

# Australia: A revealing day at the Haneef “terrorism” inquiry

Our reporter

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A brief public forum conducted last month by the Australian government's Clarke inquiry into the failed terrorist prosecution of Dr Mohamed Haneef provided a rare glimpse into the workings of this secretive body. The Labor government established the closed-door investigation earlier this year, with a brief to "restore public confidence" in counter-terrorism measures.

Last year's Haneef debacle was a significant turning point in the discrediting of anti-terror legislation in the eyes of ordinary people. The young Indian-born Muslim doctor was arrested in July 2007 and detained for more than three weeks before being charged with "recklessly" supporting a terrorist organisation.

However, despite a media frenzy, fuelled by leaks from police and the former Howard government, suggesting that Haneef belonged to an international "terrorist doctors' network," the case quickly disintegrated after his lawyers released the transcript of a police interview, allowing the public to see the lack of any real evidence against him.

The Commonwealth Director of Public Prosecutions was forced to drop the charge, with a prosecutor admitting in court that the police had made two crucial false allegations against Haneef: that his old mobile phone SIM card had been found in the jeep that exploded into Glasgow airport on June 30, 2007 and that Haneef had resided in Britain with people connected to the attack.

The Howard government's attempt to frame up an innocent young man only added to the rising distrust and opposition to the entire "war on terror", which had been used as the pretext not only for introducing police-state measures at home, but for joining the broadly unpopular US-led wars in Afghanistan and Iraq.

Facing electoral defeat last year, Howard and his ministers seized upon Haneef's arrest to try to whip up new fears of terrorism and justify the draconian anti-terrorism laws introduced since 2002. The then Labor opposition, led by Kevin Rudd, and the state Labor governments all participated in the witch-hunt. Only when the tide of public opinion turned and the case imploded did Labor change tack, promising to conduct an inquiry.

The Clarke inquiry's one-day event on September 22 was intended as a token gesture of public consultation. It was the only occasion, apart from a formal opening session, in which the inquiry, headed by former judge John Clarke, has been opened to public view. All the inquiry's actual proceedings--which have consisted of "non-adversarial" interviews with some of those involved in pursuing Haneef--have been held in camera, completely shielded from public scrutiny.

In keeping with Labor's instructions to focus on re-building support for the anti-terrorism measures, the stated purpose of the public forum was extremely narrow. It was to enable "interested persons" to discuss one of the inquiry's terms of reference: to examine any "deficiencies" in the counter-terrorism laws or the operational procedures of the federal police and security agencies.

Participants were asked to comment on an issues paper that was confined to presenting alternative proposals for amending some of the legal provisions used against Haneef. The options included recommendations to strengthen police powers of arrest and detention.

Opening the event, the chairman, lawyer Stephen Thompson, specified that no questions would be allowed of Clarke or any of the Commonwealth agencies. Nor was there to be any canvassing of the facts in the Haneef case, only submissions on the relevant laws and protocols.

In a brief welcoming statement, Clarke rejected--without offering any explanation--calls that had been made for the inquiry to be given royal commission powers and hold public hearings where key participants in the frame-up could be cross-examined.

The nature of the inquiry was underlined by keynote speaker, former High Court Chief Justice Gerard Brennan, who expressed concerns that the failed prosecution had undermined public trust in the legal system itself. A "public consensus" was needed on fighting terrorism and all forms of crime, he pleaded, arguing that the issues at stake were "too important for political controversy".

Australian Law Council president Ross Ray QC, the first guest speaker, reviewed a lengthy list of criticisms made of the terror laws by his organisation, which represents the legal profession. His most telling comment was that Haneef would possibly still be behind bars, and might have remained there for years, if not for the intervention of public opinion. It was a correct estimation, by a senior lawyer, of the extent to which the shift in popular sentiment triggered the collapse of the Haneef case.

## **The theory of exception**

The next guest speaker was the former solicitor-general, David Bennett QC, who was the Howard government's chief advocate in the Haneef and other terrorist cases. Bennett voiced the chilling logic behind the "war on terror" when he insisted that all the powers used against Haneef, such as detention without trial, were necessary exceptions to civil liberties. He also defended extensive secrecy provisions that allow terrorist trials to be closed to the public and prevent the defendants from even being told about key

police evidence used against them.

Bennett, now a private barrister, argued that essential protections against arbitrary state power had to be sacrificed because of the exceptional conditions created by modern terrorism, where Islamic fundamentalists had access to "weapons of mass destruction".

Michael Head, a WSWS correspondent, asked Bennett how his doctrine of exception differed from that of the Nazi regime and its chief jurist, Carl Schmitt. Remarkably, Bennett declared that he had no knowledge of Schmitt. The Nazi jurist is well-known internationally for his concept of "state of exception," which maintains that every government capable of decisive action must have a dictatorial element within its constitution to free the executive from any legal restraints that would normally apply.

Despite professing ignorance of Schmitt, Bennett dismissively declared that any comparison was invalid because the present system of government was democratic, not fascist.

Another guest speaker, Nicholas O'Brien, a former senior British police officer, now a policing academic, echoed Bennett's assertions that Islamic fundamentalism constituted an unprecedented and dire threat to society. O'Brien specifically insisted that police had to have stronger powers, including to detain terrorist suspects for lengthy periods without charge or trial, because police could require up to three months to conduct thorough forensic searches of houses to seek evidence of terrorist activity.

"Human rights are inevitably affected," O'Brien stated, evincing a similar notion of exception to that advanced by Bennett.

Head asked O'Brien whether he regarded as legitimate the police abuses and entrapment that had been exposed in Australian terrorist prosecutions—such as the use of a police provocateur to incite Zaky Mallah, a young Muslim man, to make a video threatening to attack a government office; the unlawful interrogation of Melbourne man Jack Thomas based on torture in Pakistan; the illegal police kidnapping and coercion of Sydney medical student Izhar ul-Haque; and the frame-up of Haneef.

The former anti-terrorist officer did not answer the question, claiming instead that anyone wronged by the police could sue for damages.

It was another invited speaker, Sydney University legal academic Ben Saul, whose remarks pointed to the essential political purpose of the public forum and the Clarke inquiry as a whole. Known as a civil libertarian, he postulated three possible paradigms for viewing the experiences of the Haneef case.

One was that the collapse of the prosecution highlighted "growing pains" in the ways that the security authorities applied the counter-terrorism laws introduced since 2002. A second was that the case showed the need to "recalibrate" the laws to achieve a better "balance" in favour of civil liberties. The third was a more "radical" view, presented in the British House of Lords by Lord Hoffman, which denied that the laws were necessary at all, because terrorism did not truly threaten the fabric of the nation.

After saying that his own view fell somewhere between these approaches, Saul outlined a number of proposals to modify aspects of the laws, mainly curtailing some detention powers and offences relating to terrorist organisations. He also suggested that the Rudd government should follow the British Labour government in

appointing an "independent reviewer" of the anti-terror laws.

In effect, Saul's contribution centred on giving the Rudd government advice, via the inquiry, on how to head off public unease over the laws, while retaining their central features by making some adjustments and creating the appearance of ongoing "independent" review. It must be noted that the existence of a British "reviewer" has not stopped the Brown government from pushing ahead with plans to extend detention without charge to 42 days.

Head challenged Saul's assertion that there were only three ways to assess anti-terror laws. Rather, Head explained, the entire "war on terror" was bogus, largely manufactured by governments to pursue their economic and strategic interests in the Middle East and Central Asia, and to justify repressive measures domestically. Head pointed out that the Nazis and Carl Schmitt had also claimed that their exceptional dictatorial powers were necessary to combat terrorism after the 1933 Reichstag fire, which Hitler falsely blamed on the Communist Party.

In response, Saul said he agreed "completely" that there were underlying causes to terrorism, including "American oil policy in the Middle East". Nevertheless, he contended that it was still necessary to criminalise terrorist violence that threatened Australians, although "we shouldn't do, as part of that process, what we did to Dr Haneef".

This answer dovetailed with the thrust of the day's proceedings—to sidestep or stifle any discussion about the real character of the war on terror, prevent any serious examination of the actual abuses carried out by the Howard government and the security agencies, and find ways to maintain the anti-terror measures and make them more effective in the face of deep public distrust.

When the Labor government established the Clarke inquiry, Prime Minister Kevin Rudd and Attorney-General Robert McClelland gave it a very explicit brief. The task was to resuscitate public confidence in the laws and the police and intelligence services. The one-day forum reflected this instruction and foreshadowed the likely content of the inquiry's recommendations, which will be to hone the terrorism laws and procedures for future use.



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