

# Australia: Haneef “terrorism” inquiry to be conducted behind closed doors

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At its first—and possibly only—public hearing yesterday, the head of the Rudd government’s inquiry into last year’s failed “terrorist” frame-up of Mohamed Haneef confirmed that most of the evidence will be heard in secret and none of the witnesses will be questioned on oath.

Former New South Wales Supreme Court justice John Clarke QC announced that he would conduct private, non-adversarial, interviews with witnesses. As a result, much of the evidence will not be made public. Transcripts of interviews will be posted on the inquiry’s website “subject to issues of confidentiality or national security” or ongoing police investigations.

In addition, witnesses will have no immunity against defamation or self-incrimination—two protections normally associated with royal commissions—making it doubly unlikely that any of the truth about the Haneef affair will be revealed to the public.

Clarke rejected a request by lawyers for the young Indian Muslim doctor that he ask the government for royal commission powers, which would include the right to compel witnesses to appear or provide documents. The retired judge also rejected an application by Haneef’s barrister, Stephen Keim SC, for permission to cross-examine witnesses.

Clarke made his rulings despite a public campaign by Haneef’s lawyers, other members of the legal profession and sections of the media, complaining that the inquiry would be toothless unless key witnesses were required to testify on oath and be cross-examined. Speaking to the media after the hearing, Haneef’s solicitor Ron Hodgson said Clarke’s “hands are partly tied behind his back”.

The retired judge said he had received assurances from the government agencies involved, including the Australian Federal Police (AFP), Australian Security Intelligence Organisation (ASIO) and the Director of Public Prosecutions, that they would fully cooperate with

the inquiry. Hence, he did not need coercive powers.

His remarks underscore the fact that the Rudd government’s purpose in setting up the inquiry was not to lay bare the truth and hold accountable those responsible for trying to railroad an innocent man to jail for up to 15 years. The real authors of the Haneef frame-up were the Howard government and the state Labor governments. They jointly mobilised the police and intelligence agencies and orchestrated a media witch-hunt, not only against Haneef but against other Muslim doctors as well.

From the outset, the federal Labor government designed the Clarke inquiry to prevent public scrutiny of the evidence. At a media conference on March 13 announcing the inquiry Attorney-General Robert McClelland specified that it would be mostly conducted behind closed doors. Moreover, he laid out the required result in advance, declaring it would be “an important step in ensuring public confidence in Australia’s counter-terrorism measures”.

Accordingly, the inquiry’s terms of reference were restricted to examining and suggesting improvements to operational procedures. This means shielding and bolstering the security agencies, as well as the political establishment itself. There will be no grounds for putting the key players in the Haneef affair on the stand—former Prime Minister John Howard, his Attorney-General Philip Ruddock and other members of Howard’s national security committee, along with ex-Queensland Premier Peter Beattie.

When Haneef was arrested last July 2, the only allegations against him related to the alleged involvement of two of his second cousins in two botched bomb attacks in London and Glasgow last year. After being held for 12 days without trial under the counter-terrorism laws he was eventually charged with “recklessly” supporting a terrorist organisation—for giving his old mobile phone SIM card to a cousin, Sabeel Ahmed.

Police later claimed that the SIM card had been found in the explosives-laden jeep that had rammed into the Glasgow airport terminal. Within weeks, however, the AFP admitted that the card had been located about 200 kilometres away, inside Sabeel's Liverpool flat. Last month, it was revealed that by the time Haneef was arrested, the police knew that Sabeel had no prior knowledge of the bombings or any terrorist activity, and therefore Haneef's decision to leave the SIM card with him had nothing to do with terrorism.

Nevertheless, the Howard government, staring at the prospect of defeat in last November's federal election, immediately seized upon Haneef's arrest as proof of the dangers of terrorist cells entering Australia. With hundreds of police mobilised to conduct raids on Islamic doctors' homes, and the media declaring that a "doctors' terrorist network" was being investigated, the Coalition government claimed that the development proved the need for extensive anti-terrorism powers and measures.

After a magistrate ordered Haneef's release on bail, largely because of the flimsiness of the evidence against him, the Howard government went one step further. Its cabinet security committee effectively defied the judicial order by cancelling Haneef's residency visa, so that he would be held in immigration detention.

However, the entire operation began to collapse after Haneef's lawyers leaked to the media extracts from the police interrogations of their client, which exposed the lack of any real evidence against him. As AFP Commissioner Mick Keelty later complained, this had the effect of moving the "court of public opinion" behind Haneef. The shift reflected deepening distrust of the government's repeated use of terrorist scaremongering.

The Director of Public Prosecutions then dropped the charge, telling the magistrate that factual "mistakes" had been made, including the claim that British police had discovered Haneef's discarded SIM card inside the Glasgow jeep.

The Howard government's problems worsened when a Federal Court judge, followed by the Full Federal Court, ruled that Immigration Minister Kevin Andrews had unlawfully revoked Haneef's visa. Using arbitrary powers under the Migration Act, Andrews had declared Haneef to be "not of good character" merely because of his family "association" with his cousins.

Before the Clarke inquiry's opening hearing, a fresh round of infighting broke out over who would become the scapegoat for the Haneef debacle. On April 28, articles appeared in the Fairfax newspapers, claiming that

Andrews's decision to revoke Haneef's visa had "spoiled" the joint investigation by the AFP and the Queensland police.

The claims were an apparent attempt to exonerate the AFP and its commissioner, Keelty. Emails published last year recorded discussions between high-level AFP and immigration officials on the plan to send Haneef into immigration detention if a magistrate released him on bail.

The Howard government's cabinet security committee, led by Howard, authorised the plan, but the emails proved that senior AFP officials were involved in preparing it.

On April 30, the *Australian* reported what appeared to be a counter-strike by Andrews. Andrews, the newspaper said, was intending to tell the Clarke inquiry that the AFP did not inform him of the evidence disproving allegations against Haneef's second cousin Sabeel Ahmed.

According to the *Australian*, "Mr Andrews' evidence to the inquiry will effectively leave AFP Commissioner Mick Keelty on his own in explaining the detention and charging of Dr Haneef".

While Keelty and Andrews are trying to save their own skins, these claims and counter-claims serve as a political diversion. Responsibility for the campaign against Haneef rests with the Howard government, the former federal Labor opposition and the state Labor governments—which is why the new Rudd government is doing everything it can to ensure that the inquiry will be a whitewash.



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