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The Secretary
Clarke Inquiry
P.O.Box 5365
Kingston, ACT 2604

By Fax: (02) 6270 5860

RE: Clarke inquiry into intelligence agency mishandling of the case of Dr Haneef

Dear Sir,

This is a formal submission to your Inquiry into intelligence agency mishandling of the case of Dr Haneef as stated below (from the inquiry website www.haneefcaseinquiry.gov.au).

The Inquiry is to examine and report on:

- 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.

I submit that Dr Haneef's case demonstrates the strong public benefit of early court involvement in intelligence agency (eg ASIO, AFP and others) matters in holding those agencies accountable for their actions.

The issue of Dr Haneef's release is the focus of my submission to the inquiry. My concern is that there are limited processes by which people may attempt to challenge the legitimacy of intelligence agency activities (particularly with reference to ASIO). There is need for clear public processes for the protection of individuals. Currently IGIS is the only accessible oversight body that manages individual's complaints against intelligence agencies and its processes are neither transparent nor inclusive of rights accorded by the courts. The Dr Haneef and Ul Haque cases offer strong examples where legal action in the courts has enabled individuals to learn of the allegations against them, present their defense and be vindicated through this process.

Dr Haneef's case strongly indicates that legal protections for individuals targeted by the intelligence agencies need strengthening to ensure that all cases of alleged intelligence agency abuse have access to the courts – not just the most egregious. I submit that legislative reforms are necessary to bolster the legal protections for individuals targeted by the intelligence agencies as follows:

- Legislative reforms to prevent ASIO/AFP/intelligence agencies conducting interference/sabotage activities against a target (except in cases of imminent physical attack) prior to the target having an opportunity to learn of the allegations and defend themselves before the courts.
- Legislative reforms to ensure immediate access to the courts in which the target has an opportunity to learn of the allegations if ASIO/AFP/intelligence agencies continue surveillance on a person for more than some reasonable period of time (6 to 24 months).
- the right to legal representation for the target, and
- the right to defend themselves against the allegations.

As a result of the lack of court oversight of intelligence agency activities from an early stage, the intelligence agencies' administrative and operational procedures and arrangements occur in an environment where their regard for the facts and the law go largely untested. Any tests that may occur currently, occur in the absence of the target having the above legal rights, and are therefore unlikely to be able to confirm or prevent intelligence agency abuses. The potential wide extent and frequency of such abuses is therefore not documented and it is conceivable in the absence of such documentation that the activities directed against the vast majority of people routinely targeted and interfered with by these agencies are unlawful.

The legitimacy of agency activities are largely untested and the agencies unaccountable, leading to a failure of public justice with no offsetting security benefit, both in the case of Dr Haneef and more broadly, I quote from Ian Barker, QC.

"Any defence lawyer having anything to do with a case involving ASIO will know that its agents habitually act outside their powers and routinely abuse them, always in secret. It is rare indeed for their conduct to be exposed." (Sydney Morning Herald, letters to the editor, 28 December 2007).

Familiarity with this sentiment stems from ongoing correspondence with IGIS concerning ASIO conduct in other matters, and which is relevant to this submission in that it provides a context of systemic abuse of which Dr Haneef's case is just one instance. It appears to be a widespread practice that intelligence agencies' surveillance and interference of an individual can go on indefinitely without any right of redress by the person targeted, where the target has no right to be informed of the allegations, nor allowed to defend themselves with legal representation, let alone cross examine the agencies involved.

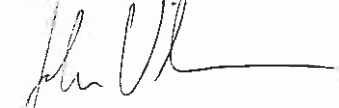
ASIO's methods involve extensive use of tactics to "soften", "unsettle", "unbalance" or "destabilize" targets – and these methods now include imprisonment, as applied against Dr Haneef. These tactics, frequently constitute human rights abuses against innocent Australians or foreigners – abuses that seemingly are all too eagerly committed for lack of a current strong system of oversight and accountability. The courts offer accountability and transparency – both of which are needed to temper the intelligence agencies, and to maintain justice and public confidence.

There is a need for the courts to be involved in all intelligence agency matters at a much earlier stage than presently generally occurs and for ASIO powers to be accompanied by increased court oversight. A clear and accessible process must be established by which people targeted by intelligence agency activity can force the matter and the intelligence agencies to defend their activities before the courts.

I have no comment in relation to the other parts of your inquiry.

I look forward to your response.

Yours sincerely,



Mr. John Wilson