

# Being able to speak out... at the right time

By Ian Brown



Shortly before I commenced my term as President of the Australian Lawyers Alliance, the Queensland Law Society proposed rules to govern the legal profession in Queensland that received widespread media coverage. Prior to this coverage, the vast majority of the legal profession in Queensland was either unaware of the proposed rules, or did not appreciate their potential impact.

The rules had been endorsed a number of years previously by the Law Council of Australia. Parts of these rules – particularly rule 19 of the Model Rules of Conduct – would have effectively prevented lawyers from publicly advocating on behalf of their clients.<sup>1</sup>

At the time, I pointed out that, whereas governments and corporations typically have millions of dollars and teams of spin doctors and bureaucrats at their disposal to articulate and promote their messages, the average person in the legal system only has their lawyer.

The proposed rules were defended on the basis that they would help to prevent conduct that could '(bring) about the collapse of trials or prosecutions or miscarriages of justice'.<sup>2</sup>

That is absolutely correct. Speaking at the wrong time could lead to a miscarriage of justice. The ability, however, to speak out at the right

time can also prevent a miscarriage of justice. There are already appropriate laws in place governing contempt and defamation.

It was for these reasons that the Lawyers Alliance strenuously opposed the proposed rules in Queensland. To its considerable credit, the Queensland Law Society rejected the proposed rule and agreed to introduce the far more reasonable rule that is presently in force in Victoria.

Recently, Australia's legal system and its anti-terror laws have made international headlines over the treatment of alleged terrorist, Dr Mohamed Haneef. As I write this, Dr Haneef is safely back in Bangalore with his family. However, his reputation and career as a medical practitioner have been damaged, probably beyond repair. At the time I write this, Dr Haneef is fighting for reinstatement.

The reason Dr Haneef is free today is because his lawyers were able to speak publicly and defend the doctor against an avalanche of leaks and misinformation from various authorities and government officials.

Dr Haneef's barrister, Lawyers Alliance member, Stephen Keim SC, has been threatened with an investigation after he released a transcript of an interview that the AFP held with Dr Haneef. This interview revealed the extent of the almost Orwellian 'Newspeak' campaign

mounted by the federal government against Dr Haneef and his lawyers. (We are fortunate to be able to publish Mr Keim's account of his involvement in the Haneef case in this edition of *Precedent* – see page 36.)

Dr Haneef's solicitor, another Lawyers Alliance member, Peter Russo, is to be applauded for his single-minded determination in defending Dr Haneef.

The Australian Lawyers Alliance was the only national legal body to speak out in defence of Mr Keim's actions, and we should be proud that we have lawyers of this calibre in the Alliance.

Dr Haneef's case has shown just how important it is that lawyers should be able to speak out on behalf of their clients. ■

**Notes:** **1** See Model Rules of Professional Conduct at <http://www.lawcouncil.asn.au/policy/1957352449.html>. **2** See 'Law Council Conduct Rules Balanced and in the Public Interest' at <http://www.lawcouncil.asn.au/read/2007/2438713579.html>.

**Ian Brown** is National President of the Australian Lawyers Alliance and a partner at Carter Capner Lawyers.

**PHONE** (07) 3210 3444

**EMAIL** [ibrown@cartercapner.com.au](mailto:ibrown@cartercapner.com.au)