



Australian Government

Australian Security
Intelligence Organisation

Director-General of Security

25 July 2008

ASIO SUBMISSION TO THE CLARKE INQUIRY

ASIO is committed to co-operating fully with the Clarke Inquiry and welcomes this opportunity to provide it with an unclassified submission.

This submission is divided into three parts: Part I which explains ASIO's functions; Part II which outlines ASIO's intelligence investigation of Dr Mohamed Haneef; and Part III refers to the findings of a previous review into ASIO's investigation.

PART I – FUNCTIONS AND POWERS OF ASIO

(i) Legislation governing ASIO

ASIO is Australia's security intelligence service. Its functions and powers are prescribed by the *Australian Security Intelligence Organisation Act 1979* (the ASIO Act). The ASIO Act specifies ASIO's remit as 'security', which is defined as the protection of Australia and Australians from espionage, sabotage, politically motivated violence (including terrorism), promotion of communal violence, attacks on Australia's defence system and foreign interference whether directed from, or committed within, Australia or abroad.¹

Pursuant to s17 of the ASIO Act, ASIO's functions are to:

- obtain, correlate and evaluate intelligence relevant to security;
- for purposes relevant to security and not otherwise, to communicate any such intelligence;
- advise Ministers and authorities of the Commonwealth on matters relating to security;
- furnish security assessments;
- advise Ministers and authorities of the Commonwealth in respect of matters relating to protective security; and
- obtain foreign intelligence within Australia.

¹s4 ASIO Act.

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Freedom of Information Act 1982.
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(ii) ASIO is not a law enforcement agency

ASIO is not a law enforcement agency. It is not responsible for the enforcement of any laws of the Commonwealth or of the States.² As the Victorian Court of Appeal recently noted:

"... The activities of ASIO and the AFP are conducted in parallel, not jointly. Given that one is a security service and the other a police force, this is hardly surprising... ASIO is authorised to co-operate with other Commonwealth agencies – but only 'so far as necessary for, or conducive to, the performance of its [own] functions' (s. 19(1))".³

Given the respective specialist functions of ASIO and domestic law enforcement agencies, ASIO works cooperatively with such agencies where investigations are relevant both to security and the enforcement of criminal laws. In these circumstances, ASIO communicates intelligence relevant to security to the police and, where appropriate, liaises closely with international partners.

**PART II – AN OVERVIEW OF ASIO'S ACTIVITIES CONCERNING
DR HANEEF**

ASIO conducted an intelligence investigation in relation to Dr Haneef and provided analytical support to the Australian Federal Police.

ASIO did not detain or question Dr Haneef.

ASIO was not involved in the decisions to arrest, charge, prosecute or release Dr Haneef. Beyond providing advice that it did not have sufficient grounds to issue an adverse security assessment in respect of Dr Haneef, ASIO was not involved in the decisions to cancel Dr Haneef's Australian visa or to issue a criminal justice certificate.

In conducting its intelligence investigation, ASIO considered whether Dr Haneef posed a threat to security and provided advice across Government on this issue.

ASIO participated in whole of Government meetings in relation to Dr Haneef. ASIO's consistent advice to these meetings was that, based on available information, ASIO did not assess Dr Haneef as a threat to security and did not have grounds to issue an adverse security assessment. In the early days of the investigation, ASIO nevertheless considered that further investigation of Dr Haneef was warranted.

In written advice issued to the Government and various agencies on 11 July 2007, ASIO reported that, while it continued to progress its inquiries, it did not have information to indicate Dr Haneef had any involvement in, or foreknowledge of, the UK terror acts. Nor

Australian Crime Commission v AA Pty Ltd [2006] 149 FCR 540 at 32.
R v Thomas (No 4) [2008] VSCA 107 at 40.

was there any information to indicate that Dr Haneef was undertaking planning for a terrorist attack in Australia or overseas.

ASIO, through the National Threat Assessment Centre, issued several Threat Assessments concerning the potential threat to security posed by Dr Haneef. Those Threat Assessments consistently indicated that there was no information indicating any specific, credible terrorist threat in Australia linked to the attacks in the UK. As such, there was no basis for varying the terrorist threat level in Australia.

ASIO also provided written submissions to the then Attorney-General, the Hon Philip Ruddock MP. These submissions updated the Hon Philip Ruddock on ASIO's assessments of intelligence and its assessments of information in media reporting.

PART III – REVIEW BY THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

ASIO is subject to oversight by the Inspector-General of Intelligence and Security (the IGIS). Pursuant to s. 8 of the *Inspector-General of Intelligence and Security Act 1986*, the IGIS may conduct an inquiry to:

- check the compliance of ASIO with laws of the Commonwealth, the States and Territories and the Attorney-General's Guidelines;
- verify the propriety of ASIO's activities; and
- ensure ASIO's activities are appropriate and consistent with human rights.

The IGIS conducted an administrative review of ASIO's investigation into Dr Haneef. IGIS staff met with senior officers from ASIO and reviewed ASIO files.

The IGIS wrote to the Attorney-General, the Hon Robert McClelland MP, in December 2007 and advised that ASIO appeared to have approached its investigation of Dr Haneef with an open mind, and that following its initial investigations it had reached a preliminary assessment that Dr Haneef was unlikely to have engaged in activities prejudicial to security. Those views strengthened over time and its assessments were regularly provided to relevant agencies within Government.

I trust the above assists in explaining ASIO's intelligence investigation of Dr Haneef.

[signed]

Paul O'Sullivan
Director-General