



**AFP**  
AUSTRALIAN FEDERAL POLICE

## **Submission to the Clarke Inquiry**

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## **1. THIS SUBMISSION**

The Australian Federal Police (AFP) welcomes the Clarke Inquiry into the case of Dr Mohamed Haneef. It is our strong view that this Inquiry will allow all the facts of the case to be analysed, forensically assessed and independently reported.

Since the Inquiry was established by the Australian Government in March 2008, the AFP has provided its full cooperation.

Four detailed AFP submissions have been made to the Inquiry addressing its Terms of Reference. The AFP has also made available many witnesses, provided detailed witness statements, and provided access to all AFP documents and information relevant to the case.

Due to national security reasons and international criminal trials related to this case, some information contained in these previous submissions and statements is subject to a non publication order in the United Kingdom (UK) or is otherwise classified. This prevents the AFP from making this information public. The AFP is aware that this information has been analysed in its entirety by the Inquiry.

The AFP understands and supports the need for the organisation to be accountable.

This public submission aims to explain the AFP's role and involvement in the case. The AFP has been working throughout the course of the Inquiry to provide a public submission that balances the needs of UK authorities and their prosecution process with the transparency and accountability that the AFP welcomes.

The AFP continues to assist the Inquiry and welcomes any findings that may improve the way in which it operates and conducts counter terrorism investigations in the future.

## 2. INTRODUCTION

As Australia's Commonwealth law enforcement agency, the AFP has a responsibility for enforcing Commonwealth criminal law in relation to terrorism offences.

Since 11 September 2001, the Australian Parliament has debated and enacted a suite of anti terrorism laws, including laws to enable an effective law enforcement response to terrorism-related acts. Central to this has been public scrutiny of these laws in terms of their impact on individual rights and the accountability frameworks put in place to ensure their appropriate use and review.

The AFP is cognisant of the heavy burden the responsibility for enforcing these laws brings and does not take this responsibility lightly.

Terrorism investigations are highly complex and among the most challenging undertaken by law enforcement agencies. Due to their complicated, high impact and, at times, urgent nature, they can test the limits of investigative, prosecutorial and judicial capacities.

In counter-terrorism investigations, the AFP seeks the cooperation and expertise of other Commonwealth, State and Territory agencies and supports rigorous judicial oversight throughout the investigation process.

The investigation into Dr Mohamed Haneef was conducted in very challenging circumstances.

When the three terrorism-related incidents occurred in the UK in June 2007, the AFP had a duty to act on information provided by the UK MPS. The MPS needed to urgently locate Dr Haneef who was the subject of an arrest notice.

The close connection of Dr Haneef to some of the people arrested in relation to the UK incidents and the information provided by the MPS, needed to be closely examined to determine whether there was a breach of Australian law and / or a threat to Australia.

Investigations into criminal offences pursue many and varied lines of inquiry. Some of them result in charges being laid and convictions being recorded, some do not.

No investigation is ever perfect and that is why the AFP welcomes the many checks and balances that exist in relation to the investigation process: oversight by judicial officers and courts, assistance from partner agencies, accountability to the public through the Minister and the Parliament, and independent inquiries such as this.

The AFP notes that the Commonwealth Director of Public Prosecutions (CDPP) engaged senior counsel to review the role of the Office of CDPP in the Dr Haneef case. The AFP endorses the findings of the review, particularly as they relate to the provision of the advice by the CDPP case officer.

The AFP recognises that there can be deficiencies in policies and procedures, especially in relation to complex matters such as terrorism.

Unlike many claims of improper conduct by police where there are allegations of corrupt behaviour or the inappropriate use of force, no such allegation has or could be made against the AFP in this matter.

What is at issue in this matter is the application of law and policy. The AFP understands that there are many in the community who are opposed to Australia's terrorism laws but these are laws passed with bipartisan support by our Parliament.

As yet, the Parliament has not deemed it appropriate to amend these laws. If and when amendments are made, including enhancements, or the implementation of the recommendations of this Inquiry the AFP will embrace and apply the changes as it does in any other area of policy change.

The AFP has learned a lot from an AFP-initiated independent review which examined the way in which the organisation works with its partner agencies on counter-terrorism investigations. Headed by former NSW Chief Justice Sir Laurence Street, [\*The Street Review: A review of interoperability between the AFP and its national security partners\*](#), reported in March 2008 and made 10 recommendations about the way the AFP operates with other national security agencies.

The AFP is implementing all the recommendations of the Review. These recommendations relate to operational decision-making processes, joint taskforce arrangements, information sharing, training and education.

These enhancements are making significant improvements to our interoperability with partner agencies and the AFP looks forward to building on these in the future.

### **3. ROLE OF THE AFP**

The AFP is the Commonwealth's law enforcement agency. It is Australia's international law enforcement and policing representative and the chief source of advice to the Commonwealth Government on policing issues. The AFP's role is to enforce Commonwealth criminal law and protect Commonwealth and national interests from crime in Australia and overseas.

The AFP provides a range of investigative, criminal intelligence and other services supporting the Commonwealth's law enforcement objectives. The AFP directs a large proportion of its efforts toward preventing and responding to high impact, high level crime which threatens Australia's national interests.

The AFP also provides community policing services to the Australian Capital Territory and to Australia's external territories. Significant offshore commitments to law and order and peace operations are delivered by the AFP's International Deployment Group.

The AFP also provides protective security services, close personal protection services to high office-holders and visiting dignitaries and uniformed policing at major Australian airports.

The AFP's strategic direction and its priorities are determined in accordance with the *Australian Federal Police Act 1979*, and by Ministerial Directions issued under the Act.

### **4. THE INTERNATIONAL LAW ENFORCEMENT ENVIRONMENT**

Today the global criminal environment is complex, borderless and fluid. Ongoing advances in information and communications technology are enabling criminal groups to communicate, cooperate and mobilise in real-time across the world. These advances are also enabling criminals to maximise the efficiency and impact of their operations as well as evade detection and capture. All of these factors combine to make the job of policing and ensuring a secure environment extremely challenging.

With criminal and terrorist groups active at local, national and international levels, Australian investigations are increasingly likely to have international dimensions. This creates additional challenges for law enforcement as they have to contend with different jurisdictional and evidentiary standards and systems, some of which fall short of Australian requirements. They also face time pressures created by different time zones and operational priorities.

In response to this, the AFP works closely with law enforcement agencies around the world to promote timely and effective cooperation. In Australia, this includes all Australian State, Territory and Federal law enforcement agencies, as well as the Australian Intelligence Community. The AFP also works with other Australian Government departments domestically and abroad to ensure a whole-of-government approach to combating crime.

Internationally, the AFP is Australia's representative on the International Criminal Police Organisation (INTERPOL). It also provides a first point of contact for overseas law enforcement inquiries and international cooperation through the AFP International Network.

The AFP International Network consists of 88 international liaison officers at 33 posts in 27 countries. These liaison officers work with international law enforcement agencies to promote information and intelligence exchange to combat transnational crime, providing services 24-hours-a-day, seven-days-a-week.

Consistent with Australia's treaty obligations in relation to combating transnational crime, including terrorism, the AFP has signed Memoranda of Understanding with many overseas law enforcement authorities.

These MoUs are individually negotiated and provide for cooperative exchange of information. They entail a range of caveats on the dissemination of information. Failure to uphold these provisions could not only jeopardise criminal trials, but erode the trust and confidence of overseas partner agencies, which would result in diminishing information exchange and hamper the AFP's ability to carry out its function of investigating crime, including terrorism.

In December 2006, the AFP signed an MoU with the Metropolitan Police Service in the UK. This MoU governs the exchange of information on operational matters between the AFP and the MPS Counter Terrorism Command.

## **5. TERRORISM AS A CRIME**

There is significant debate about the nature of terrorism in which it is recognised that terrorism is not an ordinary crime. While some criminals use violence to meet a specific end, terrorists often do not act for material gain. Terrorists act to cause a consequence or create a psychological repercussion beyond the violent act itself in order to influence public opinion to effect political, religious or ideological change.

Modern technology has provided a profound advantage to those with a desire to plan and commit terrorist acts. With very limited resources, terrorists are able to use modern communications technology to plan an

attack undetected. Similarly, terrorists are able to execute their plans remotely from the location of an attack. Terrorists are also known to use technology to mask their true intent and frustrate law enforcement responses.

There is no stereotypical terrorist. International experience has shown that terrorist and terrorist cells can be made up of people from a variety of educational and ethnic backgrounds.

In addition, law enforcement and security agencies have come under immense pressure over recent years to meet the increasing expectations of government and the community to not only detect and investigate acts of terrorism, but prevent them from eventuating.

This poses extreme challenges, with policing responses traditionally reliant on gathering evidence after a crime has been committed. The nature of terrorism offences and the potential consequences of a terrorist act are so great, that police now have to focus on investigating and potentially disrupting activity at a very early stage.

In doing so, they must continually balance the needs of preventing an incident against the need to gather as much evidence as possible to ensure successful prosecution. A decision to intervene, including arresting suspects, can occur much earlier in terrorism cases than with other criminal investigations because of the possible threat to public safety.

As a result, counter terrorism investigations are usually highly intense, and characterised by tremendous urgency and fluidity. Considerations for public safety remain paramount at all times.

## **6. TERRORISM THREAT IN AUSTRALIA**

Fortunately, in recent years, there have been no successful terrorist attacks in Australia.

In 2007, the official terrorism threat to Australia was rated at medium. A medium threat level means that a terrorist attack could occur.

With a focus on prevention, Australian authorities have thwarted a number of terrorism related acts. The recent conviction of eight people in Melbourne is a watershed in Australia's national security history and stands to confirm that terrorist operations are no longer isolated offshore.

Other countries have not been as fortunate as Australia, with terrorist attacks occurring with disturbing regularity in places such as Pakistan,

Indonesia and the Philippines. There have also been incidents in countries such as the UK, the United States, Spain and Turkey.

The AFP has been asked to respond to many requests for assistance to investigate terrorist bombings overseas, particularly in Indonesia. These have included the Bali bombings in 2002 and 2005, the bombing of the Australian Embassy and Marriott Hotel in Jakarta, which together claimed hundreds of lives. The AFP has provided a range of specialist forensic, technical and analytical support to these bombing investigations as well as capability in Disaster Victim Identification (DVI).

The AFP has also gained experience in investigating terrorism offences within Australia. A number of investigations have been conducted around the country which most recently saw the conviction of eight men in Melbourne for terrorism offences. These investigations are among the most complex and high profile in Australian policing and legal history.

These experiences have brought home the reality and seriousness of the terrorism threat.

## **7. THE AFP COUNTER TERRORISM PORTFOLIO**

In addressing the priorities associated with counter terrorism investigations, the AFP works collaboratively with Commonwealth, State and Territory law enforcement and national security partner agencies, including Australian Security Intelligence Organisation (ASIO), the Attorney-General's Department (AGD), the Australian Customs Service, and the CDPP.

The AFP also works with representatives on the National Counter-Terrorism Committee (NCTC), which was established by the Inter-Governmental Agreement signed by the Prime Minister, Premiers and Chief Ministers on 24 October 2002.

The role of the NCTC is to implement the national counter-terrorism framework set out in the Inter-Governmental Agreement, in particular by providing expert strategic and policy advice to heads of government and other relevant ministers and coordinating an effective nationwide counter-terrorism capability.

Domestically, Joint Counter Terrorism Teams (JCTTs) have been established in each State and Territory to conduct criminal investigations into terrorist activity. These teams comprise AFP and State and Territory Police, as well as national security agency representatives.

The AFP's domestic security arrangements are complemented by an offshore strategy to counter the broader regional threat of terrorism.

The AFP has developed cohesive strategies through continued and enhanced multi-lateral engagement with its regional counterparts.

A key strategy for the AFP is strengthening the capacity of regional law enforcement partners and developing collaborative operational relationships overseas, particularly in the areas of investigations, intelligence, forensics, DVI, surveillance and response capabilities. The AFP also undertakes capacity building initiatives such as the Jakarta Centre for Law Enforcement Cooperation and regional Bomb Data Centres in Indonesia, Philippines and Thailand.

## **8. INVESTIGATING TERRORISM**

There are some unique characteristics that set terrorism offences apart from other serious crime.

As previously mentioned, terrorism investigations are highly complex and intense and are often carried out in an environment of high public scrutiny. They require multi-faceted, multi-jurisdictional and multi-agency responses, challenging the interoperability between agencies and placing them and their people under more pressure than may ordinarily be the case during investigations.

Terrorism investigations involve large flows of information and are extremely time-critical and resource intensive, often requiring personnel and equipment to be diverted from other operations.

Terrorism investigations typically involve the need for investigators to examine huge volumes of material, including electronic data, some of which may be encrypted or written in foreign languages. Accordingly, specialist technical, linguistic and interpretive skills are required.

Often the material involved in terrorism investigations must be obtained from foreign jurisdictions, all with different processes, legal standards and systems to which Australian investigators must adhere. Furthermore these jurisdictions may also assign different priorities in responding to requests for assistance and this can create further time and resourcing pressures on investigators.

Critical to the investigation of this matter, as with all transnational investigations, is the need to manage the tensions that occur when dealing with classified or sensitive information that belongs to a foreign partner agency. To not adhere to the caveats placed on such information puts at risk international relationships which are essential in dealing with the terrorism challenge. At the same time, the AFP has to fulfil its obligations to the Australian Government and the Australian community.

Importantly, terrorism investigations are subject to rigorous judicial checks and balances at each step in the process, with judicial decisions required on questions such as warrants, detention and bail. In complex investigations, the AFP routinely seeks advice from the AGD, CDPP and the Australian Government Solicitor (AGS).

It is not uncommon for terrorism investigations to take a long time to complete. This is due to the complex nature of terrorist crimes and the absolute priority for law enforcement and national security agencies to follow up all lines of inquiry.

## **9. INTELLIGENCE**

The AFP, in meeting its responsibilities under the *Australian Federal Police Act 1979* considers the intelligence it receives from a policing perspective. Members of the intelligence community must and do consider intelligence from a perspective relevant to their statutory function.

The volume of information in counter terrorism investigations can be overwhelming and require significant resources and technology to analyse and assess it. In these circumstances, ensuring that police do not miss relevant information that could lead to the collection of admissible evidence or mitigate risk to the community can be a significant challenge.

Rapid exchange of intelligence between all the agencies involved in investigating terrorism is critical to the process. To be effective, the AFP must be able to quickly and easily share information and intelligence with our partners, both locally and internationally. If police are to prevent terrorist acts, intelligence exchange is vital and time critical.

It is important to emphasise that intelligence collected for national security purposes will not always amount to evidence. The methodologies adopted by intelligence agencies are very different to those adopted by police. This, again, is reflective of the differing statutory functions between police and intelligence agencies and is addressed in the Street Review.

The use of intelligence by police is always subject to the need to appropriately protect it. Indeed, the use of intelligence provided to police by domestic and international agencies is very often subject to strict non-disclosure requirements. The unauthorised disclosure of intelligence by the AFP would greatly harm the AFP's ability to work cooperatively with our colleagues in countering the global threat of terrorism. If the AFP is to remain effective in the fight against terrorism, then the conditions upon which intelligence is provided must be observed so as to protect collection methods and sources which are not known to terrorists.

## 10. TERRORISM LAWS

To ensure the protection of Australia and Australians, in 2001 the Government undertook extensive legislative review and sought Parliament's agreement to new offences and new powers for Australia's national security and law enforcement agencies.

A suite of anti-terrorism legislation was introduced between 2002 and 2005 to enable an effective law enforcement response to terrorism and related criminal activity.

### **Part IC of *Crimes Act 1914***

The legislation included amendments to Part IC of the *Crimes Act 1914* to specifically deal with the investigation of terrorism offences.

#### **Investigation period**

The practical effect of Part IC is to divide the time the person spends in custody into two types, the 'investigation period' and time that is known as 'down time'. The investigation period begins to run from the time the person is arrested, irrespective of whether the person is actually being questioned by police.

Part IC provides an initial investigation period of up to four hours. For serious offences (those carrying a penalty of more than 12 months imprisonment) police can apply to a judicial officer for an extension of the investigation period of up to eight hours.

Police cannot continue to detain a person beyond the expiry of the investigation period. At or before the end of the investigation period, police must make a decision to charge or release the person.

Periods of down time, as set out in Part IC are not included in the calculation of the investigation period. This includes for example, time during which questioning is suspended to allow the arrested person to speak to their lawyer.

Part IC was amended in 2004 with the introduction of specific provisions relating to a person arrested for a terrorism offence. The amendments increase the maximum possible extension of the investigation period in terrorism cases from eight to 20 hours. This means that during an investigation into terrorism offences a total of up to 24 hours may be granted to investigate the terrorism offence for which the person was arrested.

## **Specified Time**

The amendments to Part IC also enable police to apply to a judicial officer for a period of 'specified time'. Periods of specified time are a category of down time and therefore are not included in the calculation of the investigation period.

In cases where an arrest occurs at an early point in the investigation, police are under considerable time pressure to gather evidence and conduct enquiries prior to the conclusion of the investigation period. This amendment was made to enable investigators to conduct a thorough investigation, including interviews with terrorist suspects, and to make inquiries in overseas locations in different time zones so information relevant to the investigation could be obtained. Among other things, it also allowed adequate time to translate information, to decrypt encoded messages and to receive and analyse responses.

During international terrorism investigations, Australian police may have to rely on foreign agencies answering Australian requests for assistance within this timeframe.

Unlike other down time categories, a period of specified time is only available on application to a judicial officer. In the case of Dr Haneef, the role of the judicial officer was performed by a Queensland Magistrate. Just as police cannot make the decision to extend the investigation period on their own, nor can they unilaterally decide to extend a person's detention through the use of specified time. Both of these processes require police to prepare an application to the judicial officer which must include the reasons for seeking the additional time.

It is a judicial officer who makes the decision on whether to grant specified time, and if so how much time should be granted. In making this decision, the judicial officer is also obliged to have regard to any representations put forward by the arrested person or their legal representative.

The legislation does not provide a limit on the amount of specified time that the judicial officer may grant. That is a matter for the judicial officer to decide on the basis of the representations. In this regard the size, scale and complexity of the police investigation may be relevant.

The judicial officer is not required to assess the guilt or innocence of the person during this process. Part of the reason for having an investigation period pre charge is that it gives police time to test and verify the information on which the person was arrested and to consider any explanations that the arrested person may put forward.

The AFP's experience and observations of overseas law enforcement counter terrorism investigations led to our support of the anti-terrorism

amendments. The amendments also received bipartisan political support in the Australian Parliament.

Australia is not the only country to have legislated to address the special requirements of investigating terrorism offences. For example, the UK has made specific provision for judicially supervised pre-charge detention including an initial period of detention of 48 hours and the ability to extend that with Court authority for up to 28 days. Extensions are able to be granted only if the Court is satisfied that there are reasonable grounds to believe further detention is necessary to obtain relevant evidence and the investigation is being conducted diligently and expeditiously.

The amendments to Part IC preserve all of the safeguards to which an arrested person is ordinarily entitled under Australian law. Importantly it does not alter the right to silence.

The AFP conducted its own review of the investigation, as is the usual practice, following major investigations undertaken by the AFP. As a result of that review, the AFP has placed further emphasis on training in the operation of Part IC particularly to those staff involved in counter terrorism investigations.

## **11. EVENTS IN THE UK**

On 29 June 2007, two vehicles containing sophisticated improvised explosive devices involving remote controlled mobile phone detonators, were located in Mayfair and Haymarket, London, England. These explosive devices did not detonate.

On 30 June 2007, a vehicle was driven into the front doors of Terminal One at Glasgow International Airport, Scotland, in an apparent suicide/homicide attack. The vehicle burst into flames and explosions occurred.

UK authorities arrested a total of seven people in relation to the attacks:

- Kafeel Ahmed, an Indian born engineer, was identified as the driver of the vehicle driven into Glasgow airport. Kafeel Ahmed was conveyed to hospital in a critical condition with burns to 90 percent of his body. He subsequently died from injuries sustained in the attack.
- Dr Bilal Abdulla, a British born Iraqi doctor who is suspected of being the passenger in the vehicle driven into Glasgow airport, was arrested at the scene. Dr Abdulla was subsequently charged with conspiracy to murder and conspiracy to cause explosions

likely to endanger life or cause serious injury to property, in contravention of UK law.

- Dr Mohammed Jamil Abdelqader Asha, a Saudi Arabian born, Jordanian qualified doctor, was arrested on 30 June 2007 on the M6 motorway near Staffordshire. Dr Asha was charged with conspiracy to murder and conspiracy to cause explosions likely to endanger life or cause serious injury to property, in contravention of UK law.
- Dr Asha's wife, Marwa Dana Asha, was arrested in the company of her husband on 30 June 2007. Marwa Asha was subsequently released without charge on 12 July 2007.
- Dr Sabeel Ahmed, an Indian born doctor and brother of Kafeel Ahmed, was arrested on 30 June 2007 at Liverpool, UK. Dr Sabeel Ahmed was charged with failing to disclose information relating to an act of terrorism, in contravention of UK law. He subsequently pleaded guilty to the offence on 11 April 2008. 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. Dr Sabeel Ahmed was sentenced to 18 months imprisonment but was not required to serve his sentence, as he had already spent 270 days in custody and agreed to return to India voluntarily.
- On 2 July 2007, two further persons were arrested for their suspected involvement in the attacks. Both were subsequently released without charge on 15 July 2007.

## **12. THE ARREST OF DR HANEEF**

On 2 July 2007, the UK MPS requested urgent assistance from the AFP in verifying the whereabouts of Dr Haneef, who was suspected to be in Australia, as there was a phone associated with him which had been identified in their investigation of these attacks.

UK authorities had issued an arrest notice for Dr Haneef as they suspected him of being a terrorist. Finding him if he was in Australia became an operational priority for both agencies.

### **Australian response**

On 2 July 2007, as a result of the urgent UK request for assistance, a joint AFP and Queensland Police Service (QPS) investigation, known as Operation Rain, was commenced by the AFP's Joint Counter Terrorism Team based in Brisbane. The focus of the investigation comprised two distinct elements:

1. To determine the alleged involvement of Dr Haneef and others in the terrorist incidents in London and Glasgow on 29 and 30 June 2007; and
2. To identify any persons involved in criminal activity who may pose a threat to Australia's national security.

That morning, police enquiries identified Dr Haneef's residence and it was placed under surveillance.

Late in the evening police identified Dr Haneef and then observed him attend Brisbane International Airport. Given the pace at which the events were unfolding, police were required to respond to Dr Haneef's possible departure with little notice.

The AFP was aware that the UK attacks had been intended to cause maximum civilian casualties because of the location of the unexploded bombs in the central business district of London. The AFP was also aware that a terrorist act had been committed at Glasgow International Airport. Due to the limited time available before Dr Haneef's departure, it was determined that, if lawfully achievable, he should be prevented from travelling on an aircraft until further enquiries could be conducted.

In addition to addressing public safety concerns, the AFP assessed the available evidence provided by UK authorities. Following this assessment it was determined sufficient grounds existed for the arrest of Dr Haneef for a breach of Australian law. Notwithstanding the terrorist attacks had occurred in the UK, Australian anti-terrorism legislation makes it an offence to provide support or resources to terrorist organisations overseas. The relevant section of the *Criminal Code* 1995 is set out below.

### **Section 102.7 *Criminal Code* - Providing support to a terrorist organisation**

- (1) 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 knows the organisation is a terrorist organisation.

Penalty: Imprisonment for 25 years.

- (2) 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.

Penalty: Imprisonment for 15 years.

A **terrorist organisation** is defined in s102.1 (1) of the *Criminal Code* as meaning:

- (a) an organisation that is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs); or
- (b) an organisation that is specified by the regulations for the purposes of this paragraph.

Arrest powers in Australia empower police to arrest a person without a warrant if the arresting officer believes on reasonable grounds the person has committed or is committing the offence and that proceeding by summons would not achieve certain purposes. The relevant section of the *Crimes Act 1914* is set out below.

### **Section 3W Crimes Act 1914**

- (1) A constable may, without warrant, arrest a person for an offence if the constable believes on reasonable grounds that:
  - (a) the person has committed or is committing the offence; and
  - (b) proceedings by summons against the person would not achieve one or more of the following purposes:
    - (i) ensuring the appearance of the person before a court in respect of the offence;
    - (ii) preventing a repetition or continuation of the offence or the commission of another offence;
    - (iii) preventing the concealment, loss or destruction of evidence relating to the offence;

- (iv) preventing harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence;
- (v) preventing the fabrication of evidence in respect of the offence;
- (vi) preserving the safety or welfare of the person.

On the information then available to the AFP, the arresting officer formed the belief that Dr Haneef had committed the offence set out in section 102.7(1) of the *Criminal Code* and that proceeding by summons against Dr Haneef was not appropriate in the circumstances. At 11.05pm, Dr Haneef was arrested at Brisbane International Airport.

### **13. EVIDENCE**

This section details some of the evidence gathered prior to the charging of Dr Haneef. Further information, including the UK sourced information, is contained within the AFP classified submissions which have been provided to the Inquiry and are not available for public release.

The AFP notes that Dr Haneef's alleged involvement in the offence for which he was charged has been thoroughly investigated and that following this investigation it was determined that there was insufficient evidence to continue proceedings against Dr Haneef for any criminal offence.

#### **Dr Haneef's intended departure**

The circumstances of Dr Haneef's intended departure from Australia aroused considerable suspicion on the part of the AFP and were the subject of extensive inquiries.

Dr Haneef sought to leave Australia almost immediately after being notified of UK law enforcement interest in himself and a Subscriber Identity Module (SIM) card, registered in his name, that he provided to Dr Sabeel Ahmed prior to leaving the UK around July 2006.

At the time of his arrest Dr Haneef provided police with all items contained within the pockets of his clothing. Included among the items was a document on which there were a number of handwritten notes including a phone number for a UK police officer. Dr Haneef had been trying to contact the UK police officer regarding inquiries which he understood the UK authorities had made in relation to him.

Dr Haneef was leaving Australia on a one-way ticket to India. This was purchased on the day of his departure. AFP inquiries revealed Dr

Haneef's ticket had been purchased in India at a cost of INR 83,885.00 (approx A\$2,213.00). Dr Haneef told investigators that he had planned to return to Australia in approximately one week. Inquiries further revealed that had Dr Haneef purchased a return ticket at that date and time, it would have been considerably cheaper than buying two one way tickets. A return ticket would have cost him A\$2993.84 (valid for use within 35 days) or A\$3086.84 (valid for use within three months). Accordingly, if Dr Haneef had intended to return to Australia within the seven days that he had indicated, the purchase of a one-way ticket defied economic sense and raised suspicions among police.

Dr Haneef's luggage included original documents relating to his professional qualifications and his original marriage certificate. Dr Haneef also had in his luggage the original purchase agreement for the SIM card he gave to Dr Sabeel Ahmed before departing the UK around July 2006. These documents did not appear necessary for a short visit to India. Dr Haneef indicated to the arresting officers that he understood the UK police to be interested in the SIM card in relation to the recent attacks.

When arrested at the airport, Dr Haneef offered this explanation for his departure from Australia:

*"...But I submit to you but I haven't supported any of the terrorist organisations. I got to know, I was just visiting my wife (inaudible) cause she just gave birth to a child last week in an emergency section. And they told me there was some problem, one of the doctors, Mum called me and told me there was some problem. Actually I left UK, um, last year 2000 (sic), July, um I don't remember the exact date probably the 25th, um..."*

Police inquiries revealed that he offered a similar explanation to his employer, specifically:

- about 10.00am on 2 July 2007 Dr Haneef contacted the Gold Coast Hospital Human Resources Operations office enquiring about parental leave stating his wife had just had a baby in India and he wanted to see how long he could take off work. Dr Haneef was provided with an email detailing leave entitlements; and
- Dr Haneef applied for leave between 2.00pm and 3.00pm on 2 July 2007 (approximately eight hours before he was arrested trying to leave the country). The explanation provided by Dr Haneef to the administration officer was that his wife *"had to have an emergency Caesar."* When asked

by the officer how the baby was, Dr Haneef told the officer that the baby had *"a bit of jaundice."*

Police inquiries revealed that Dr Haneef's daughter was born six days earlier by Caesarean section in India on 26 June 2007. Furthermore, Dr Haneef's associates and colleagues at the Gold Coast Hospital were, prior to 2 July 2007, apparently unaware of either a medical emergency requiring Dr Haneef's return to India or the fact that he was planning to return. Indeed one of Dr Haneef's associates advised Dr Haneef on 1 July 2007 that he (the associate) was intending to travel to India. At this time Dr Haneef made no mention of any travel plans of his own.

Dr Mohammed Asif Ali, a close associate of Dr Haneef's, was also questioned about Dr Haneef's intended departure from Australia. Dr Mohammed Asif Ali told police that he spoke with Dr Haneef between 3.30 and 4.00 pm on 2 July 2007 where Dr Haneef had said:

*"Asif I don't know what has happened but they are some issues regarding my old card which I have left there and one of my friend 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"*

Dr Haneef's explanation to police and the hospital of his departure was seen to be all the more suspicious after police recovered an internet communication between Dr Haneef and his brother on 2 July 2007, which cast doubt on his explanation to police and the hospital about his departure. The internet communication included the following excerpts:

brother	right now nothing of you will be known no brother
Dr Haneef	what else?
brother	in the five arrests they made, there are two doctors
Dr Haneef	Hmmm
brother	one of them is brother Sable
Dr Haneef	Ho
brother	watch BBC.COM
Dr Haneef	ok....by God's grace I'll come there
brother	Some friend of mami (Aunty) told from there that yours is there too
brother	when are you leaving?
Dr Haneef	Today
	<i>Later in the same conversation</i>
brother	Now did you take leave from your hospital?
Dr Haneef	hmmm
Dr Haneef	Don't know what happened (or Do you know what happened?)
brother	What tell?
Dr Haneef	What did you say?

brother	Here they are asking whether you could take leave from the hospital
brother	Has ticket been booked
Dr Haneef	hmmm
brother	You don't worry. Come bravely
Dr Haneef	Don't tell mother anything
Dr Haneef	God is great
Brother	No, I have told no one at home
Dr Haneef	ok
brother	Take brother Asif with you to the airport
Dr Haneef	He's on duty
brother	What time are you leaving?
	<i>Later in the same conversation</i>
brother	what did you tell at hospital to take leave?
brother	tell them you are going because you had a baby daughter and give details before coming
Brother	Secondly, do not tell them anything else
Dr Haneef	I have told them I had a child born in an emergency C section.
brother	hmm ok

This internet communication occurred after Dr Haneef's application for leave from the hospital. It appeared to police that Dr Haneef's focus was on the events in the UK rather than any medical problems with his child. Investigators considered it unusual that the medical problems were not central to the communications with a family member when Dr Haneef stated that they were the primary reason for his return to India.

Finally, when asked by police about the fact that his father-in-law had booked and paid for the one-way ticket, Dr Haneef claimed that this was done because he did not have sufficient funds in his Australian bank account and that he intended to arrange a ticket for the return leg when he got to India, and that he intended to return within seven days.

Two concerns arose from this explanation. Firstly, as noted above, to purchase a one way ticket whilst positively intending to return within one week was odd. Secondly, Dr Haneef was in possession of a credit card at the time of his arrest which could have been used to purchase the ticket.

## **Dr Haneef's relationship with UK persons**

### *Dr Haneef's relationship with Kafeel Ahmed*

Dr Haneef's relationship with Kafeel Ahmed was longstanding and ongoing. For example, Dr Haneef confirmed the following during his record of interview:

- Kafeel Ahmed is his second cousin;
- Dr Haneef visited Kafeel Ahmed at Cambridge on two occasions in June/July 2004 and again during Ramadan in November 2004. Dr Haneef stayed with Kafeel Ahmed for 4-5 days during the first visit and one day on the second visit;
- Kafeel Ahmed attended Dr Haneef's wedding in India in November 2005;
- Dr Haneef and Kafeel Ahmed visited Dr Sabeel Ahmed at Preston (UK) around August 2005;
- Whilst Kafeel Ahmed was in India in October 2005, Dr Haneef transferred £960 to Kafeel Ahmed's bank account. Dr Haneef stated that Kafeel Ahmed was to pass the funds to Dr Haneef's family in India on Dr Haneef's behalf as he (Dr Haneef) did not have an Indian bank account at that time;
- When he arrived in the UK, Kafeel Ahmed provided him with a prepaid SIM card for his use. Kafeel Ahmed, who was living in Belfast at the time, posted the SIM card to Dr Haneef;
- After departing the UK, Dr Haneef met Kafeel Ahmed in Mysore, India in August 2006 at Dr Haneef's brother-in-law's wedding; and
- Dr Haneef maintained direct contact with Kafeel Ahmed whilst Dr Haneef was in Australia (the last such known contact being via internet communication around March 2007). He also inquired about Kafeel Ahmed in his conversations with Dr Sabeel Ahmed.

Kafeel Ahmed's death in the terrorist attack at Glasgow Airport obviously meant that the MPS and the AFP were unable to pursue these inquiries further.

### *Dr Haneef's relationship with Dr Sabeel Ahmed*

Dr Haneef had a relatively close relationship with Dr Sabeel Ahmed and confirmed as much during his record of interview. For example:

- Dr Sabeel Ahmed is his second cousin;
- Dr Sabeel Ahmed attended Dr Haneef's wedding in India in November 2005;
- In December 2005 over his Christmas leave Dr Haneef, his wife and Dr Sabeel Ahmed travelled to Swansea to visit a friend and Dr Sabeel Ahmed stayed with them on this trip;
- Dr Haneef's wife's family visited the UK in April 2006. They stayed for three or four weeks and went travelling with Dr Sabeel Ahmed

- to the Lake District, Glasgow and Edinburgh. Dr Haneef's wife and Dr Sabeel Ahmed also rented a car and travelled to London;
- Dr Sabeel Ahmed visited Dr Haneef at his mother's house in Bangalore India around August 2006;
  - Prior to leaving the UK Dr Haneef transferred his excess property (manchester, crockery, clothes, books) to Dr Sabeel Ahmed's residence with the intention of having Dr Sabeel Ahmed return them to India at some stage; and
  - Dr Haneef maintained contact with Dr Sabeel Ahmed via the internet which continued whilst Dr Haneef was in Australia. Dr Haneef's most recent contact with Dr Sabeel Ahmed was around 30 June 2007 via internet communication during which Dr Sabeel Ahmed congratulated him on the birth of his daughter

#### *Dr Haneef's relationship with Dr Bilal Abdulla*

Dr Haneef had been introduced to Dr Bilal Abdulla by Kafeel Ahmed on one occasion. There was no family relationship between Dr Bilal Abdulla and Dr Haneef.

Examination of Dr Haneef's laptop computer revealed that Dr Bilal Abdulla's contact details were uploaded in December 2006 together with several other contacts. Dr Haneef informed police that he obtained a file of contacts from Dr Sabeel Ahmed after he had lost his mobile containing his contacts.

#### **Dr Haneef's property**

Located during a search of Dr Haneef's premises was a brochure apparently published in 2005 (at which time Dr Haneef was resident in the UK) from the UK branch of an international organisation, which is a prescribed terrorist organisation in a number of countries. The brochure includes a reference to "...the brutal invasion and occupation of Afghanistan and Iraq... the killing and murder of our brothers and sisters and the brutality of British and American foreign policy..."

Examination of Dr Haneef's laptop revealed a number of audio files containing lectures by an author who has been linked to Al Qa'ida. In one of the lectures the author expresses a militant view of jihad, explaining that fighting jihad in the path of Allah is the primary meaning of the word if it is used unqualified. The lecturer goes on to say that undertaking jihad in the cause of Allah is the most virtuous act a Muslim can carry out. Further the author argues that no act of violence carried out by Muslims can ever reach the level of violence and evil committed against the Muslims. He further justifies his support for fighting jihad in the path of Allah by arguing that it is divinely sanctioned.

## **Dr Haneef's possible knowledge of the UK attacks**

The AFP examined a range of material that raised the possibility that Dr Haneef may have had some knowledge of the UK attacks prior to their commission.

In particular, the AFP considered whether Dr Sabeel Ahmed had prior knowledge of the attacks and whether Dr Haneef's communications with Dr Sabeel Ahmed involved oblique references to a shared understanding that the attacks were planned.

On 17 June 2007, Dr Haneef had an internet chat with Dr Sabeel Ahmed where they discussed among other things the location of Kafeel Ahmed at Glasgow. A relevant excerpt follows:

Dr Haneef	How's Kafeel
Dr Sabeel Ahmed	Greetings
Dr Haneef	Is he at Cambridge?
Dr Sabeel Ahmed	No
Dr Sabeel Ahmed	He's at Glasgow
Dr Haneef	When did he move to Glasgow
Dr Haneef	What about the job at Cambridge?
Dr Sabeel Ahmed	well thats shifted to Glasgow
Dr Haneef	Is it

These internet communications revealed an active interest on the part of Dr Haneef into Kafeel Ahmed's activities and whereabouts. The AFP had to consider the possibility that these internet communications, when coupled with other information indicated a shared understanding that a "job" in Glasgow was in fact a reference to planned terrorist activities in Glasgow.

On 30 June 2007, less than 2 hours prior to the Glasgow airport attack, Kafeel Ahmed sent a message to Dr Sabeel Ahmed instructing him to access an email account. Dr Sabeel Ahmed did so a couple of hours later. The account contained instructions from Kafeel Ahmed to family members.

An uncritical face value acceptance of the documents 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. However, the AFP had to ascertain whether Kafeel Ahmed created the documents in the hope that they would be able to be used by Dr Sabeel Ahmed to mask his true knowledge at the time.

It should be noted here that, ultimately, Dr Sabeel Ahmed was neither charged nor convicted of any offence which involved proof that he had prior knowledge of Kafeel Ahmed's actions before accessing these documents.

The AFP considered Dr Haneef's relationships with Dr Sabeel Ahmed and Kafeel Ahmed to be significant. In view of their shared backgrounds the

question arose as to whether Dr Haneef may have known that, or at least been reckless as to whether, Kafeel Ahmed, Dr Sabeel Ahmed and others were fostering an act of terrorism.

### **SIM Card**

Dr Haneef confirmed he provided a SIM card to Dr Sabeel Ahmed whilst in the UK in 2006. He stated that Dr Sabeel Ahmed wanted to use the remaining free time left on the phone and take up the opportunity of cheaper rates during the second year of the contract. He said that he did not make inquiries with the phone service provider as to whether the contract could be transferred into Dr Sabeel Ahmed's name. He provided Dr Sabeel Ahmed with his account password and cancelled the direct debit facility to his own bank account.

After Dr Haneef departed the UK, Dr Sabeel Ahmed visited Dr Haneef at his mother's house in Bangalore India around August 2006. Dr Haneef claims to have raised the issue of the SIM card he had given Dr Sabeel Ahmed and told him that if he wanted to extend the contract, to change it in to his own name and that he (Dr Haneef) would cancel the direct debit arrangements from his bank account. Inquiries confirmed that the direct debit arrangements were terminated by Dr Haneef.

### **Other Relationships**

Also significant in the context of the investigation and the suspicions held by investigators, was the relationship between Dr Haneef and Dr Mohammed Asif Ali.

After being arrested, Dr Haneef informed investigators that he had left personal possessions, including his laptop computer with Dr Mohammed Asif Ali.

On 3 July 2007, members of the AFP executed a search warrant at Dr Mohammed Asif Ali's residence. Due to the failure of Dr Mohammed Asif Ali to admit police or acknowledge their presence, the front door of his premises was forced open. Among items seized was Dr Haneef's laptop.

AFP investigations revealed an association between Dr Mohammed Asif Ali and Dr Sabeel Ahmed and a limited association between Dr Mohammad Asif Ali and Kafeel Ahmed.

Since becoming a person of interest to the AFP and prior to his departure from Australia, Dr Mohammed Asif Ali was observed by AFP surveillance officers engaging in activities suspected of being counter-surveillance measures.

Analysis of telephone records attributed to Dr Haneef and Dr Mohammed Asif Ali identified contact with numerous mobile

telecommunications services which appeared to have been subscribed to in false details.

JCTT members in Brisbane, Sydney and Melbourne physically attended each address associated with the false name services and the occupants of the premises were interviewed.

It is not known whether the use of the false name services by Dr Haneef was to secure cheap international calls or to assist in concealing the identity of the various parties to these communications.

During the course of the investigation 47 persons were identified as being potentially relevant to the investigation. The majority of these people were either interviewed or provided statements which required a resource intensive response. All, except for one person were subsequently assessed to be not of interest to the investigation.

On 16 August 2007 Dr Mohammed Asif Ali departed Australia for India. On 24 August 2007 the Queensland Department of Health dismissed Dr Mohammed Asif Ali on the grounds of misconduct.

## **14. THE DETENTION OF DR HANEEF**

### **Overview**

Dr Haneef was detained pursuant to Part 1C of the *Crimes Act 1914*. Under Part 1C, a person may be detained upon arrest for a terrorism offence for the purposes of investigating whether the person committed the terrorism offence for which they were arrested, or another terrorism offence which an investigating official reasonably suspects the person to have committed.

### **Investigation period**

The investigation period during which Dr Haneef was detained under Part 1C of the *Crimes Act 1914* was as follows:

- four hours – initial period following arrest (3 July);
- eight hours extension (granted on 3 July – 10.15am); and
- 12 hours extension (granted on 3 July – 5.20pm).

The investigating officers made each of the two extension applications to a magistrate.

### **Specified time**

During the course of the investigation AFP officers made applications for specified time pursuant to section 23CB of the *Crimes Act 1914*. This

was the first time these provisions had been used since the legislation was introduced. The investigating officers made regular applications to a Magistrate for specified time to ensure that the process was subject to the close and continual oversight of the Magistrate. The applications for specified time were considered necessary primarily to facilitate the continuing need to collate and analyse material from sources both within Australia and overseas, predominantly the UK.

The specified time granted by the Magistrate totalled 192 hours as follows:

- 48 hours – granted on 3 July at 11.20 pm;
- 96 hours – granted on 5 July at 7.05pm; and
- 48 hours – granted on 9 July at 3.30 pm.

During the application on 9 July 2007, Dr Haneef's legal representatives raised a number of arguments relating to the application for further specified time. The magistrate granted 48 hours in order for the AFP to seek appropriate legal advice to consider these arguments. Dr Haneef's legal representatives also sought a copy of the AFP's application.

In addition to the applications for specified time, on 11 July 2007 the AFP sought to extend the application for specified time made on 9 July 2007. This application was held over until 13 July 2007 to consider an application made by Dr Haneef's legal representatives for the Magistrate's disqualification.

The AFP was represented by the AGS at the hearings of the 11 and 13 July 2007.

On 13 July 2007, the AFP withdrew the application for specified time made on 11 July 2007 as it was ready to resume the interview of Dr Haneef.

### **Decision to provide information to Dr Haneef's Legal Team**

On 9 July 2007, Dr Haneef's legal team requested from the AFP a copy of the specified time application. Consistent with its national security obligations, the AFP position was that the confidential material contained in the application should not be disclosed due to its highly sensitive nature. On 11 July 2007, the supporting material submitted to the Magistrate was divided into two documents. One document contained the sensitive information which the AFP was unable to disclose for reasons of national security. The other document was provided to Dr Haneef's solicitor.

### **The contents of the applications for specified time**

During an investigation police are necessarily required to act on information available at the time which may be imprecise or incomplete.

The investigation period provides police with time to investigate whether the person committed the offence for which they were arrested. This is common to all police investigations and is understood and recognised by the judiciary. Investigative powers would serve no purpose if their exercise depended upon the police already possessing admissible evidence sufficient to prove the offence which was under investigation. Accordingly, neither the legislation nor common sense requires that applications for specified time involve conclusive proof of the commission of an offence.

The AFP's applications for specified time addressed the requirements of the legislation, as set out in Part IC of the Crimes Act. They also set out a broad outline of the AFP's investigation and relevant information known at that time.

## **15. THE CHARGING AND PROSECUTION OF DR HANEEF**

### **Decision to charge**

Given the serious and complex nature of terrorism cases, the AFP's practice has been to seek advice from the CDPP for the purposes of determining sufficiency of evidence and whether it is appropriate to lay charges in the circumstances. As a consequence of previous CDPP involvement in advising on counter terrorism investigations, the AFP was aware that the CDPP had developed a body of expertise on what are relatively new offences. Indeed, the typically complex nature of counter terrorism investigations necessitates such expertise in assessing the sufficiency of the available evidence.

The *Memorandum of Understanding between the Commonwealth Director of Public Prosecutions and the Australian Federal Police* (the MoU) establishes that the CDPP is available to provide advice on any questions of law that arise during the investigation of an alleged offence against Commonwealth law. In particular, the CDPP can provide advice on the sufficiency of evidence, brief of evidence requirements and any issues arising under the *Prosecution Policy of the Commonwealth*.

The MoU relevantly provides:

*Where the AFP commences a prosecution by way of an arrest or summons the informant will provide the DPP with a brief of evidence or a detailed statement of facts and other relevant information surrounding the prosecution as soon as possible and in any case in sufficient time to enable the prosecutor to consider the brief before the case is first mentioned in court.*

*The DPP will review the case and if necessary provide any pertinent advice to the AFP at the earliest*

*opportunity, particularly as to the sufficiency of the evidence and the appropriateness of the charges.*

*If the DPP considers that proceedings not be instituted or that charges already laid be discontinued in a matter that has been referred to it, it will, as soon as practicable notify the AFP in writing of its consideration and the reasons for so deciding, as well as inviting the AFP to respond.*

As set out in the CDPP submission to the Clarke Inquiry, the CDPP guidelines state that before giving oral advice, the officer must consider:

- Whether the matter is straightforward;
- Whether the request can be dealt with properly on the information supplied;
- Whether consultation is required; and
- Whether research is required.

In this instance the AFP sought the advice of CDPP prior to making a decision to charge. Material was provided by the AFP to the CDPP to enable its officers to assess the sufficiency of the evidence. To this end, the CDPP's legal advice was a fundamental factor in the decision making process to charge Dr Haneef.

Early in the investigation the CDPP assisted the AFP in settling an application for a warrant relevant to the case. Two CDPP officers, including a senior case officer attended the AFP Brisbane Office on 6 July 2007 for the purposes of discussing the grounds for the warrant. At the meeting the AFP informed the CDPP about the investigation including details of the UK incidents and information regarding Dr Haneef.

On 12 July 2007, officers of the CDPP Brisbane office, including the senior case officer, attended the AFP Brisbane office where they received a verbal briefing in relation to the investigation and the available material regarding Dr Haneef. During this meeting it was agreed that the CDPP officers would return to the AFP office at 9.00am on 13 July 2007 at which time they would be provided with documentary material held by police to enable them to review it and provide advice as to the sufficiency of evidence to move to charge.

On the evening of 12 July 2007, MPS provided the AFP with updated information regarding the location of the SIM provided by Dr Haneef to Dr Sabeel Ahmed.

On 13 July 2007, the CDPP officers returned to the AFP Brisbane office where they were provided with a 49 page comprehensive briefing paper outlining the available material held by police in relation to Dr Haneef, including the updated information from the MPS.

Over the course of 13 July 2007, additional verbal and written briefings were provided to the CDPP officers at their request as they worked through the materials. The CDPP officers were provided with a separate conference room and telephone facilities to enable them to consider the material in private.

During the course of their review, the AFP understands that CDPP Brisbane office members conferred via teleconference with the Deputy Director of Commercial, International and Counter Terrorism branch of the CDPP Head Office, Canberra. After their teleconference with CDPP Canberra, the CDPP Brisbane officers conferred with an officer from the CDPP Melbourne office.

In the early afternoon of 13 July 2007, the AFP Senior Investigating Officer obtained an update on the progress of the CDPP officers. It was at this time that the senior CDPP officer indicated more time would be required to consider the material and that it seemed likely he would be in a position to provide advice that afternoon at 4pm. The AFP Senior Investigating Officer made it clear that although timely advice was being sought, it was important that an informed view was provided.

The AFP officers involved in briefing the CDPP ensured the officers were provided every assistance so that they could carry out their function. In the late afternoon of 13 July 2007, the senior CDPP officer provided the AFP with oral and written advice regarding the available evidence.

The senior CDPP officer provided the AFP with advice that, notwithstanding certain evidentiary limitations, there was sufficient evidence to charge Dr Haneef. The advice included draft wording for a charge that could be laid. It was not until the Senior Investigating Officer, who was responsible for laying the charge, considered this advice from the CDPP that he formed the view that there was sufficient evidence to charge Dr Haneef.

While some senior police and CDPP staff may have held a different view, the provision of this advice from the senior CDPP officer was the catalyst to the initiation of the charge. It is not uncommon during investigations for there to be differing views on the law and available evidence. Prior to the receipt of the advice from the CDPP, the AFP was of the view that there was not enough evidence to charge. It was only when the advice from the CDPP was received that the AFP came to the decision that there was sufficient evidence to charge.

If the AFP had ignored the CDPP advice this would have been without precedent. The AFP would have been severely criticised for refusing to accept the advice, which it understood to be the settled corporate advice of the CDPP.

On 14 July 2007, relying on the legal advice from the CDPP, Dr Haneef was charged with the following offence:

- On or about the 25<sup>th</sup> day 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 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.

The wording of this charge was amended from that originally proposed by the CDPP to remove reference to a mobile phone handset to reflect updated information provided by the UK MPS.

This was the first time a person had been charged with this offence. Other individuals had previously been charged with a similar offence under subsection 102.7(1) of the Criminal Code but the difference between the two offences is that subsection 102.7(1) requires the person *to know* that the organisation to which they provide support is a terrorist organisation, whereas subsection 102.7(2), only requires that the person *be reckless* as to whether the organisation is a terrorist organisation.

### **The Prosecution of Dr Haneef**

Once Dr Haneef was charged with the offence he was brought before the Brisbane Magistrates Court to have the question of bail determined. The AFP offered to prepare a comprehensive Statement of Facts outlining the available evidence against Dr Haneef to assist the CDPP case officer. However the CDPP advised the AFP that this document was not required. The AFP had previously provided a 49-page document outlining the evidence to the case officer, and also prepared four other documents relating to the bail application.

During the CDPP submissions to the Court, two incorrect statements were made by the CDPP case officer that had to be later clarified. These were in relation to the location of the SIM card provided by Dr Haneef to Dr Sabeel Ahmed and an address in the UK where Dr Haneef was alleged to have resided. The Magistrate adjourned the bail decision until 16 July 2007.

Given that this was a bail mention matter, no AFP case officer was present in the court at that time and so the mistakes were not identified by the AFP until they were raised in the media. It was at this time that the AFP consulted the CDPP about the errors and it understood the CDPP intended to correct the record when the matter was next mentioned before court.

On 16 July 2007, Dr Haneef was granted bail by the Magistrate. In deciding the bail application the Magistrate gave consideration to section 15AA of the *Crimes Act 1914*. The following bail conditions were imposed:

- Surety of \$10,000 or two deposits of \$5,000;
- Report to Queensland Police Service at Southport between the hours of 6.00am and 10.00pm each Monday, Wednesday, and Friday, and notify CDPP in writing if he wishes to change the station to which he reports;
- Notify CDPP within 24 hours of his release of his residential premises and further notify CDPP if he wishes to change that residential address;
- Not to apply for a passport;
- Not to attend any points of departure; and
- Not to depart Australia.

Following the decision to grant bail, Dr Haneef did not supply the surety as required. As a consequence, Dr Haneef remained in custody until 27 July 2007.

On 17 July 2007, at the request of the CDPP, the AFP provided CDPP with an updated briefing paper outlining the material held in relation to Dr Haneef. This was provided to assist the CDPP in conducting a further review of the evidence.

On 24 July 2007, the AFP received supplementary legal advice from the CDPP regarding the evidence required to support the charge to the requisite standard. The CDPP requested any additional evidence from the AFP, if available.

On 26 July 2007, the AFP responded to the CDPP supplementary advice and noted the AFP's concern that the more recent legal advice was not consistent with its previous legal advice.

The CDPP subsequently reviewed the case against Dr Haneef and on 27 July 2007, the CDPP withdrew proceedings against Dr Haneef and conceded that a mistake was made in this matter.

## **16. IMMIGRATION DECISIONS**

### **Cancellation of Dr Haneef's visa**

Decisions concerning the cancellation of a visa are usually matters for the Minister for Immigration and Citizenship, based on advice from the Department of Immigration and Citizenship (DIAC).

The tests applied to such decisions are very different to the tests applied in arresting and charging a person under Australian law.

As a matter of standard process, the AFP liaises with DIAC on criminal investigations involving non-Australian citizens.

On 3 July 2007, DIAC approached the AFP requesting information in relation to Dr Haneef to assist DIAC with providing advice as to whether Dr Haneef should remain in Australia. At an NCTC meeting on the same day, the AFP informed NCTC members of DIAC's approach.

On 4 July 2007, DIAC circulated to PM&C, DFAT and the AFP a paper which outlined visa cancellation issues concerning Dr Haneef. The AFP understands this was to enable DIAC to advise the Minister for Immigration and Citizenship of Dr Haneef's legal status in the event he was not charged.

The AFP provided DIAC with written information on seven occasions and two clarification letters to assist in DIAC determinations on the continued viability of Dr Haneef's visa. Updates on this information were provided to DIAC by the AFP as more information came to light. Three occasions were prior to the Minister's decision to cancel Dr Haneef's visa pursuant to the provisions of section 501 of the *Migration Act 1958*.

On 16 July 2007, the Minister for Immigration and Citizenship cancelled Dr Haneef's visa. On 29 July 2007, Dr Haneef departed Australia for India.

On 21 August 2007, following an appeal by Dr Haneef the Federal Court set aside the decision to cancel Dr Haneef's visa, a decision which was upheld by the Full Federal Court on 21 December 2007.

### **Criminal Justice Stay Certificate**

On 16 July 2007 the AFP requested that the then Attorney-General issue a Criminal Justice Stay Certificate pursuant to Section 147 of the *Migration Act 1958*, to prevent Dr Haneef from being removed or deported from Australia. The purpose of the Certificate was to enable the 'administration of criminal justice', relating to the prosecution of Dr Haneef. The Certificate was issued on the 17 July 2007.

Following the formal withdrawal of the charge against Dr Haneef by the CDPP, the former Attorney-General cancelled Dr Haneef's Criminal Justice Stay Certificate. This occurred on 27 July 2007.

## **17. CHANGES TO INFORMATION DURING INVESTIGATION**

During the course of the investigation the AFP obtained and analysed large volumes of information including regularly updated information from the UK authorities. As is often the case with urgent and complicated investigations, the content and understanding of some of this information was subsequently amended as new information came to light and the investigation progressed. When the AFP was made aware of such changes, it acted to update individuals and agencies with whom the AFP was dealing.

### **Location of the SIM card**

On 5 July 2007, advice was provided by UK authorities to AFP that the SIM registered to Dr Haneef, was located in the possession of Kafeel Ahmed at the time of his arrest, at Glasgow and Dr Haneef's handset was found in the possession of Dr Sabeel Ahmed at the time of his arrest.

On 5 July 2007, this information was used in an Application for Specified Time pursuant to Section 23CB(2) *Crimes Act 1914* by an AFP Special Member.

On 12 July 2007, UK authorities advised that the SIM was not found in possession of Kafeel Ahmed and that the SIM and the handset registered in the name of Dr Haneef were in fact found in the possession of Dr Sabeel Ahmed.

Late on 13 July 2007, UK authorities advised AFP that the handset registered in the name of Dr Haneef had not been located and only the SIM was found in the possession of Dr Sabeel Ahmed. The CDPP case officer was advised of this on the morning of 14 July 2007 prior to his attendance at Court.

### **Bentley Road Residence**

During the course of the investigation it was suspected that Dr Haneef and Dr Sabeel Ahmed lived together for a period at residential premises at Bentley Road Liverpool.

Information received by the AFP was to the effect that Dr Haneef had resided with Dr Sabeel Ahmed at Bentley Road Liverpool. Whilst they had each lived at that address and had visited each other at that

address, the AFP was not able to confirm this information and subsequently advised DIAC of this position.

### **Dr Haneef's Diary**

Several media outlets reported that the AFP had written the names and phone numbers of several persons of interest in the UK investigation in Dr Haneef's diary, and then put the diary to him during his record of interview.

This is incorrect. Dr Haneef's diary was located amongst his possessions when he was arrested at Brisbane International Airport. Officers made separate handwritten notes of some of the entries to avoid over-handling the diary and potentially compromising evidence.

The handwritten document containing the names and numbers was then provided to the interviewing officer in order for him to question Dr Haneef about the contents.

Due to a miscommunication, Dr Haneef was initially questioned about the handwriting on the note which, of course, was not his.

The interviewing officer subsequently clarified the situation during the interview and then questioned Dr Haneef in relation to the names and phone numbers referred to in the handwritten note.

Dr Haneef has always agreed that the information came from the back of his diary.

### **One way ticket to India**

A statutory declaration sent to Dr Haneef's solicitors on 11 July 2007 stated that 'He (Dr Haneef) had planned to return to Australia within 7 days but he had no explanation as to why he did not have a return ticket'.

Although Dr Haneef offered an explanation as to his intended return to Australia and as to how the ticket came to be purchased by his father-in-law, the AFP investigators did not consider it reasonable in the circumstances. Further, for the reasons described above, the AFP had concerns about the truthfulness of aspects of explanations which Dr Haneef gave relating to his travel to India.

However, the AFP accepts that the statutory declaration, could have better reflected the situation if it stated: 'in the AFP's view there was no reasonable explanation about his one-way ticket'.

## **18. OTHER MATTERS**

### Ministerial briefings

The Attorney-General is the Minister responsible for national security matters. The AFP lawfully provided the Attorney-General with written briefings on six occasions during the course of Operation Rain. These briefings provided updates on the case as more information came to light.

### Briefing of National Counter Terrorism Committee (NCTC)

The NCTC was kept informed of the progress of the investigation from its commencement. The NCTC was briefed on Operation Rain on 13 occasions.

## **19. MANAGEMENT OF THE INVESTIGATION**

From the outset, Operation Rain was a global investigation involving the UK, Australia and India and it quickly became multijurisdictional within Australia.

A Major Investigation Plan was developed by the AFP to provide a systematic approach to managing and leading the criminal investigation.

The AFP was responsible for the management and administration of information. The AFP information management system was utilised as the primary information recording and case management system for the investigation. Given the global, multi-jurisdictional nature of the investigation the international capability of the AFP information management system proved invaluable in providing real time access to information across Australia and around the world.

Due to the large volume of information, it was necessary to establish a team to manage the information as it was received. A Major Incident Room team was established, which was responsible for receiving, collating and assessing all information relevant to the investigation. A large proportion of information was received from the UK MPS. Accordingly, the Major Incident Room operated 24 hours a day, seven days a week, to process the information and account for time differences between Australia and the UK.

### **Investigational Structure**

The investigational structure for Operation Rain comprised teams of investigators and support staff. A Senior Investigating Officer was

appointed to lead the investigation together with a number of key individuals who were tasked with specific roles.

At the commencement of the investigation, a Senior AFP Investigator was appointed to the role of Coordinator Investigations, responsible for overall coordination of operations. As the focus of the investigation expanded beyond Queensland, the Command Structure was reviewed and a Senior QPS Investigator was appointed to the position of Coordinator Investigations Queensland and the Senior AFP Investigator was appointed to the position of Coordinator National Investigations. The Coordinator Investigations Queensland was responsible for coordinating all investigative activity within Queensland and the Coordinator National Investigations was responsible for coordinating all national and international activities. The AFP Senior Investigating Officer, QPS Coordinator Investigations Queensland and AFP Coordinator National Investigations formed the nucleus of the Operation Rain Joint Management Team.

Specialist teams were established to support the investigation teams. The specialist teams included Surveillance, Forensic Services, Legal Support, Financial Investigations and a combined Intelligence cell.

## **Personnel**

As the main focus of the investigation was based in Queensland, the majority of resources were deployed to and from the AFP Brisbane Office. Significant other operational activity occurred in NSW and Western Australia, where links to Dr Haneef and Dr Ali were identified. In total, 47 persons of interest were identified as part of Operation Rain.

Significant support was provided by the following agencies:

<b>Number</b>	<b>Organisation</b>
<b>249</b>	AFP
<b>225</b>	Queensland Police
<b>12</b>	ASIO
<b>54</b>	WA Police
<b>40</b>	NSW Police
<b>6</b>	Australian Customs Service
<b>2</b>	NT Police
<b>1</b>	Tasmania Police
<b>6</b>	Linguists
<b>4</b>	Austrac
<b>2</b>	UK Police (posted to Australia)

## Information Volume

The volume of information generated and the scale of information requiring management throughout this investigation can best be explained through the table below:

Number	Item
63,535	Log entries into case
2,313	Tasks generated
759 gigabytes	Electronic data seized
321	Witness statements obtained

## Search Warrants

During the course of the investigation police obtained and executed numerous section 3E *Crimes Act 1914* search warrants for the purpose of collecting evidential material.

Section 3E (1) of the *Crimes Act 1914* provides:

*An issuing officer can issue a warrant to search premises if the officer is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.*

A search warrant is a document issued under authority of law which authorises the holder to enter and search private premises, or sometimes to search a person, and to seize evidential material.

Section 3E applies to all offences against Commonwealth law. However a warrant under section 3E can only be executed by a police officer.

Under the Act the issuing officer has an obligation to ensure that they are satisfied that the pre-conditions for the issue of a search warrant have been fulfilled. It is not enough for the issuing officer to ensure that a police officer considers that there is a proper basis for a search warrant. The issuing officer must form their own opinion on that issue.

All applications were made in writing to a Magistrate who granted the warrants after considering the information.

## Records of Interview

Investigators had various interviews and conversations with Dr Haneef. Dr Haneef provided certain information to the investigators during the recorded interviews and conversations. Inquiries were subsequently conducted to verify, validate and investigate the information provided by Dr Haneef.

## **Australian Crime Commission**

The ACC was engaged and provided valuable support to this investigation.

## **International Inquiries**

During Operation Rain an unprecedented level of information exchange occurred between the AFP and MPS. This was largely attributable to the long standing relationship between the two agencies.

The AFP London Office provided support to the investigation and facilitated the exchange of information in a timely fashion.

A Senior MPS officer on exchange to the AFP provided significant assistance to the investigation. Furthermore, on 5 July 2007 an MPS Counter Terrorism Command officer travelled to Australia to further assist in the operation.

In addition, two investigators (one AFP and one QPS), one AFP financial investigator and one AFP Counter Terrorism Intelligence analyst were deployed to the UK. This enabled an enhanced exchange of information between the AFP and MPS.

On 6 July 2007, an AFP Senior Liaison Officer travelled to India in support of the investigation.

## **Scrutiny and Accountability**

When confronted with the threat of terrorism, particularly where that threat may be imminent, police must act lawfully, carefully and urgently to protect the community from possible harm. Whilst the liberty of an individual suspect/defendant in any such case must always be given the most careful attention, the law recognises that the short-term detention of that person may be required.

Ultimately the AFP's actions in this regard are subject to many checks and balances: oversight by the courts and judicial officers, assistance from partner agencies, accountability to the public, through our Minister and the Parliament and from time-to-time review by independent inquiries.

The present case is no exception. In particular, the AFP was subject to the many decisions of magistrates on questions of warrants, detention and bail and sought and followed the advice of the CDPP. The AFP exercised various powers, made various applications to magistrates and sought the assistance of partner agencies. It did so with appropriate caution and circumspection in view of the information and advice which

was available. Importantly, the AFP acted at all times in good faith and with careful regard both to the interests of Dr Haneef and the community.

### **Street review**

The AFP's experience in counter terrorism investigations has involved meeting a number of challenges, in particular improving interoperability with national security agencies.

In November 2007, the AFP initiated a review into its national security operations and the effect of the interaction between the AFP and its national security agency partners in carrying out such operations.

The review was conducted by former NSW Chief Justice Sir Laurence Street, former director of the Defence Signals Directorate Martin Brady and former NSW Police commissioner Ken Moroney.

The Review delivered 10 recommendations designed to significantly improve the way joint agency counter terrorism investigations are managed.

These recommendations relate to operational decision making processes, joint taskforce arrangements, information sharing and training and education.

All 10 recommendations are currently being implemented by the AFP in conjunction with relevant partner agencies. Significant progress is being made in this regard that will improve whole of government responses in countering terrorism.

### **Media issues**

In the counter terrorism environment, the media play an important role in providing information to the public, particularly as it relates to issues of public safety.

The AFP aims to provide information on operations to media outlets in a way that does not produce the unintended consequence of interfering with any current or subsequent judicial process, or ongoing investigation.

The investigation into Dr Haneef was a case that attracted significant media interest, both domestically and internationally.

The AFP's media liaison activities during the investigation period aimed to provide factual information to assist with accurate reporting of the investigation. This included explaining the police powers being used,

particularly the anti-terrorism provisions that were being used for the first time.

During the investigation, there was considerable criticism of the AFP in respect to the handling of the investigation. The AFP does not shirk from or make complaint about any fair, accurate or legitimate criticism.

But there were occasions during Operation Rain when criticism appeared to have been made without full appreciation of the facts or understanding of the need for operational police to make urgent and critical decisions about public safety in accordance with the law.

The important work of police in protecting the Australian community is made more difficult by such uninformed criticism and this is directly relevant to the Inquiry's Terms of Reference.

As is their right, some journalists were seeking to conduct a parallel investigation in the media. Despite the AFP's best efforts to communicate the facts, as can be seen from this submission, some facts changed as the police investigation progressed. Understandably, this created extra demand and confusion in the public domain as to the current facts of the investigation. Some media outlets reported material that was factually incorrect and some of that material remains uncorrected by those news organisations.

In the criminal justice system, the impact of reporting inaccurate information can have significant consequences. Not only does it make it more difficult for an accused person to receive a fair trial, but it creates unnecessary pressure on investigators who must counter the misinformation at critical stages of their investigation.

In short, it has the capacity to undermine the proper administration of justice.

During the investigation into Dr Haneef, the AFP had to issue several clarifying statements in an attempt to correct erroneous reporting. These included misreports that:

- police were investigating Dr Haneef's involvement in a plot to blow up the Q1 Building on the Gold Coast;
- AFP officers had written notes in Dr Haneef's diary; and
- the AFP was delaying the provision of a transcript of a taped record of interview to Dr Haneef's legal team.

There was also a statement issued to correct widespread misreporting of the AFP's role in providing information to then Minister for Immigration and Citizenship, Kevin Andrews.

This erroneous reporting was not only unhelpful to Dr Haneef and the AFP, it was unfair to the Australian community who might reasonably have expected that accurate information on such an important issue was being made available to them.

A further statement was issued by the AFP objecting to the release to the media by his lawyers, of the transcript of Dr Haneef's second record of interview.

Part IC of the Crimes Act 1914 was introduced in 1991 to improve the accountability and transparency of police interviews with suspects. It has all but eliminated allegations that police invent or manipulate admissions from suspects. This has been enormously beneficial to the governance of our criminal justice system.

During this investigation, the transcript of Dr Haneef's record of interview was published in the media. The AFP is concerned that the public interest does not justify the release of a record of interview prior to the matter being properly dealt with by a Court. The AFP referred the release of this transcript to the relevant body for investigation. The Queensland Legal Services Commission subsequently found that, while a breach of the Bar Rule had occurred, there was no reasonable likelihood of a finding by a disciplinary body of either unsatisfactory professional conduct or professional misconduct in relation to the release of this material. However it was noted in a report provided to the AFP by the Queensland Legal Services Commission on this matter, that it was undesirable for matters to be "tried in a court of popular opinion" and that this may pose a risk to the trial process should a jury become involved.

## **20. CONCLUSION**

The AFP welcomes the Clarke Inquiry and recognises that it is undertaking difficult work as it considers all of the issues associated with the investigation and the way in which Commonwealth, State and international bodies worked together to establish the facts.

Operation Rain was an investigation driven by the available facts and evidence at the time. It was an investigation that commenced following multiple terrorist attacks in the UK and based on information and urgent requests for assistance from UK law enforcement authorities.

As explained, this submission does not represent all that is known by the AFP and does not answer all of the questions about the investigation. The AFP is unable to publicly release all the information it

has provided to the Clarke Inquiry in relation to this case as some of it is classified and it cannot prejudice the fair trial of people overseas. This submission, therefore, provides a summary of the unclassified information provided by the AFP to the Inquiry.

The AFP has concluded its active inquiries in relation to Dr Haneef, although some overseas inquiries are yet to be finalised. Dr Haneef is not considered a person of interest.

During the investigation, the AFP relied upon terrorism laws that were designed to allow investigators sufficient time to fully and properly investigate complex terrorism cases. It is the AFP's view that these laws were appropriately applied and their use was justified by the evidence available to them at the time.

The AFP relies on other agencies to perform their statutory functions in support and furtherance of the overall aim of protecting Australia's national security. The AFP's work in this case was undertaken in a high pressure environment where the information flow was fast, ever-changing and at times, complex. These pressures and complexities were, of course, felt by other agencies involved in the matter. It has been suggested from time to time that the AFP may have applied pressure on other agencies to discharge their functions in a particular way. The AFP rejects any such suggestion. It is important that each agency properly and independently discharge its own functions and the AFP has never desired or sought otherwise. It is not the practice, nor the intent of the AFP to overbear the will of any individual working in partnership with the AFP. The AFP is firmly of the view that the cooperation, professionalism and collegiate approach to the investigation by all agencies involved highlights the depth of commitment to global national security issues.

The AFP recognises that time spent in detention is neither easy nor pleasant. Investigation and prosecution of serious criminal offences frequently involves suspects or defendants being held in custody. From time to time such persons are released without having been convicted of a criminal offence.

When confronted with the threat of terrorism, particularly where that threat may be imminent, police must act lawfully, carefully and urgently to protect the community from possible harm. Whilst the liberty of an individual suspect or defendant in any such case must always be given the most careful attention, the law recognises that the short term detention of a person may be required.

No investigation is ever perfect and multi-jurisdictional and multi-agency investigations are more complex than most. This case was no exception. However, the AFP is firmly of the belief that the officers involved in the investigation into Dr Haneef acted professionally and

they were motivated by the need to protect the Australian public and Australian interests.

The AFP officers carefully weighed up the evidence against Dr Haneef and were satisfied that sufficient evidence existed to arrest and detain Dr Haneef.

While the decision to charge ultimately rested with the Senior Investigating Officer, the CDPP advice was fundamental to the decision to charge. It was following the advice to charge that the CDPP reviewed the available evidence and on 27 July 2007 determined that the case should be withdrawn.

Ultimately, the AFP's actions in this case were subject to many checks and balances, such as oversight by judicial officers and courts, assistance from partner agencies, accountability to the public, through our Minister and the Parliament, and by independent inquiries such as the present. In particular, the AFP was subject to the many decisions of magistrates on questions of warrants, detention and bail and sought and followed the advice of the CDPP.

Deficiencies in policies and procedures are being addressed through the implementation of the recommendations of the Street Review. The AFP is continually striving to improve its practices, particularly in relation to counter terrorism and it looks forward to opportunities to strengthen these in the future.