

Clarke Inquiry into the Case of Dr Mohamed Haneef

Report of the Inquiry

Government response to the Recommendations

Recommendation	Government Response
<p data-bbox="145 488 568 526">Constitution of Inquiries</p> <p data-bbox="145 562 568 891">1. The Inquiry recommends that the government consider incorporating in legislation the special arrangements and powers that would apply to inquiries and other independent reviews and investigations involving matters of national security.</p>	<p data-bbox="568 488 1493 562">Agree – the Government will consider various options to address the Inquiry’s concerns, including:</p> <ul data-bbox="568 562 1493 974" style="list-style-type: none"><li data-bbox="568 562 1493 636">• asking the Australian Law Reform Commission (ALRC) to review the <i>Royal Commissions Act 1902</i>;<li data-bbox="568 636 1493 824">• broadening the mandate of the Inspector-General of Intelligence and Security (IGIS) to enable (at the direction of the Prime Minister) IGIS inquiries to be extended to Commonwealth agencies that are not members of the Australian Intelligence Community (AIC); and<li data-bbox="568 824 1493 974">• reviewing the issues raised by the Inquiry in light of existing mechanisms (for example, inquiries by the IGIS under the <i>Inspector-General of Intelligence and Security Act 1986</i>, as modified by the proposed amendment). <p data-bbox="568 1010 1493 1227">The Government is providing a reference to the ALRC to review the Royal Commissions Act, with terms of reference that include consideration of incorporating in legislation the special arrangements and powers as recommended, and consideration of scope for an alternative form of executive inquiry to provide more flexibility where appropriate.</p> <p data-bbox="568 1263 1493 1704">Extension of the IGIS’s mandate will partly address some of the Inquiry’s concerns. The IGIS has strong coercive powers under the <i>Inspector-General of Intelligence and Security Act 1986</i>, and is accustomed to conducting inquiries dealing with national-security related matters. The IGIS’s functions are currently limited to agencies in the Australian Intelligence Community (AIC) (ASIO, ASIS, DSD, DIO, DIGO and ONA). Extending the IGIS’s mandate to enable the IGIS to extend his inquiries, by a direction from the Prime Minister, outside the AIC, will enable the IGIS to more effectively assist future inquiries and other independent reviews involving matters relating to security and intelligence that extend beyond the AIC itself.</p> <p data-bbox="568 1740 1493 1957">The extension of the IGIS’s mandate would also facilitate the IGIS conducting certain inquiries similar to the Clarke Inquiry, and would provide a further option to Government in establishing an inquiry structure that is appropriate to the circumstances of particular cases where the scope of an inquiry predominantly concerns national security.</p>

<p>Roles, functions and responsibilities of government agencies and departments</p> <p>2. The Inquiry recommends that a committee – consisting of the Deputy Director-General of ASIO, the Deputy Commissioner of the AFP, the Deputy Director of the Commonwealth Director of Public Prosecutions (CDPP) and senior representatives (at minimum at deputy secretary level) of PM&C, DIAC and AGD – be established to conduct a review and determine ways of dispelling misapprehensions about the respective roles, functions and responsibilities of government agencies and departments in a counter-terrorism context and the purpose of the information they produce in that context. The committee should review existing procedures, arrangements and guidelines with a view to providing clear guidance and achieving a common understanding.</p>	<p>Agree – This is an important recommendation that will build upon work that has already been undertaken in response to the recommendations of the Street Review. A committee, chaired by the Department of the Prime Minister and Cabinet, will be convened and conduct a review as recommended.</p>
<p>Issues relating to legislation</p> <p>3. The Inquiry recommends that the provisions of Part 1C of the <i>Crimes Act 1914</i> in relation to terrorism offences and the association of those provisions with s.3W of the Act be reviewed in the light of the discussion in Chapter 5 and relevant provisions of the United Kingdom’s <i>Terrorism Act 2000</i>.</p>	<p>Agree – The Government has requested the Attorney-General’s Department to conduct a review of the relevant provisions in Part 1C, and their interaction with s.3W, of the Crimes Act, taking into account the issues raised in the Clarke Inquiry report.</p> <p>While some amendments could be made quickly to address the key concerns raised by the Inquiry, the Government agrees with Mr Clarke that it would be preferable to conduct a comprehensive review of these detailed and important provisions.</p> <p>The review will involve public consultation through a discussion paper to be released in the first half of 2009.</p> <p>In addition, the Government will direct relevant agencies to ensure their officers are properly trained and briefed on the operation of these provisions.</p>

<p>Independent Reviewer</p> <p>4. The Inquiry recommends that consideration be given to the appointment of an independent reviewer of Commonwealth counter-terrorism laws.</p>	<p>Agree – Please see the response to the Parliamentary Joint Committee on Intelligence and Security Review of Security and Counter-Terrorism Legislation.</p>
<p>Issues relating to legislation</p> <p>5. The Inquiry recommends that consideration be given to amending s.102.7 of the Criminal Code to remove the uncertainties discussed in Chapter 5.</p>	<p>Agree – the Government will confer with the States and Territories on amending section 102.7(2)(a) to clarify the fault element of this offence. This will address Mr Clarke’s finding that the wording of the first element of the offence (s.102.7(2)(a)) is potentially confusing and risks ‘judicial error’.</p>
<p>ASIO material in Minister for Immigration’s decision</p> <p>6. The Inquiry recommends that the Minister for Immigration and Citizenship be added to the distribution list for security intelligence reports produced by ASIO, in addition to senior departmental officers.</p>	<p>Agree – the Minister for Immigration and Citizenship will, where relevant, be added to distribution lists for ASIO security intelligence reports.</p> <p>In addition, DIAC and ASIO will explore ways of ensuring their interaction and cooperation is effective in visa cancellation processes, including how ASIO may best assist DIAC with that process and ensuring appropriate attention is paid to relevant ASIO information.</p>
<p>Cooperation, coordination and interoperability</p> <p>7. The Inquiry recommends that the National Counter-Terrorism Committee develop for the National Counter-Terrorism Handbook and the National Counter-Terrorism Plan procedures specifying operational protocols for an investigational structure and a Major Incident Room structure to be implemented for counter-terrorism investigations.</p> <p>8. The Inquiry recommends that a review of Joint Counter Terrorism Team arrangements</p>	<p>Agree – The Government will support, and seek the collaboration of the States and Territories for, the ongoing implementation of these recommendations through the NCTC and, as necessary, the Council of Australian Governments (COAG).</p> <p>Again, this will build on initiatives already undertaken to implement the recommendations of the Street Review to improve cooperation and interoperability between the AFP and its national security partners.</p>

<p>be conducted with a view to establishing nationally consistent arrangements under the National Counter-Terrorism Committee governance framework.</p> <p>9. The Inquiry recommends that a national case management system for major police investigations be developed and adopted as a matter of urgency.</p>	
<p>Cooperation, coordination and interoperability</p> <p>10. The Inquiry recommends that the National Counter-Terrorism Committee facilitate exercises that specifically respond to the problems involved in investigating and prosecuting terrorist offenders in Australia.</p>	<p>Agree – The Government will support, and seek the collaboration of the States and Territories for, the ongoing implementation of this recommendation through the NCTC and, as necessary, the Council of Australian Governments (COAG).</p> <p>The Street Review of interoperability between the AFP and its national security partners recommended that the AFP request the NCTC to facilitate exercises that specifically address the problems involved in investigating and prosecuting terrorist offenders in Australia. This Street Review recommendation has been implemented. The Mercury 08 Counter-Terrorism exercise program had a heavier focus on prevention, prosecution, and investigation exercises. This focus will be further enhanced in 2009 through the NCTC.</p>