

Australia: Haneef inquiry seeks to “restore confidence” in terror laws

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The old saying that a government only establishes a judicial inquiry when it knows the outcome has once again been proven correct. In this case, the inquiry has been set up by the Rudd government to report on last year’s failed frame-up of Indian Muslim doctor Mohammed Haneef on a terrorism charge.

The inquiry, headed by former New South Wales Supreme Court judge John Clarke, will be shrouded from public scrutiny—conducted largely behind closed doors, without any witnesses required to testify on oath or be cross-examined. Moreover, in announcing its terms, Attorney-General Robert McClelland spelt out the required result, saying it was “an important step in ensuring public confidence in Australia’s counter-terrorism measures”.

One thing is certain. The inquiry will not examine the essential character of the Haneef affair—a politically-motivated witch hunt orchestrated against the young doctor by the former Howard government, the state Labor governments and the federal and state police and intelligence agencies, designed to bolster the flagging and increasingly discredited “war on terror”.

Last July, Haneef was detained for nearly two weeks without charge, amid government- and police-orchestrated media leaks alleging that he and other foreign-born doctors were part of a “terror network” with close links to those accused of involvement in the mid-2007 attempted bombings in London and at Glasgow airport. When a charge of “providing support” to a terrorist act was eventually laid, a magistrate granted Haneef bail because the police evidence was so flimsy. In an extraordinary exercise of executive power, the Howard government’s National Security Committee intervened, effectively overturning the court ruling by canceling Haneef’s residency visa so that he would be detained indefinitely in an immigration prison. Finally, when news broke that the authorities had falsely claimed that Haneef’s old mobile phone SIM card had been found in the jeep that crashed into Glasgow airport, the Director of Public Prosecutions (DPP) was forced to drop the charge and the Howard government, confronted by a complete debacle, put Haneef on a plane to India.

Fielding questions at a media conference announcing the inquiry, Attorney-General McClelland confirmed that it would have no power to compel two of the key participants in

Haneef’s persecution—former Immigration Minister Kevin Andrews and Australian Federal Police (AFP) chief Mick Keelty—to give evidence. No media representative asked the real question: what about ex-Prime Minister John Howard, his Attorney-General Philip Ruddock and other members of Howard’s National Security Committee, as well as ex-Queensland Premier Peter Beattie and the state police and Australian Security Intelligence Organisation (ASIO) chiefs, all of whom were intimately involved in the Haneef case?

The Rudd government does not want these figures testifying in public for two reasons. First, the Labor Party itself is thoroughly implicated in the Haneef affair. To publicly question and seriously probe the role of these participants would mean also examining the part played by the former Labor opposition led by Kevin Rudd, which backed every action against Haneef, and the state Labor governments, which mobilised massive police resources in an unsuccessful effort to produce evidence against the doctor and some of his medical colleagues. Commissioner Keelty told a Senate estimates committee last month that more than 600 police personnel had worked on the Haneef case, including 249 AFP officers and 335 state and territory police, in an investigation that cost more than \$7.5 million, searched 22 residential premises, obtained more than 300 witness statements and collected 349 forensic samples.

Second, Labor at both federal and state levels remains just as committed as the Howard government was to using terrorist scares and fear campaigns to divert popular attention from worsening economic and social conditions, justify military interventions overseas and bolster the unprecedented powers and resources given to the police, intelligence and military forces over the past seven years.

That commitment was underscored by the terms of reference and instructions given to Clarke. According to McClelland’s news release, Clarke will “conduct the inquiry in a way which ensures the protection of national security information, ongoing investigations and upcoming overseas trials”. Moreover, Clarke may present a “confidential report” to supplement a public version. In other words, whatever is released for PR purposes, the interests of the security agencies and the political establishment will be protected.

McClelland added, “It is in the interests of all parties to ensure public confidence in our national security agencies,” and noted that “all Commonwealth agencies” had assured the government of their full cooperation with the inquiry. These are code words for a cooperative agreement with the police and intelligence services so that they too can be confident of the inquiry’s outcome.

Before last November’s federal election, in an attempt to quell deep public concern over Haneef’s treatment and growing distrust in the entire “war on terror,” the Labor Party promised a judicial inquiry into the Haneef affair, in order to “restore” public trust in the terrorism laws. The inquiry’s terms of reference faithfully serve that purpose. They focus on identifying “deficiencies” in the laws, “administrative and operational procedures” and “coordination and interoperability” between federal and state security and law enforcement agencies.

What can be expected from the Haneef inquiry can be gauged from the government’s warm embrace, on the same day that it announced Clarke’s appointment, of the AFP’s own internal review of its operations and its relations with ASIO. The AFP investigation was carried out in the wake of another debacle, the dropping, last November, of terrorist charges against Sydney medical student Izhar ul-Haque.

Keely secretly established the review on November 22, 2007, just two days before the Howard government’s election defeat. He appointed former NSW Chief Justice Sir Laurence Street, ex-NSW Police Commissioner Ken Moroney and Martin Brady, the former director of Australia’s largest spy agency, the military Defence Signals Directorate, to examine the interaction between the AFP, ASIO and the DPP. The move came after a NSW Supreme Court judge threw out an alleged confession by ul-Haque and accused the AFP and ASIO of committing the crimes of kidnapping and false imprisonment in an unsuccessful effort to coerce the young man into becoming an undercover agent.

According to McClelland’s media release: “Sir Laurence Street and the other committee members have made some very valuable and constructive suggestions, which will assist our agencies to work together more effectively. I am pleased that the AFP, ASIO and the DPP are already working hard at improving their coordination and communication in national security operations. The recommendations in the AFP’s Street Review will assist them in that process.”

The gist of the Street Review’s recommendations is that the AFP and ASIO should work more closely together, and involve the DPP in their operations from the outset, in order to ensure that better frame-ups are conducted than those mounted against Haneef and ul-Haque. The Review proposed that the AFP Commissioner, ASIO Director-General and Commonwealth DPP constitute a permanent committee to review and resolve issues relating to “national security”, “strategic priorities” and “enhanced operability”. It called for ASIO officers to be

attached full-time to police Joint Counter-Terrorism Teams, the mutual sharing of files and other information between the AFP and ASIO, and the participation of the DPP from the commencement of the “operational planning stage of an actual or likely terrorism offence investigation”.

In the past, the AFP, ASIO and DPP were meant to operate somewhat at arm’s length from each other, providing, it was claimed, checks and balances against the creation of a police-state. Through spies, undercover agents, electronic surveillance and other surreptitious methods, ASIO compiles information on a wide range of people—in the past it has maintained files on tens of thousands, including members of parliament, political activists, demonstrators and trade unionists. By comparison, the AFP is meant to investigate only those people actually suspected of committing an offence, while the DPP is supposed to authorise and conduct prosecutions only where there is a serious prospect of conviction.

These distinctions are to be swept aside in a bid to secure terrorist convictions. The report refers to a “shared understanding that successful prosecutions under Australia’s anti-terrorism laws was a central element in this overall strategy”. There is clearly concern in ruling circles that while nearly 30 people have been prosecuted under the country’s anti-terrorism laws since 2002, only one has been convicted.

The Street Review’s report sums up its recommendations as follows: “The consequences of these measures should be that agencies work to a common agenda, that the requirements for effective prosecution are addressed early in the investigation process, and that investigations are managed in a structured way through to prosecution action. It is important that this be done lest the effectiveness of Australia’s response to terrorist threat is eroded by prosecutions that fail for essentially procedural reasons.”

Thus, far from having their already extensive powers called into question, as a result of the illegal methods exposed in the ul-Haque case, the security agencies have had their powers enhanced. Led by an eminent former judge, the Review has dismissed the criminal violations against the young man as “essentially procedural” problems, effectively excusing the denial of basic legal rights and civil liberties. The Rudd government’s welcome of this result further underlines its commitment to the development, under the banner of “counter-terrorism,” of a more sophisticated and powerful security apparatus—that can and will be used against social unrest and political dissent.



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