

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 2.1

Question No. 118

Senator Greig asked the following question at the hearing on 16 February 2004:

Could you provide a copy of the communiqué for the request for Australia to enter into an article 98 agreement?

The answer to the honourable senator's question is as follows:

No.

On 17 July 2002, the United States' (US) Ambassador to Australia met with the Secretary of the Department of Foreign Affairs and Trade and proposed that the US and Australia enter into an agreement that would come under Article 98(2) of the Statute of the International Criminal Court.

During this meeting, the Ambassador gave a copy of the US model agreement to Australian officials. This document was communicated in confidence by the Government of the United States. It would not be appropriate to pass this text onto the Committee.

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Question No. 119

Senator Ludwig asked the following question at the hearing on 16 February 2004:

- (a) Does the Department know how many handguns have been bought back under the national Handgun Buyback? If so, how many?
- (b) Does the Department know the amount of funds acquitted to date under the buyback? If so, how much?
- (c) At this stage, does the Government anticipate a surplus from the Handgun Buyback? If so, how much? How will any surplus be allocated?
- (d) Does the Department know how many illegal guns have been handed in under the amnesty? If so, how many?

The answer to the honourable senator's question is as follows:

- (a) States and Territories have reported to the Attorney-General's Department that up to 4 April 2004 59,770 eligible handguns have been bought back under the National Handgun Buyback.
- (b) States and Territories have reported to the Attorney-General's Department that up to 4 April 2004 they have paid \$80,756,286.04 in compensation for items surrendered during the National Handgun Buyback.

For the months of July 2003 to January 2004 inclusive the Australian Government has reimbursed States and Territories \$40,654,113.07, representing its share of the compensation payments made by States and Territories for eligible items during this period.

The reimbursement figure does not include claims for payment made by Western Australia and South Australia. The Australian Government has not made any reimbursement payments to Western Australia as it has not signed the Intergovernmental Agreement (IGA) concerning the accountability and administrative procedures for the National Handgun Buyback, and at this time has not been deemed compliant with the terms of Council of Australian Governments' (COAG) handgun agreement. South Australia has only recently been deemed compliant with the terms of the COAG handgun agreement and will receive its first reimbursement payment from the Australian Government shortly.

The Australian Government has also advanced all States and Territories, other than Western Australia, a proportional share of the unspent \$15 million from the 1996 firearms buyback for administrative costs. Western Australia has not been paid its share of the advance as it has not signed the IGA and has not been deemed compliant with the COAG handgun agreement.

- (c) Pursuant to the *National Handgun Buyback Act 2003*, the Consolidated Revenue Fund is appropriated to fund the Australian Government's share of the National Handgun Buyback. There will be no surplus funds from the National Handgun Buyback.

(d) States and Territories have reported to the Attorney-General's Department that up to 29 February 2004 4,673 illegal firearms have been handed in under the amnesty being run in conjunction with the National Handgun Buyback.

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Question No. 120

Senator Ludwig asked the following question at the hearing on 16 February 2004:

At page 107 of the Department's Annual Report, it states that under the new Commonwealth Fraud Control Guidelines, issued in May 2002:

“Agencies must collect information on fraud and provide it to the Government by 30 September each year. Many agencies have improved their reporting and information management systems to collect fraud related information. This process has provided a greater level of information on fraud against the Commonwealth than previously available”

What has been the total cost of reported fraud across government since these Guidelines were implemented?

- a) What was the total cost in the 2002–03 financial year?
- b) How does this compare to the period before the Guidelines were implemented?
- c) Are you able to provide a full list of the cost of reported fraud by agency?
- d) How many investigations have been conducted since the implementation of the Guidelines?
- e) How many prosecutions have been commenced for fraud against the Commonwealth since the implementation of the Guidelines?
- f) How many convictions have been obtained?
- g) How do these figures compare with the previous financial year?

The answer to the honourable senator's question is as follows:

- a) The total cost of reported fraud against the Commonwealth is \$458,994,364 for the 2002-03 financial year. The Commonwealth Fraud Control Guidelines reporting requirements came into effect for the 2002-03 financial year.
- b) This represents a 5.6% decrease in the value of fraud reported compared to the 2001/02 financial year. The cost of reported fraud in 2001/02 was \$486,098,417.
- c) No. The majority of agencies were unable to provide a dollar figure for fraud for the 2002-03 financial year. The cost of fraud given above is derived from cases referred to the AFP for both the 2001-02 and 2002-03 financial years. The value of each fraud is that estimated at the initial investigation stage.
- d) 22,816 cases of suspected fraud were initially investigated by agencies and the AFP in the 2002/03 financial year. Not all of these found sufficient evidence to warrant referral to the DPP for consideration of possible prosecution action.
- e) The report collects data on prosecutions completed rather than commenced. 3,876 cases of alleged fraud were prosecuted by the Commonwealth in 2002/03 financial year with the

Commonwealth Director of Public Prosecutions (DPP) prosecuting 3677 cases and agencies reporting 199 cases.

- f) 3,351 cases resulted in convictions, 90 resulted in acquittals, with other outcomes for the remainder.
- g) Data relating to agency prosecutions was not collected for the 2001-02 financial year. There was a 5.4% increase in the number of prosecutions completed by the CDPP in the 2002/03 financial year compared with the previous financial year.

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Output 2.1

Question No. 121

Senator Ludwig asked the following question at the hearing on 16 February 2004:

The National Crime Prevention Program is funded in the Budget until the end of 2003-04.

- a) What amount of funds remains unspent under the program
- b) Is the Department still considering applications for grants under the program? If so, until when will the Department continue to consider applications?
- c) Has a decision been made to continue with the Program next financial year?

The answer to the honourable senator's question is as follows:

- a) As at 31 January 2004, \$6.23 million in project funding remains unspent under the National Crime Prevention Program. However, the majority of unexpended funding has been allocated to specific projects, some of which will not conclude until 2005.
- b) The National Crime Prevention Program is not a grant program.
- c) Decisions regarding future funding will be made in the context of the 2004-05 Budget.

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Question No. 122

Senator Bolkus asked the following question at the hearing on 16 February 2004:

Have there been any complaints made to some international organisations where we would expect complaints to be made about conditions generally in Guantanamo Bay?

The answer to the honourable senator's question is as follows:

The Attorney-General's Department is not aware of any complaints being made by, or on behalf of, either Mr Hicks or Mr Habib to any international organisation.

The Government's understanding is that the detainees at Guantanamo Bay are treated humanely. The United States has previously stated that detainees are being held in accordance with the principles of humane treatment contained in the Geneva Conventions. The United States has asked the precise nature and daily routine of the detention regime not be discussed due to security concerns associated with the running of a high security detention facility.

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Output 2.2

Question No. 123

Senator Bolkus asked the following question at the hearing on 16 February 2004:

Can you advise if Hicks and Habib have access to radio, television, library books whilst in isolation? Could you advise if it is the same for both people?

The answer to the honourable senator's question is as follows:

Detainees do not have access to radio or television. All detainees have access to religious books and books of literature. A copy of the Koran is made available to every detainee.

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Output 2.2

Question No. 124

Senator Bolkus asked the following question at the hearing on 16 February 2004:

In terms of access to exercise yards and so on, what is the size of the exercise yards? What are the restrictions with respect to duration of time and to time of day, ie, is access available at night or only day? How big are their cells?

The answer to the honourable senator's question is as follows:

Mr Hicks is given the opportunity to exercise for one hour every evening in an outside enclosure approximately 17 feet x 17 feet. He is also able to exercise in his cell as he wishes.

Mr Habib has the opportunity to exercise for twenty minutes three to seven times a week in an outside enclosure approximately 17 feet x 17 feet. The time of day during which he may exercise varies. He may also exercise in his cell at any time.

Mr Hicks is in a cell 7.5 feet x 15 feet x 10 feet. There is a larger area adjacent to his cell in which he meets with his defence team.

Mr Habib is in a cell 6 feet x 8 feet x 8 feet.

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Output 2.2

Question No. 125

Senator Bolkus asked the following question at the hearing on 16 February 2004:

When was the first request raised in relation to Habib having access to his lawyers?
What are we doing to press the point?

The answer to the honourable senator's question is as follows:

The United States has made it clear that detainees will not be granted access to lawyers until such time as they are listed by President Bush as eligible for trial by a military commission, pursuant to the President's military order of 13 November 2001.

Access to lawyers was discussed with the United States authorities in July 2003 during the Minister for Justice and Customs' visit to the United States. As a result of those discussions, the United States agreed that Mr Hicks and Mr Habib would be permitted to retain an Australian legal consultant as part of their defence team. This is in addition to the appointed military defence counsel and United States civilian defence counsel that are to be made available to an accused person.

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Question No. 126

Senator Bolkus asked the following question at the hearing on 16 February 2004:

Has Mr Habib raised any complaints about his treatment, for instance, into Guantanamo Bay, in Egypt or other countries?

The answer to the honourable senator's question is as follows:

Mr Habib claimed to United States officials that he was mistreated during his captivity in Egypt.

Mr Habib also claimed to Australian Government officials that he has been tortured during his time at Guantanamo Bay. However, Government officials who visited Mr Habib at Guantanamo Bay as recently as February 2004 did not see any physical evidence of torture or mistreatment. Those officials were also permitted to examine Mr Habib's medical records. They did not report that anything unusual appeared in those records.

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Question No. 127

Senator Bolkus asked the following question at the hearing on 16 February 2004:

Would there be a problem in asking the Americans for access to be given to an independent medical assessor, either psychological or physical for both Hicks and Habib?

The answer to the honourable senator's question is as follows:

The United States has made it clear that access to the detainees will only be granted for law enforcement and intelligence purposes.

After their November 2003 visit to Mr Habib and Mr Hicks, Australian officials reported that: "Competent physical and mental health personnel and facilities are available for both detainees to meet any needs that arise." The behavioural health service is composed of a full-time psychiatrist and psychologist, psychiatric nurses and psychiatric technicians.

In addition to the behavioural health service, detainees also have access to a hospital inside Camp Delta. US authorities report that: "The hospital is comparable to a full-service medical facility used by U.S. military forces when deployed anywhere in the world, with state-of-the-art equipment and professional medical staff."

Mr Hicks's defence team, which has visited him several times since December 2003, has not complained that Mr Hicks is ill treated.

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Question No. 128

Senator Bolkus asked the following question at the hearing on 16 February 2004:

Could you provide a copy of the prepared document that sets out the key elements of the agreement and the guarantees of rights that Mr Hicks has under the military commission order under the terms of the agreement between the United States and Australia?

The answer to the honourable senator's question is as follows:

The key elements of the agreement pertaining to the military commission process and the Australian detainees have been included in the document titled "Procedures accorded the accused appearing before a military commission" tabled with the Committee on 18 February 2004. A copy of that tabled document is also included with this response to the honourable Senator's question.

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Question No. 129

Senator Bolkus asked the following question at the hearing on 16 February 2004:

Did the US ask for the agreement not to be answered?

The answer to the honourable senator's question is as follows:

The United States has asked that at this time the document containing the Australian Government's and United States Government's understanding about the military commission process not be released.

The parts of the document pertaining to the military commission process and the Australian detainees have been included in the document titled "Procedures accorded the accused appearing before a military commission" tabled with the Committee on 18 February 2004. A copy of that tabled document is included with the response to question no. 128.

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Question No. 130

Senator Bolkus asked the following question at the hearing on 16 February 2004:

When did the Australian law enforcement authorities and prosecuting authorities come to the conclusion that no prosecution can be mounted in Australia against either Hicks or Habib?

The answer to the honourable senator's question is as follows:

On 23 October 2002, the Commonwealth Director of Public Prosecutions (CDPP) advised that neither Mr Hicks nor Mr Habib could be prosecuted for their activities in Pakistan and Afghanistan. On 2 February 2004, the CDPP advised that Mr Hicks could not be prosecuted for his activities in Kosovo.

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Question No. 131

Senator Bolkus asked the following question at the hearing on 16 February 2004:

On the legality of Hick's and Habib's detention have we taken advice on whether they are being legally held in Guantanamo Bay, whether it was from the Office of International Law or elsewhere?

The answer to the honourable senator's question is as follows:

It has been the practice of successive governments over the years not to reveal whether the Government has sought legal advice on a matter nor the nature of any advice it may have received.

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Output 2.2

Question No. 132

Senator Bolkus asked the following question at the hearing on 16 February 2004:

In relation to the discussion towards the end of January that some UK prisoners may go back to the UK for trial.

The answer to the honourable senator's question is as follows:

Five United Kingdom nationals have been returned to the United Kingdom. The laying of any charges against those five men is now a matter for the Government of the United Kingdom. As of 2 April 2004, the Department is not aware that any charges have been laid against those men. The United States has previously stated that detainees may be released when they are no longer of security, intelligence or law enforcement interest.

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Output 2.2

Question No. 133

Senator Bolkus asked the following question at the hearing on 16 February 2004:

Should the UK through the agreement and negotiations through the US get a better outcome for their citizens, would we have a capacity to revisit this after this agreement has been signed?

The answer to the honourable senator's question is as follows:

As a result of the Government's efforts, the United States has agreed that Australian detainees will receive no less favourable treatment than any other person tried by a United States military commission. In the event that another state received more favourable treatment for its nationals tried by a United States military commission, the Government could revisit the application of the military commission process to Australian detainees with the United States Government.

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Question No. 134

Senator Ludwig asked the following question at the hearing on 16 February 2004

The Government's legislation program for the Autumn 2004 sittings includes a bill called the *Telecommunications (Interception) Amendment Bill 2004*.

Can you clarify whether this bill is intended to implement the recommendations of last year's Sherman report on the *Telecommunications (Interception) Act*? If not, what is the origin of this bill, and what progress has otherwise been made to implement the recommendations of the Sherman report?

The answer to the honourable senator's question is as follows:

The Telecommunications (Interception) Amendment Bill 2004 is not intended to implement the recommendations of the Review of Named Person Warrants and Other Matters conducted by Mr Tom Sherman AO in 2003. Rather, the amendments address a number of pressing issues in the field of telecommunications interception, including:

- extending the availability of interception warrants to the investigation of additional terrorism offences, firearms dealings and State and Territory cybercrime offences;
- extend the definition of interception to include reading or viewing a communication to address advances in telecommunications technology which have resulted in many communications taking the form of text or even images; and
- clarify the application of the Act to delayed access message services such as email and SMS messaging so as to provide certainty on when such communications are protected by the Act, and when they may be accessed pursuant to other lawful authority, such as a search warrant.

The Government is currently considering the amendments made by Mr Sherman in his Review, including consulting with relevant agencies before finalising a response to the matters raised in the Report.