

Andrew Lynch | *November 21, 2008*

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**THE Australian Federal Police and the Australian Security Intelligence Organisation are the subjects of major reports this month over their actions in important terrorism cases.**

The findings of the Clarke Inquiry into the Dr Mohamed Haneef affair are expected to cause embarrassment and could lead to heads rolling, but a less dramatic report probably matters more to the improvement of counter-terrorism operations.

The Clarke Inquiry delivers its report today after two extensions. Originally due to report on September 30, John Clarke QC clearly needed more time.

For one thing, the AFP, after much resistance, only provided the inquiry with a written submission that could be publicly disclosed as recently as October 23.

The AFP is at the heart of the events surrounding Haneef's detention and charge in July 2007, and its account must feature strongly in Clarke's report, so its very late delivery of an unclassified statement hardly amounted to timely co-operation.

Just last week, the inquiry was granted another extension due to an "unexpected delay in interviewing a critical witness". This intriguing justification has only heightened anticipation of the report's findings and their possible consequences for commonwealth agencies and the anti-terrorism laws.

The AFP, and its commissioner, Mick Keelty, must be particularly uneasy, given their persistence in maintaining that Dr Haneef had a case to answer when all evidence suggested the contrary.

ASIO, on the other hand, has made it clear it never viewed Haneef as a security threat. It can expect little in the way of adverse comment from Mr Clarke.

Even so, ASIO certainly has not escaped scrutiny this month, being the subject of a report authored by the Inspector-General of Intelligence and Security, Ian Carnell, and released last Friday.

The focus of the IGIS inquiry was ASIO's role in the investigation of Izar Ul-Haque in 2003. Last year, the case against Mr Ul-Haque collapsed when Justice Michael Adams of the NSW Supreme Court declared his interviews with police were inadmissible due to the "oppressive conduct" of both ASIO and the AFP.

The actions of two ASIO operatives were particularly damaging. They surprised Mr Ul-Haque in a train station carpark one night and drove him to a public park for questioning, before returning to his family home, which was being searched, and then -- without a warrant -- interviewed him alone for several hours in a bedroom.

Justice Adams declared the ASIO agents committed offences of false imprisonment and kidnapping amounting to an "unlawful interference with the personal liberty of the accused".

A consequence of this damning assessment was a review commissioned by Mr Keelty of the way ASIO and the AFP work together in national security matters. The IGIS launched its own inquiry into the legality and propriety of the agents' behaviour.

Without doubt, ASIO will have been relieved by the IGIS report. Despite the judge's remarks, it found against referring the actions of the two agents to prosecuting authorities, saying there was insufficient evidence of their intention to commit an offence.

That may be the case, but even so the IGIS report is surprisingly mild in tone. No direct criticism of the agents' conduct is among the inspector's formal findings -- and yet their actions unquestionably distorted the investigation of Mr Ul-Haque, leading to the botched attempt to prosecute him.

The IGIS report is important due to its broader recommendations about the way ASIO should work with the AFP in future.

It supports the earlier review of interoperability between the two bodies and should prevent ASIO's involvement jeopardising future criminal investigations of terrorism cases.

Undoubtedly, the Clarke report will make an impact, but the Haneef affair was, in many ways, simply a succession of bumbles for which accountability must now be settled.

By contrast, the IGIS inquiry into the Ul-Haque investigation concerns the central challenge for our intelligence and policing agencies in national security -- how they are to work together to protect the community from terrorism while still respecting the role of the criminal justice system.

That is an ongoing issue of the greatest importance.

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