

Why did Dr Haneef leave Australia?

Address by CEO Bill Rowlings to the ANU Law Students' Society, 13 August 2007

The Dr Haneef case provides the perfect opportunity to take stock of what six years of terrorism laws has produced in the Australia of late-2007.

What should '*Life in Australia*' be like today? And what does it look like, after six years, of anti-terror laws. Most people would agree with these seven principles of what Australian society should be like:

- anyone in Australia is innocent until proven guilty;
- there is a traditional rule of law;
- we have a general freedom of assembly, and freedom of speech;
- a strong media keeps the government and police and security services honest;
- the judicial arm of government is free of political influence;
- the legislative arm operates openly and effectively to produce sound laws; and
- the executive arm acts responsibly, without abusing its power.

How do they stack up with the reality of Australia today, in August 2007.

Innocent until proven guilty?

Clearly, Dr Mohammed Haneef was declared guilty until proven innocent by police and security forces. Even after a magistrate said he should be free, the AFP in particular continued to believe he was guilty, and they still do: Commissioner Keelty and his cops continue to try to put Haneef in the frame.

I hope they do find out something bad about him...because otherwise their reputation will nosedive even further. And we need a respected police force.

When is a person innocent? If 300 police pore over someone's background for 10 to 20 days, with help from police around the world, and examine 30,000 documents on his computer, and find nothing useable in court against him, surely they can declare he is at least innocent of everything other than innocently giving a SIMM card to a relative.

But of course one man in Australia did declare Haneef formally guilty of having a bad character – not because he had done something wrong, but because his cousins allegedly had.

That man was Kevin Andrews, the Minister for Suspicion. Possibly no-one in our history has so trashed the Australian principle of innocent until proven guilty as he has done. And he was a lawyer, by the way, before power went to his head and affected his decision-making.

You will recall he was also responsible for overturning a democratically-passed Act of the Northern Territory Government on the issue of euthanasia. Neither democracy nor the innocence presumption has ever been among Kevin's strong points. You would have to wonder how, academically or ethically, he ever became a lawyer.

Earlier, of course, the Attorney-General Mr Ruddock, the Foreign Minister Mr Downer and the Prime Minister Mr Howard had all obliterated the notion of innocent until proven guilty over many years in relation to both Mamdouh Habib and David Hicks. Ruddock and Howard are lawyers and should have known better.

The rule of law in Australia?

Haneef was detained under AFP powers that limited the time he could be interrogated. Did the AFP honour the spirit of those laws? No? They trashed them, effectively making up a new 'time out' provision whereby the AFP could hold back the hands on clocks.

'Terrorism Time' in Australia now means what the AFP says it means, in their Alice in Wonderland world. When your own federal police force is trashing the laws of Australia, the rule of law has been overturned.

You might well ask why didn't they use Queensland law to detain Haneef? Because then the Public Interest Monitor, an independent authority who acts as a check and balance on excesses under the Queensland legislation, could have made sure Haneef's human rights and civil liberties weren't being abused. We desperately need a federal Public Interest Monitor for the AFP who can intervene in cases while they are active.

Freedom of assembly?

Can you go about lawful business in Australia without interference from the police? No.

At Parliament House, the AFP take the name, address, phone number and car registration details of anyone who is there protesting by means of holding up a sign, alone, in silence, in the area formally designated by the Parliament for protest.

The AFP put those details on a file, and that person then has a police record for life...even though they have done what they are lawfully entitled to do, in the lawful area, outside their own Parliament building.

The police say that a protestor can refuse to give their details...but the police do not give a protestor that option, or inform them of their rights.

In Australia, you used to be able to go about your lawful business without police descending on you for no reason. Now you can't, even at the supposed home of Australian democracy, where you end up with a police record for exercising your democratic rights. That's a significant measure of how far Australian society has slipped.

Freedom of speech?

Dr Haneef was barred from talking to the media in Australia, by locking him up in administrative detention. He only got back his freedom of speech in India. What a sorry indictment of Australia's current freedoms that fact is.

And Mamdouh Habib, freed years ago from Guantanamo Bay because he had done nothing wrong, is still – this very day – under a cone of government-imposed silence.

As is David Hicks, though in his case Australia has allowed a foreign government – the United States – to impose silence on one of our citizens, in Australia. Hicks has until

March 2008 to go before his year of not being allowed freedom of speech in his own country is up.

A strong media, keeping people honest

When you add the numbers, there are more people in the police and security agencies doing public affairs, media, public relations, photography, videoing and the like than there are in forensic science areas.

Forensic testing is years behind in some Australian jurisdictions, and there is an epidemic of lost, contaminated, wrongly destroyed or poorly-catalogued forensic material around Australia. That illustrates quite clearly that media manipulation is far more important, in terms of staff numbers, than evidentiary considerations.

In the Haneef case, there was regular leaking of information – to suit their own purposes, against their own rules and stated policies, and outside the protocols of the Australian legal system – by very senior police and government sources.

The media were manipulated, by the media relations people of police and by the media and/or ministerial advisors of government people.

That has become the normal situation today in Australia. There is a class of media and other advisors for police, security forces, the military and the government who work actively to keep information from the Australian public, or to only make information available if it is favourable to the source.

This is a national scandal, with no mechanism at the moment to correct it. CLA hopes to work out a way of changing this disgrace to democracy.

As well as that, the media's efforts to keep people honest have been severely curtailed. In the recent past, you have journalists (McManus and Harvey) convicted for doing their job and exposing problems in the Australian government system. You have had a public servant concerned about national security – Kessing – convicted for doing the right thing and trying to safeguard security at our airports.

On top of all this, Australia's Freedom of Information access has become an open joke. Information is not put on file; information that does make it on to files is arbitrarily withheld, or blacked out; and then you have government ministers able to issue conclusive certificates...that is, to write their own excuse notes for not providing information to the public.

Is the judicial arm free of political and personal considerations?

I don't think there is anyone in Australia who thinks that appointments to the judiciary are less influenced by political considerations today than they were a decade ago.

Certainly Sir Gerard Brennan doesn't, as was evident by his Senate lecture at Parliament House on 10 August 2007 where he spoke very forthrightly for a former Chief Justice of Australia about the dangers of political bias and personal patronage in judicial appointments.

And then there's the August 2007 Jack Thomas case in the High Court, which was undoubtedly decided in terms and on principles different from how it would have been decided 50 years ago.

You have Justice Michael Kirby, historically over his career a middle of the road judge, now considered extremely left. As he points out, he hasn't moved, or changed. It's newer appointees whose decisions have taken the High Court out to one side, which happens to accord with the movement to the right of government policies over the past decade.

Does the parliamentary arm operate effectively?

We need only to refer to the one-day Senate hearing on 10 August 2007 on 'radical, urgent, emergency' legislation – 480 pages on intervention in the Northern Territory – to highlight a trend obvious since the last Federal election.

Australia's most dramatic change to anti-terrorism laws, the major Act of December 2005, also passed with one day's consideration by the Senate Legal Committee.

The executive arm of government is contemptuous of the Senate, because the Coalition has a majority in its own right. Arguably, the current executive is contemptuous of the entire Parliament – in 2006, in the usually non-controversial Committee of the Whole, the Government accepted only one amendment from all non-government parties during the entire year, while rejecting 394 amendments proposed by the Opposition, Democrats, the Greens, Family First, and by combined parties and by groupings of senators.

Table 1: Amendments, Requests etc moved in Committee of the Whole (2006)

| Moved by | Agreed to | Negated |
|-----------------------------------|-----------|------------|
| Government | 81 | 0 |
| Opposition | 1 | 168 |
| Australian Democrats ¹ | 0 | 149 |
| Australian Greens | 0 | 41 |
| Family First | 0 | 12 |
| Opposition/Australian Democrats | 0 | 9 |
| Senators Barnett and Humphries | 0 | 12 |
| Senators Colbeck and Scullion | 0 | 3 |
| Total | 82 | 394 |

¹ One amendment was moved and subsequently withdrawn

Source: *Business of the Senate 2006* (from The Alford Report, at <http://www.cla.asn.au/pages/students.php>)

Is the executive arm acting responsibly, without abusing the system

I don't think this needs any further comment – everyone watches TV, listens to the news, and reads papers. But, just for the record, here are a few items of recent times:

- one day for the Senate to consider huge volumes of legislation with dramatic impact on lives and liberty, children and families;
- over-ruling states and territories in relation to the Murray-Darling river system;
- negating valid Territory legislation on civil unions, by executive fiat;
- disenfranchising prisoners from the vote, and guillotining the time for young people to register for the first time when an election is called;
- enacting laws that don't allow people to tell relatives and their employers that they are in police or security detention;
- introducing laws to prevent the media reporting on anti-terror detention for five years (but allowing selective leaks by the AFP and the government, when it suits them, to produce dramatic front page photos and Rambo-style video of raids);
- calling in the military on civilian issues, such as in the Northern Territory, and giving the military new shoot-to-kill powers on the streets of our cities;
- closing off half the city of Sydney from its own citizens in September 2007 – including turning out the military – so that the Prime Minister can appear to be a world figure.

I've explained how free speech has gone, freedom of assembly is abused by the police, the presumption of innocence is trashed by one federal minister in particular but by several Ministers and the Prime Minister in general, the traditional rule of law has been turned on its head, the media is being manipulated and muzzled, the judiciary is being moulded to produce desired rulings, the parliament has become a playtoy, and the executive treats traditional Australian standards of propriety – and the Australian people – with contempt.

Perhaps these are the reasons why Dr Haneef left Australia.

Bill Rowlings is CEO of Civil Liberties Australia, a non-party-political group working to protect people's freedoms. Formerly a journalist and public relations consultant, he worked as a media adviser in the office of the Leader of the Opposition during the 1996 election campaign.

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