



DPP

Commonwealth Director of Public Prosecutions

27 July 2007

Media Release: Dr Haneef

The Commonwealth Director of Public Prosecutions, Damian Bugg QC today in explaining his decision to discontinue the prosecution against Dr Haneef said:

I appreciate the importance of this decision and want to set out what has occurred.

Let me say at the outset that there is an ongoing investigation against the backdrop of extremely serious and dangerous conduct of potentially great harm to the public in the United Kingdom. Much of the information is located overseas and is the subject of ongoing investigations in other jurisdictions. The position and information is constantly developing and critical decisions have to be made in circumstances of incomplete and changing information.

The decision to charge will, in some circumstances, have to be made during the process and against the background of an ongoing investigation.

In this situation, once a person has been charged a prosecution commences. The Prosecution Policy of the Commonwealth, requires that for that prosecution to continue there must be a reasonable prospect of conviction on all the admissible evidence which is available.

If, at any stage in the conduct of a matter, there is concern about whether the prosecution test will be satisfied then the Office will review a matter regardless of where it is at in the court process.

The AFP made a decision to charge Dr Haneef with one count under section 102.7(2) of the Criminal Code in relation to providing a SIM card to a terrorist organisation in July 2006 being reckless as to whether the organisation was a terrorist organisation.

This decision was made following advice provided to the AFP by one of my officers that on the basis of the information available at that stage and what was said to be likely to be available and

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other potential sources of information, the police could have reasonable grounds for believing that Dr Haneef had committed that offence.

Following the Magistrate's decision to grant bail I requested the appropriate material to enable me to consider the bail decision. Having considered that material I decided to undertake a wider review of this matter and requested further material in relation to the case. The process of supplying this further material has taken time in order to put together as comprehensive a picture as is possible. The AFP is undertaking overseas inquiries and the pursuit of fresh inquiries within Australia. I have now received an updated report on this matter from the AFP based on the information available at this time. I have also considered what evidence may become available. I have assessed this case against the evidentiary criteria in the Prosecution Policy, acknowledging that it has necessarily required a judgment to be made during a continuing investigation.

In order to prove an offence under section 102.7(2) the prosecution must prove beyond reasonable doubt that:

- a) the defendant intentionally provided resources to an organisation,
- b) the resources would help the organisation engage in preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs) and the defendant was reckless as to that
- c) the organisation is a terrorist organisation
- d) the defendant is reckless as to whether the organisation is a terrorist organisation.

The definition of a terrorist organisation for these purposes is an organisation that is directly or indirectly engaged in preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not a terrorist act occurs). Recklessness in relation to circumstances under the Criminal Code means a person is aware of a substantial risk that the circumstances exist or will exist and having regard to the circumstances known to him or her, it is unjustifiable to take the risk.

For a prosecution to succeed all of these elements have to be proved beyond reasonable doubt. While there are circumstances in which the provision of a SIM card to a terrorist organisation will amount to an offence against s102.7(2), I am not convinced that the evidence establishes a reasonable prospect of conviction against Dr Haneef under s102.7(2) relating to the provision of a SIM card in 2006. In my view there is insufficient evidence to establish the elements of the offence as set out above to the requisite standard. While there are inferences that are available

from the material I have. I am of the view they are not sufficiently strong to exclude reasonable hypotheses consistent with innocence. In the circumstances of this case I do not believe that evidence to prove the case to the requisite standard will be obtained.

There is information which would lead to a reasonable expectation that it could be established that the SIM card was used in connection with the events in the UK in 2007. However the SIM card was provided in July 2006 and there are no reasonable prospects of proving all of the elements of the offence at that time.

I will emphasise, because there has been speculation on this subject, that at no stage of either the charging process or my consideration of this matter have I been subject to any contact, request, submission or attempt to influence my decision from Government, any politician or political office. My office is independent from the political process and in my 21 years as a DPP I can say that successive Attorneys-General have respected that independence, none more so than the current Federal Attorney-General.

I also acknowledge that one of my officers put two errors of fact before the court. The first related to the SIM card and was based on a misunderstanding of the facts. The second related to the residence of Dr Haneef in the UK and was based on incorrect material provided by the AFP. The prosecution is of course under a duty to inform the court promptly of any errors that are made in submissions to the court. The hearing in which these errors were made was determined in Dr Haneef's favour and when the errors were recognised it was decided to correct them when the matter was next before the court.

My Office strives to ensure it does its work to the highest possible standard. We review our performance and apply the lessons learned and we will do so in this case.

The DPP has a separate function from the AFP. We do not investigate. While we work closely with the AFP as with any investigative agency a clear separation of these roles should be maintained, and I have initiated, with Commissioner Keelty a review of the current arrangements.