

Australia: Haneef “terrorism” inquiry produces a whitewash

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The Rudd government's Clarke review of last year's aborted terrorist witch-hunt of Dr Mohamed Haneef has proven to be a whitewash of the former Howard government and a vehicle for the current Labor government to bolster the country's draconian counter-terrorism measures.

A basic contradiction lies at the heart of the report by former judge John Clarke QC, which the government released just before Christmas. Clarke declared that Haneef was entirely innocent of the serious terrorist charge levelled against him; yet held no one responsible or accountable for the massive police, intelligence and media operation, led by the Office of the Prime Minister, to railroad the young doctor to jail.

Haneef was arrested on July 2, 2007, in the wake of two failed terrorist attacks in London and Glasgow at the end of June. Amid media headlines about a "terrorist doctors' network" in Australia, he was detained without trial for nearly two weeks. Eventually he was charged with "supporting a terrorist organisation" by giving his old mobile phone SIM card to a second cousin in Britain who was later accused of withholding information about the attacks.

When a magistrate ordered Haneef to be released on bail because of the weak case against him, the Howard government effectively overrode the court by cancelling his visa, thus consigning him to immigration detention. Within three weeks, however, the case disintegrated in the face of mounting public concern about Haneef's treatment and the exposure of key falsehoods in the police evidence. The Director of Public Prosecutions dropped the charge and, in damage control, the Howard government facilitated Haneef's immediate departure for India, his home country.

After an almost exclusively closed-door inquiry, Clarke said he could find "no evidence" that the Howard government brought "political influence to bear" in relation to the decisions to arrest, detain and charge Haneef, or that his visa was revoked "to achieve some actual or perceived political advantage".

In reality, all the evidence, including much of the material compiled in the 310-page public version of Clarke's report itself, indicates that, facing defeat at elections due before the end of 2007, the Howard government seized upon the British attacks to try to launch a new terrorism scare campaign.

Extraordinarily, Clarke reached his conclusions without examining any of the relevant cabinet documents—to which the Rudd government blocked access. These included the minutes of a July 16, 2007 cabinet National Security Committee, which approved the decisions to cancel Haneef's visa and issue a Criminal Justice Stay Certificate so that he would be sent to an immigration detention centre.

Clarke said he was told by the Department of Prime Minister and Cabinet, now headed by Prime Minister Kevin Rudd, that he was forbidden by long-standing government "conventions" from viewing any of the cabinet records or reporting anything that might reveal cabinet deliberations. "I had no option but to abide by the conventions," Clarke stated.

These conventions mean that no government can ever be held to account for its crimes, even after it leaves office. Under the so-called 30-year rule, all cabinet-related documents are kept secret for three decades, and even then, those classified as relating to national security are withheld from the public.

Moreover, ex-Prime Minister John Howard refused to be questioned by Clarke and blocked a former adviser from making a written statement to the inquiry. Another key witness, the ex-chief of staff of Howard's immigration minister Kevin Andrews, refused to make a statement. Andrews himself consented to be interviewed (behind closed doors), while Howard's Attorney-General Philip Ruddock gave Clarke just one hour of his time.

Remarkably, Clarke decided not to probe the constant stream of leaks to the media, obviously emanating from high-level government and police sources, throughout July 2007 that gave the impression that Haneef was intimately involved in the failed British bombings and in planning similar attacks in Australia. Clarke said he could not have examined the leaks satisfactorily without statutory powers to compel witnesses to appear. Such powers, however, Clarke refused to request from the Rudd government, which had originally denied them to him.

Clarke's report simply failed to mention the series of public statements made by Howard and his leading ministers insinuating not only that Haneef was guilty but that he represented the ever-present danger of "home-grown terrorism". Soon after the young doctor's arrest, Howard declared it to be a wake-up call to the public of the need for the "war on terrorism": "There are people within our midst who would do us harm and evil if they had the opportunity of doing so."

Nevertheless, a careful reading of the Clarke report leaves little doubt that, as soon as the British attacks occurred, and the British police requested assistance to locate Haneef to ask him about his discarded SIM card, the Howard government began orchestrating a security scare campaign. According to Clarke's account, in less than four weeks, Howard's office convened no fewer than 16 high-level "whole of government" meetings and 27 teleconferences to discuss the Haneef case.

The meetings, some of which involved the state and territory Labor

governments, began on July 1, the day before Haneef was arrested. They included 10 meetings of the National Counter-Terrorism Committee, as well as the cabinet National Security Committee meeting of July 16. Between July 3 and 6, Howard personally received five written briefings from his department, and thereafter his office obtained "regular" telephone updates from his department's senior national security official, former SAS commander Duncan Lewis. (Lewis, who played a central role in the Haneef affair, was recently appointed as the Rudd government's national security adviser).

Ruddock and Andrews were involved on a daily basis. Ruddock, who as attorney-general was responsible for both the Australian Federal Police (AFP) and the Australian Security Intelligence Organisation (ASIO), received four written briefs from ASIO and six from the AFP, as well as two security intelligence reports and four threat assessments. In addition, he met with AFP Commissioner Mick Keelty "on a number of occasions during July 2007".

According to Clarke's account, from July 3, the day after Haneef was arrested, Andrews received frequent updates from his department and the prime minister's department on various contingency plans to cancel the doctor's visa so that he could be detained or deported if he were not charged or if he were granted bail. On July 9, a Department of Foreign Affairs and Trade email noted that Ruddock and Andrews were preparing a joint ministerial submission on the visa revocation.

Both Andrews, in his testimony to Clarke, and Howard, in a brief statement to the inquiry, insisted that Andrews made the ultimate decision to revoke the visa on July 16 independently, exercising his own ministerial discretion. Yet, Andrews had told his departmental heads that he would not make any decision until after the cabinet National Security Committee meeting, due that day. Clarke reported that Andrews was called to a meeting with Howard and Ruddock that morning to discuss the visa issue. Clarke noted, without comment, that in a letter to the inquiry, Ruddock denied attending any such meeting.

The visa decision was officially made at 1 p.m. on July 16, just one hour after the conclusion of the cabinet committee meeting, to which Andrews had been invited. However, at 1.01 p.m. the prime minister's office sent an email to two senior officials advising that the Solicitor-General had confirmed that "no contempt issue" would arise if Andrews cancelled the visa. This suggests that Howard was involved in securing legal advice that the decision would not be in contempt of the court's grant of bail.

For nearly a month, Howard, Ruddock and Andrews presided over a massive operation, involving more than 600 federal and state police, the intelligence agencies, foreign affairs personnel and customs officers, in an effort to produce evidence against Haneef. Clarke revealed that the operation extended to the Defence Signals Directorate (DSD), the military's signals intelligence agency, which answered 71 requests to intercept Haneef's telecommunications, the Australian Secret Intelligence Service (ASIS), the overseas spy organisation, which established a "crisis team" to support the investigation, and the Australian Customs Service, which covertly searched Haneef's luggage at Brisbane airport before he was arrested there on the night of July 2.

Yet, as late as July 13, the day before Haneef was charged, all the federal and Queensland police engaged in the joint investigation had concluded that insufficient evidence existed to charge the doctor. Clarke recorded that these officers included the AFP's lead investigator, national counter-terrorism manager Ramzi Jabbour.

Jabbour had prepared a document on July 10, in which he stated he did not currently have "sufficient evidence to charge HANEEF" and he told Clarke that was still his view on July 13. Early the next morning, however, and without explanation, Jabbour decided to lay the charge, just before Haneef was due to be released from detention. After consulting his superiors in Canberra, Jabbour overrode the two arresting officers, both of whom had refused to charge Haneef (legally, the charge should be laid by the arresting officers), even after a prosecutor, Clive Porritt, had advised there was enough evidence to justify the arrest.

Porritt had told other prosecutors as late as July 13 that he did not consider the evidence adequate. He told Clarke that he changed his stance after coming under "unspoken but considerable pressure" from police commanders. Clarke concluded that Porritt would not have given his advice, which was "unsupportable—on any test," if not for the police conduct. Clarke's only explanation for what transpired was that Jabbour had "lost objectivity" because he became too intimately involved in the case.

Later it was revealed that the police information given to Porritt, and relayed to a court, contained at least two crucial lies. One was that Haneef's SIM card was found in the jeep that had crashed into Glasgow airport, when, in fact, it was located in Liverpool, 200 kilometres away. The other was that Haneef had resided in Britain with his second cousin Kafael Ahmed, who drove the jeep, although the two had never lived in the same house. Also withheld from Porritt and the court was the fact that, before his terrorist attack, Ahmed had sent an email to his brother, Sabeel, which effectively cleared Haneef of any fore-knowledge of his actions. The AFP had this information from July 8, six days before Haneef was charged.

The obvious question that arises is why the entire national security apparatus, not just Jabbour and Porritt, produced what Clarke described as a "multitude of errors and omissions". The only plausible explanation is that the real pressure was coming from the top, from the Howard government itself.

Not surprisingly, Ruddock and Andrews declared that the report vindicated them. Andrews insisted he had acted "courageously" in cancelling Haneef's visa, while Ruddock said the report proved there was no cause for a government apology or compensation to Haneef for his detention and the trashing of his reputation.

The Rudd government also welcomed the findings, and used them to underscore its "commitment to a bipartisan approach to national security". Attorney-General Robert McClelland released an overall response to the report and several previous reviews of the anti-terrorism legislation. In essence, the government's proposals consist of extending aspects of the laws, while adding cosmetic safeguards.

McClelland said the government would expand the legislation to cover psychological as well as physical harm, to apply to threats of terrorist action, to cover threats to international organisations, such as the United Nations, and to apply to terrorist-related hoaxes. At the same time, sedition offences would be modified and re-badged under the title of "urging violence".

A National Security Legislation Monitor would be established, within the prime minister's portfolio, to conduct ongoing reviews of the "practical operation" of the legislation. Oversight of the intelligence agencies by a parliamentary committee and the Inspector-General of Intelligence and Security (IGIS), another office within the prime minister's department,

would be extended to the AFP. The token character of such scrutiny was demonstrated by the failure of the IGIS and the existing parliamentary committee to expose or halt the Haneef witch-hunt.

In a comment in the *Australian*, Dennis Shanahan spelt out the central message, noting that the Rudd government was once again disappointing those seeking retribution and "justice" as a result of the assaults on civil liberties and democratic rights by the former Howard government. The Labor government was "not about to roll back any anti-terror laws that have the general support of the electorate, no matter what appeals there are for 'social justice'."

Despite Shanahan's claims about public backing for the laws, the Haneef debacle showed that ordinary people were becoming increasingly distrustful of the terrorism measures. It was this shift in sentiment—which intensified after Haneef's lawyers released the transcript of a police interview with their client, exposing the lack of evidence against him—that ultimately led to the implosion of the government's efforts.

Having given Clarke a brief to "restore public confidence" in the terrorism powers, the Rudd government is now seeking to utilise his report to bolster the legislation and the agencies that enforce it. Like the Howard government, it is committed to pursuing the "war on terror," both as a diversion from deepening economic and social tensions at home and as a rationale for backing the criminal, neo-colonial US-led military operations in the Middle East and Central Asia.



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