



**The Hon Kevin Andrews MP**

**Minister for Immigration and Citizenship**

**DOORSTOP**

**Treasury Place, Melbourne**

**Friday, 27<sup>th</sup> July 2007**

**KAT043/07**

**Subjects: Dr Haneef**

**E&OE...**

**MINISTER ANDREWS:**

Ladies and Gentlemen, as you will be aware the Director of Public Prosecutions has withdrawn the charge against Dr Haneef because in the words of the DPP 'there is no reasonable prospect of conviction'. Can I remind you that that is a reasonable prospect based on (inaudible). As I've been indicating for many days now, the test which I have had to apply as the Minister for Immigration, pursuant to the migration legislation is a different test namely it goes to the formation of a reasonable suspicion of association with a person or persons engaged, or having been engaged in criminal conduct.

You may also be aware that the Federal Commissioner of the Australian Federal Police, Mr Keely, today reiterated in the press conference that the advice which the AFP has provided to me stands. Throughout this matter I've acted on advice -- advice in relation to the evidence from the Australian Federal Police, and in addition, quite naturally legal advice. In light of today's developments, and consistent with the approach that I've adopted of acting upon the relevant advice, I now intend to seek further advice from the Commonwealth Solicitor-General whether or not the decision of the DPP has any implications for the decision which I made under the migration legislation. Whilst I'm obtaining that advice I have made what is known as a residential determination in relation to Dr Haneef. That means that rather than being detained in immigration custody, namely in Villawood or some facility such as that, he will be released into residential detention which means that he can reside at his unit on the Gold Coast, or if he wishes to reside somewhere other than that unit on the Gold Coast then any reasonable request in that regard will be taken into account and met.

Any questions?

**QUESTION:**

(Inaudible)

**MINISTER ANDREWS:**

As I said, I'm acting on advice, I have all through. The advice the Australian Federal Police gave to me, Mr Keely indicated this afternoon remains, but I am taking the precaution of seeking the advice from the highest law officer of the Commonwealth, namely the Solicitor-General as to whether or not there are any implications for my decision. I have to act according to my responsibilities under the migration legislation, and I am cognisant in doing that, that there is an issue of national security involved in this whole affair. And so that's why I'm acting on advice and acting cautiously.

QUESTION:

Mr Andrews, when are you making a decision about Mohammed Haneef's visa?

MINISTER ANDREWS:

Well what I'm saying is that I'm seeking further advice as to whether or not there are any implications of the DPP's decision today as to whether or not that changes in any way the decision which I've made. So my decision at the moment stands, but consistent with my approach throughout this whole event, or series of events, I have sought updated advice from time to time, from the AFP, and in this case I will seek further advice from the Solicitor-General.

QUESTION:

Has his passport been returned?

MINISTER ANDREWS:

No, as far as I understand his passport hasn't been returned and nor would it be returned unless there is some change in relation to his immigration status, namely that his visa was reinstated.

QUESTION:

If advice from the AFP hasn't changed and that was the basis for your decision, why would you change the decision on the visa?

MINISTER ANDREWS:

Well that's a matter for the legal advisers in this regard. If they came to a conclusion that there was some material change to the basis of my decision, as a matter of legal principle because of the decision of the DPP, well then obviously one doesn't have legal advisers for nothing, you have them there to take their advice and that's what I'll do throughout this matter.

QUESTION:

(Inaudible)

MINISTER ANDREWS:

Well as I said as a matter of caution to ensure that everything is done properly in this case, it seemed to me appropriate that I seek the advice of the highest law officer of the

Commonwealth, namely Mr Bennett the Solicitor-General and that's, that's the prudent thing to do in this regard.

QUESTION:

How long would that, would take that, have you placed a time on it? In other words how long can Dr Haneef possibly be stuck in his unit?

MINISTER ANDREWS:

Well he's not stuck in his unit can I assure you of that. Residential detention means that the place in which he is residing is that unit, or as I've said if he doesn't want to stay in that unit, he wants to stay somewhere else, then I would be quite reasonable in terms of some other location he might wish to stay at. What I'm saying by that decision is that I'm not proposing to keep him in immigration detention, namely Villawood or some similar facility; that means that he has to reside at an agreed place, it means he's free to actually move about in the community but as a matter of legal principle he is still formally, albeit in the community, he's formally in detention.

QUESTION:

What are the reporting obligations required?

MINISTER ANDREWS:

Reporting obligations I envisage will be that he reports to the Department of Immigration by telephone once a day and that every few days or once a week he reports in person. They won't be overly onerous but they will be conditions that, that do take into account that there should be a reporting mechanism in place.

QUESTION:

So when will Dr Haneef know if he can stay in Australia or be deported?

MINISTER ANDREWS:

Well this is a matter of the advice which we get. If the advice confirms that there has been no change in the basis upon which I've made the decision then the situation is that his visa has been cancelled and the normal progress from there would be that he would be removed from the country at some stage. Now, the complicating factor if I can put it that way, in terms of him leaving the country, is that through his legal advisers that decision has been challenged in the Federal Court and is due to come back to the Federal Court on the 8<sup>th</sup> August. So, I can't make a forecast about what's going to happen over the next few days. All I can say to you is given the seriousness from all points of view of this matter that it's prudent for me to obtain further legal advice. I will do that, I will have it obtained as quickly as I possibly can but obviously the Solicitor-General needs to look at this case in detail to satisfy himself as to the legal principles involved and the basis upon the decision and whether or not, as I said, there's been some material change so far as legal principles are concerned.

QUESTION:

So you won't be making a decision until the court, until the 8<sup>th</sup> August?

MINISTER ANDREWS:

No, it may well be that I come to a decision based on the Solicitor-General's advice some time much sooner than the 8<sup>th</sup> August. But if my decision stands based on that advice well the next step would be either Dr Haneef withdraws his appeal and chooses to leave the country or based on whatever advice he gets from his lawyers that they proceed with that appeal, but that's a matter for him and his lawyers.

QUESTION:

(Inaudible)

MINISTER ANDREWS:

I can't answer that question because I've been tied up with a few other things. I don't know whether or not there's been any conversation between my department and the Indian authorities so I simply can't answer the question, it's not that I don't want to, I don't know.

QUESTION:

Is there any information sharing with India?

MINISTER ANDREWS:

I can't answer that at this stage either.

QUESTION:

Is this a bit embarrassing for you today?

MINISTER ANDREWS:

No not at all. I have to act in the national interest and I have to uphold the migration legislation. I've done that in good faith, on the advice provided to me by the police and on the legal advice I've had about the nature of the discretion that I had to exercise. Now I will continue to regard this with the upmost seriousness because as I said it does go to the whole question of national interest and national security. By the same token I will act in a way in which the decision I've made can be properly looked at by the Solicitor-General so that if there is any change well then that's taken into account. But I'm not foreshadowing anything in particular, I'm just saying that the DPP made a decision today, the charge was withdrawn, as a matter of prudence and as a matter of caution I'm seeing that further advice as to whether or not it affects the decision that I had to take.

QUESTION:

(Inaudible)

MINISTER ANDREWS:

Well the police investigation according to Commissioner Keelty is ongoing. Remember the reason for which, as I understand the DPP has set out, you can check this from his statement yourself, the reason for which the DPP has withdrawn the charge is because he came to the conclusion when he reviewed the matter that there was no prospect that he could obtain a conviction; that is, there was no prospect that one of the elements, as I understand it, that had to be made out to the court, could be proven beyond reasonable doubt. Now if that's the basis upon which he's explained his decision and that's quite an appropriate decision on the part of the DPP, but as I've maintained throughout, my decision was based on a different piece of legislation which I have to uphold, different criteria in terms of the level of proof, if I can put it that way, a reasonable suspicion is different to prudence beyond reasonable doubt. But as a matter of precaution and prudence I am getting further advice to just make sure that it's still correct.

QUESTION:

(Inaudible)

MINISTER ANDREWS:

Undoubtedly, I mean the Parliament passed the *Migration Act*, the Parliament chose to say that people can be of not good character, if I can put it that way, and the Parliament set out some criteria in the legislation as to instances when a person fails the character test. Now it was specifically under that criteria that I had to address the issues and the evidence provided to me. And that criteria goes to me as the Minister forming a reasonable suspicion that Dr Haneef, in this case or someone else in other cases, has or has had an association with people engaged in criminal conduct. Now I was provided information and evidence and advice by the AFP as to those matters and I formed the conclusion that I had a reasonable suspicion based on that advice. So I'm upholding not just the letter of the law but indeed I believe the spirit of the law as enacted by the Federal Parliament.

QUESTION:

(Inaudible)

MINISTER ANDREWS:

No, no the question, the question as to whether or not the visa was cancelled was a question for me. The evidence that goes to forming a reasonable suspicion, and evidence of persons involved in criminal conduct, and evidence of association between Dr Haneef and such persons was evidence which the AFP provided. One more.

QUESTION:

(Inaudible) are you concerned that with the charges being dropped that there may be a case for compensation?

MINISTER ANDREWS:

Look that's not an issue that in my view arises. It certainly doesn't arise at this stage because of two things, one is that as I understand it from the Federal Police this investigation is ongoing; that today's decision was simply that a charge as laid had flaws in it and therefore it

has been withdrawn. But as I understand from what Mr Keelty said this afternoon in Brisbane that the police investigation is a matter which is ongoing. So I'm not going to speculate as to what that investigation may or may not reveal in the future.

Thanks very much.

[Ends]

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