved or more effective operation.

#### **2. SUMMARY OF THE PROCEDURES THAT WERE USED**

- 2.1 The AFP was acknowledged by the QPS as the lead agency as there were no State based offences subject to investigation. An MOU between the AFP and the QPS was the basis upon which the Joint Counter Terrorism Team was managed, administered and operated.

- 2.2 As previously articulated in response to Terms of Reference (A), the QPS understanding of its role during Operation Rain was:
- a) to provide investigative support and specialist assistance to the AFP in relation to Queensland based inquiries; and
  - b) to conduct investigations aimed at identifying and preventing any terrorism related activity in Queensland, including a continuous assessment and analysis of the threat environment.
- 2.3 The QPS response was coordinated by QPS State Crime Operations Command which has the responsibility to investigate state based terrorism offences. The QPS resource contribution varied throughout the investigation but essentially consisted of in excess of 200 specialist investigators, intelligence, forensics, surveillance, security intelligence, intelligence analysis, forensic computer analysis, forensic accountants, and administrative support personnel over a six week period.
- 2.4 To summarise, other major systems that were used during Operation Rain were:
- a) the use of the AFP PROMIS system, which was modified to task QPS staff;
  - b) QPS and AFP intelligence systems;
  - c) a Major Incident Room that, on the QPS observation, was initially used as an administrative tool, but was then modified to be used as a major tool or process to provide tactical and strategic direction, command and control; and
  - d) National Automative Fingerprint Identification System (NAFIS) and the National Criminal DNA database (NCDNA).
- 2.5 Much of the specifics of the procedures that were used, processes that occurred, investigations, inquiries, and intelligence are held within or reflected by documentation that is owned and possessed by the AFP.

### **3. SUGGESTED IMPROVEMENTS**

- 3.1 The QPS is of the view that an examination of how the AFP continues to review with their State counterparts the management of investigations would be worthwhile. This review could continue to examine the management of operations/investigations through the use of:
- a) command and control, particularly through the use of a Major Incident Room (MIR) as a key tool or process in managing large scale or significant police operations or investigations;

- b) case management systems;
  - c) intelligence systems; and
  - d) ongoing and developmentally focussed joint exercises to improve this model.
- 3.2 Already, the QPS and the AFP have worked together to make improvements in this area. As well, under the auspices of the National Counter Terrorism Committee many of these issues are being progressed.
- 3.3 These issues are considered in greater detail at Terms of Reference (C).
- 3.4 No issues were identified by the QPS with the current National Counter Terrorism Plan which outlines the responsibilities, authorities and mechanisms to prevent and manage acts of terrorism.

#### **4. Terms of Reference (C)**

**The effectiveness of cooperation, coordination and interoperability between Commonwealth agencies with the state law enforcement agencies relating to these matters.**

##### **1. COOPERATION**

- 1.1 It is the QPS submission that a professional and strong level of cooperation exists between the AFP and the QPS. The overall operational activity throughout Operation Rain reflected this.
- 1.2 The QPS viewed the strategic investigative plan of the Senior Investigating Officer, AFP as sound. However, implementation of this plan was diminished at times by the investigative structure used in the early stages of the operation.
- 1.3 Considerable will and determination existed between officers to overcome coordination and interoperability challenges. Issues arose with respect to investigative structure as well as use of the Major Incident Room (MIR) and intelligence systems.

##### **2. COORDINATION & INTEROPERABILITY**

- 2.1 An underpinning QPS philosophy is to engage in a process of continuous improvement. Wherever possible, the QPS aims to support and assist the agencies it interacts with. The QPS has attempted to have best practice reflected in its own operations and practices. The current approach by the QPS to coordination of major investigations has been informed by the QPS' best endeavours to adopt best practice from around the world. It is with this in mind that the QPS has promoted a cooperative approach to evidence based review and reform of its operations and policies.
- 2.2 Interoperability and the use of technology are issues, in the QPS view, that all modern governments and law enforcement agencies are attempting to deal with in a way that balances resource costs with the ability to continue to provide service delivery that meets community expectations. The problem of interoperability of different operating systems at the inter-agency level has already been identified as a significant issue. The cost of developing solutions, however, should not be underestimated.
- 2.3 An operational debrief between the QPS and the AFP was conducted on 1 February 2008 at the AFP Brisbane office and was attended by senior representatives from the QPS, AFP and the UK Liaison Officer,

including those officers who fulfilled management roles for the Queensland component of Operation Rain. Key issues identified by both agencies were discussed during the debrief.

- 2.4 The QPS understood that it was agreed during the debrief that the levels of cooperation and coordination between the QPS and the AFP were sound but the interoperability between the agencies was problematic from a number of perspectives including:
- a) investigation structure;
  - b) IT systems;
  - c) forensics; and
  - d) intelligence processes and systems.
- 2.5 The QPS understands that senior AFP management was amenable to adopting modified methodologies and operational suggestions for any future operations of a similar nature.

## **2.6 Investigative Structure and the Major Incident Room**

- 2.6.1 Interoperability concerns arose in relation to the Major Incident Room, which included issues such as case management systems, intelligence support and forensics. Differing methodologies and incompatible systems appeared to be the central causes of this problem.
- 2.6.2 The QPS would normally use its IMAC case management system to manage a major investigation. The AFP PROMIS system was modified to allow QPS staff to be tasked and to have access. This issue represented what has been an ongoing issue for all jurisdictions namely, interagency differences in not only methodologies, but technical systems that impact on the ability of both agencies to work in a computerised partnership.
- 2.6.3 From the QPS perspective, it appeared the view of some AFP senior officers that the Major Incident Room was to be used as an administrative process rather than the investigative or operational management structure or tool.
- 2.6.4 It is the QPS experience that all other State jurisdictions, and many international agencies, use major incident rooms, or a like process, to manage large scale police operations and major investigations.
- 2.6.5 The structure used during Operation Rain caused a lack of consistency and co-ordination in the tactical and strategic direction of the Major Incident Room and in the early stages reduced its ability to support the investigation and investigator. Examples of issues identified that needed to be reviewed were:

- a) the investigation team worked in isolation to the Major Incident Room which contributed to a lack of command and control across the investigation;
- b) multiple tasking of resources from cells within the investigation and the Major Incident Room that were not working in partnership with each other. This led to the inability of the Major Incident Room to prioritise investigative direction and resources in a co-ordinated manner;
- c) duplication of taskings causing inefficiency in resource management. An example being that on occasions separate teams were arriving at the same address to conduct inquiries;
- d) execution of investigative tactics from various cells without consideration to the strategic position of the investigation at any given time; and
- e) the Major Incident Room not receiving critical information that was known to cells operating outside of the Major Incident Room structure.

2.6.6 It appeared that some AFP officers may have been of the view that the Major Incident Room process was one of an administrative nature with the primary purpose of collecting and collating information. This conflicted with the QPS long held and reinforced experience of the Major Incident Room being used to provide investigative direction, purpose and command and control of the investigation.

2.6.7 After about two weeks AFP senior management did use the Major Incident Room to provide overall direction to the investigation both tactically and strategically. This process:

- a) reduced the multiple tasking of resources;
- b) reduced the duplication of taskings;
- c) increased the flow of information to the MIR;
- d) provided appropriate prioritisation of relevant taskings;
- e) provided real time examination of the tactical position of the investigation within the strategic environment.
- f) increased the scrutiny and validation of information and task results; and
- g) improved the development of new tasks arising from completed tasks.

## **2.7 Intelligence Processes**

- 2.7.1 The QPS is of the view that the conduct of Operation Rain could have been improved by the use of better intelligence functions and structures including implementation of Joint Intelligence Group and Joint Analysis Group structures in accordance with the National Counter Terrorism Plan and National Counter Terrorism Handbook.
- 2.7.2 While the investigation did not involve the activation of the National Counter Terrorism Plan, the Joint Intelligence Group and Joint Analysis Group structure is nationally recognised and exercised, and in the QPS view, represented the best structure to ensure effective interoperability between two agencies having differing intelligence systems and procedures. The structure had been validated as effective in previous terrorism related investigations.
- 2.7.3 Early in the investigation it appeared to the QPS that the AFP's primary focus was towards supporting the UK investigation and determining the extent of Dr. Haneef's role and involvement.
- 2.7.4 The QPS also wished to address any potential broader terrorist threat to the local community. The QPS recommended to AFP management the implementation of a Joint Intelligence Group structure and Joint Analysis Group capability to improve intelligence and address the lack of analysis of local threat issues. These recommendations were not actioned within the Operation Rain structure at any time.
- 2.7.5 The failure to implement a Joint Analysis Group limited the ability to analyse broader issues including timely and accurate analysis of current or impending threats to the community of Queensland. The QPS performed this function unilaterally utilising liaison roles performed by QPS intelligence officers deployed to the Operation Rain investigation. ASIO contributed to the analysis of the local threat environment within the context of Operation Rain. However, the AFP's intelligence resources were focussed towards supporting the investigation and did not contribute to that analysis.
- 2.7.6 The intelligence analysis ultimately provided an assessment that, based on accessible information, there was no imminent terrorist threat to the South Eastern Region, or the wider Queensland community. It was also concluded in that assessment that whether Dr. Haneef represented a threat to the local community could not be determined due to an inability at that time to establish whether he was involved in the terrorist bombings in the United Kingdom, or even if he possessed any extremist views. The threat assessment was completed on 8 July 2007 and disseminated to the AFP on the same day.

- 2.7.7 From the QPS perspective, implementation of a Joint Intelligence Group may have reduced confusion, duplication and the delay in the delivery of intelligence and improved the quality of the product delivered.
- 2.7.8 The QPS and AFP have differing intelligence systems and procedures and the two agencies intelligence staff functioned as different sections. They were given separate tasks rather than acting as an integrated group of cells with complementary functions. Difficulties from the QPS perspective included a lack of specific cell structures within the Operation Rain intelligence group, differences in the structure and analysis of information and its presentation, different reporting mechanisms, no designated AFP liaison officer in the QPS intelligence section and a lack of updated operational information from the AFP to ensure more accurate products.
- 2.7.9 Considerable resources are required for these types of operations and clearly one of the purposes of joint teams and operations is to provide resource coverage in terms of officers and skill sets. Limitations of resources and the need to 'upskill' officers is a challenge for all police agencies. The QPS view is that Operation Rain has highlighted the importance of overcoming the challenges faced by the clear differences in methodology, training and skill sets between intelligence officers. The QPS had difficulty in delivering effective succession of the roles as the investigation progressed and the need for staff to take time off increased.
- 2.7.10 The difficulties in the intelligence structure and level of skills also impacted on the flow of information between the Major Incident Room and the intelligence section. The lack of coordination between sections resulted in delays in information being provided to intelligence officers conducting analysis and preparing timelines. This diminished the quality of some intelligence products.
- 2.7.11 It has since been acknowledged by both the AFP and the QPS in debriefs that the Joint Intelligence Group and Joint Analysis Group structure should have been implemented and are expected to be for any future investigations of a similar nature. It has also been acknowledged that both agencies need to exercise these functions with the AFP as the lead agency.

## **2.8 Forensics**

- 2.8.1 It appeared to the QPS that Operation Rain could have been improved from the outset by the development of a formal strategy that coordinated all forensic requirements across jurisdictions so that forensic taskings were better controlled and used within the Major Incident Room.

2.8.2 The need for a consistent national approach in respect of a forensic response (e.g. different levels of examination; use of exhibit spreadsheets for control and to assist with future taskings) was identified during the investigation and a joint national strategy was developed. This was implemented with the assistance of a QPS forensics specialist (Inspector).

2.8.3 In Queensland, QPS forensic officers collected evidence for and on behalf of the AFP.

## **2.9 Progressing Improvements**

2.9.1 Nationally, a range of complexities have been identified and a number of 'capabilities' or areas requiring examination have been established under the auspices of the National Counter Terrorism Committee. For example, the Operational Response Capability Sub-Committee of the National Counter Terrorism Committee has been established for some time and an Investigation Support Capability Sub-Committee has recently been established.

2.9.2 The work of the Investigation Support Capability Sub-Committee will focus on investigation support issues that are pre-emptive and preventative in focus, as well as post incident issues. Under this Sub-Committee, it is anticipated that the capabilities identified during the debrief will be comprehensively explored and/or developed by consolidating work already undertaken under other National Counter Terrorism Committee capabilities with further research and review. The Queensland Deputy Commissioner of Police (Specialist Operations) is the chair of this Sub-Committee and the Detective Superintendent of the Organised Crime Group (QPS) will chair a working group tasked to examine most of the issues identified during Operation Rain.

2.9.3 Both the QPS and the AFP agreed the majority of the issues identified during Operation Rain should be progressed through the relevant 'Capabilities' Sub-Committee of the National Counter Terrorism Committee.

## **5. Terms of Reference (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 any agency and interagency communication protocols and guidelines.**

- 5.1 A further and broader aspect worth noting, in the QPS view, is the nature of the offence subject of this Inquiry. Clearly terrorism and offences related to it represent a significant risk to the public generally, and this is reflected in current legislation.
- 5.2 The QPS acknowledges that the powers provided to law enforcement agencies with respect to terrorism need to be balanced with the rights of the individual. Nonetheless, a challenge faces police involved in these types of investigations as the specific nature of terrorism and offences related to it differ markedly from most routine criminal matters. In general, police will investigate but not arrest or charge persons that are involved in the early or preparatory stages of the commission of a criminal offence. With routine criminal offences, generally speaking, the act or omission that creates the offence has already occurred, and as such, police react or respond.
- 5.3 Quite properly the risk associated with acts of terrorism has been reflected in legislation that recognises that the consequences of a terrorist act on Australian soil are significant and that everything possible should be done to prevent terrorism occurring. This legalisation reflects the need to prevent and to intervene in the early stages of terrorism related behaviour as an appropriate response to the level of threat or risk created by terrorism.

### **QPS submission**

- 5.4 The QPS view is that the context of terrorism, the consequences of it, and the types of offences related to it, should be at the forefront of any assessment of the actions of law enforcement agencies which have the difficult task of preventing terrorism. The Inquiry, in the QPS view, may wish to consider the acceptance in the broader community of the distinction between a routine criminal investigation and the need for decisive action and intervention at a much earlier stage in a potential terrorism activity.
- 5.5 Matters concerning any areas for improvement that are within the legal and operational scope of the QPS and within the specific terms of

reference of the Inquiry have already been outlined in response to terms of reference (A), (B) and (C). The QPS submits that these suggested areas for improvement be considered by the Inquiry.

- 5.6 All of the QPS submissions relate to administrative or operational processes that can be progressed through existing intergovernmental processes.

## **6. CONCLUSION**

- 6.1 It is the QPS submission that significant goodwill and determination exists within, and between, the AFP and the QPS to provide an appropriate level of law enforcement capacity to ensure the safety and security of the Australian and broader international community. Effective arrangements with respect to national security and counter terrorism necessitate the utmost vigilance and effort by law enforcement agencies using appropriate and relevant legislation as well as continued enhancement of skill levels and technology.
- 6.2 All Australian police jurisdictions have long held the view that openness, transparency, a commitment to fair treatment of individuals and an appropriate level of accountability are mandatory components of ensuring community support and respect for police agencies. It is with this in mind that the QPS has provided suggestions for improvements to current processes.
- 6.3 The QPS view is that the context of terrorism, the consequences of it, and the types of offences related to it, should be at the forefront of any assessment of the actions of law enforcement agencies which have the difficult task of preventing terrorism. The Inquiry, in the QPS view, may wish to consider the acceptance in the broader community of the distinction between a routine criminal investigation and the need for decisive action and intervention at a much earlier stage in a potential terrorism activity.
- 6.4 The QPS acknowledges that the AFP, as the lead investigation agency, had the responsibility to make the final decision whether to charge and prosecute Dr. Haneef.
- 6.5 The QPS has experienced, on numerous occasions, informed minds differing on the test to prosecute, whether on issues of sufficiency of evidence or public interest. In a general sense, this experience is well documented.
- 6.6 As the officer involved in the arrest was seconded as a special member of the AFP, was under the direction and control of the AFP, and was using Commonwealth powers, the QPS submits that the initial arrest of Dr. Haneef is a matter for the AFP and therefore beyond the scope of the QPS submission.
- 6.7 With respect to the prosecution, release, cancellation of visa and the issue of a criminal justice stay certificate in relation to Dr. Haneef, other than the advice provided above generally, Queensland had no involvement in these processes. These issues are beyond the jurisdiction or legislative scheme of Queensland; responsibility for these issues rests with the Commonwealth.

- 6.8 The QPS understanding of its role during Operation Rain was:
- a) to provide investigative support and specialist assistance to the AFP in relation to Queensland based inquiries; and
  - b) to conduct investigations aimed at identifying and preventing any terrorism related activity in Queensland, including a continuous assessment and analysis of the threat environment.
- 6.9 Already, the QPS and the AFP have worked together to make improvements in terms of joint operations of this nature. As well, under the auspices of the National Counter Terrorism Committee many of these issues are being progressed.
- 6.10 The QPS has provided suggestions for improvements to current processes, in particular:
- a) continued development of interoperability of ICT systems between jurisdictions;
  - b) continued use and development of standardised joint intelligence processes; and
  - c) continued development of the role of investigation support, in particular the use of major incident rooms and their role in investigations at the operational, tactical and strategic levels.
- 6.11 The QPS would argue that there are sufficient mechanisms in place at the national and state levels, coupled with sufficient legal remedies, for any suggested improvements to be placed before the current intergovernmental bodies and processes for implementation. The National Counter Terrorism Committee is an appropriate mechanism to continue to facilitate the operational and administrative improvements suggested by the QPS.
- 6.12 No issues were identified by the QPS with the current National Counter Terrorism Plan which outlines the responsibilities, authorities and mechanisms to prevent and manage acts of terrorism.
- 6.13 The QPS reiterates that given the limited time available for the development of this document and the fact that the overwhelming majority of investigative documents are the property of the AFP, this submission will make a number of general points that may require access to specific documents held by the AFP if officers are to provide direct examples of their observations or to refresh their memories. Specific examples will be provided where available, but without recourse to detailed documentation held by the AFP. Such documents

have not been sought by the QPS and accordingly, senior officers have relied in part on their memory of events.

- 6.14 The Inquiry might wish to examine some of the general issues, opinions or observations offered in this submission at a later date. With this in mind, and having regard to the legal basis on which the Inquiry has been established, the QPS would submit that the best possible method of conducting interviews with its officers is to:
- a) provide notice of the issues to be examined or analysed, preferably through prior notice of questions or specific topics to be addressed; and
  - b) publish only those issues or general comments that would necessarily and clearly inform public knowledge; the QPS would prefer that publication of interviews occur after all interviews were completed so that all information could be placed in context.
- 6.15 The QPS also asks that prior notice of publication of material it provides to the Inquiry be afforded so that it can meet its own reporting obligations.
- 6.16 The QPS understands that there may be considerable or significant evidence or material placed before the Inquiry after this initial submission is provided. The QPS would ask for the opportunity to comment on any recommendations by the Inquiry about proposed legislative, operational, administrative or resourcing issues that may effect the business of the QPS or that may criticise the QPS. The QPS aim in this regard would be to provide relevant information so that the Hon Mr Clarke is fully informed prior to his final report being completed.