

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Group 3

Program 1.6

Question No. 154

Senator Wright asked the following question at the hearing on 16 October 2012:

David Hicks

1. Recently in the Senate, Senator Ludwig, representing the Attorney-General, referred to two separate investigations undertaken by US authorities into allegations of mistreatment of David Hicks during his incarceration at Guantanamo Bay, Cuba. Senator Ludwig indicated that these investigations revealed no evidence of mistreatment or abuse while David Hicks was in US custody. Does the Department have the reports of these two separate investigations, which Senator Ludwig referred to?
2. If so, where are these reports and are they publicly available?
3. Who conducted these investigations, and does the Department consider that these investigations and reports are independent?
4. If these reports are not publicly available, why not and will they be made publicly available in the future? If they won't be made publicly available, why not?
5. Does the Department have access to any other reports regarding David Hicks' incarceration in Guantanamo Bay and his treatment while in US custody?
6. If so, what are those reports and are they publicly available?
7. Can you provide a list of all publicly available reports and information that the Attorney-General's Department possesses regarding David Hicks, particularly in relation to his detention in Guantanamo Bay and his treatment while in US custody.
8. Do any of these reports indicate or allege that David Hicks was mistreated or tortured while in Guantanamo Bay and/or while in US custody?
9. If so, please provide a list of any reports that make such allegations.
10. Are you aware of allegations by David Hicks and others that he was mistreated while in US custody? If yes, how have you responded to these allegations?
11. Senator Ludwig also indicated that the government has provided David Hicks with considerable assistance to support his welfare and reintegration into the community. Can you please comprehensively detail how and what welfare assistance the government has provided to David Hicks since his return to Australia in 2007?

12. David Hicks has indicated that he was mistreated when he was held in US custody and recent reports have alleged that David Hicks was forcibly administered drugs. Under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (which Australia ratified on 8 August 1989 and that came into force for Australia on 7 September 1989) Australia has an obligation to ensure that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation (article 14). Can you please provide details of how the Australian government is meeting its obligations under article 14 of the Convention Against Torture with respect to the allegations and reports concerning David Hicks' mistreatment and/or torture while in US custody.

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

1. Yes.
2. (a) Copies of the reports were provided by the US to the Australian Government in 2004 and 2005 respectively.
(b) No.
3. (a) The first investigation was conducted by the US Office of the Secretary of Defense in 2004. The second investigation was conducted by the US Naval Criminal Investigative Service (NCIS) in 2005.
(b) Yes.
4. (a) The reports are not publicly available because they are classified.
(b) and (c) This is a matter for the US Government.
5. Yes.
6. (a) The Department has records of welfare visits of Australian officials to Mr Hicks in US custody between 2001 and 2007.
(b) Redacted versions of some reports have been released in response to requests made under the Freedom of Information Act. .
7. There are no official public reports about Mr Hicks' detention in Guantanamo Bay. Various statements by relevant Ministers at the time are on the public record.
8. No.
9. N/A – see response to question 8.
10. (a) Yes.
(b) The former Australian Government pursued allegations of mistreatment directly with the US Government. The investigations referred to in question 1 were undertaken by US authorities at the request of the former Australian Government. The Australian Government also sought and obtained further assurances from the US Government on 17 October 2008 and 22 May 2009 that the US Government stands by the findings of

these investigations and by assurances provided to Australia in 2005 that Mr Hicks was treated humanely while in US custody.

The Government is also aware that Mr Hicks made a number allegations directed towards the conduct of the US in his communication to the UN Human Rights Committee under the First Optional Protocol to the International Covenant on Civil and Political Rights to which Australia is a party. The Government has provided submissions in response to the Committee. In its response, the Government has indicated that as the United States is not a party to the First Optional Protocol, these allegations are inadmissible as a matter of international law. The Government is awaiting the Committee's views on the communication.

11. Following Mr Hicks' repatriation to Australia, the Government accommodated his re-integration to the community. This included, for example, the AFP's agreement to the modification of certain reporting conditions in his control order to accommodate his relocation from South Australia to New South Wales in 2008.
12. As noted in the responses to questions 10 and 11 above, the Australian Government pursued allegations of mistreatment directly with the US Government as soon as they were brought to attention. As noted above, the ensuing investigations found no evidence of mistreatment. Australia is a longstanding party to the Convention against Torture and remains committed to its obligations, including the right to redress in article 14. However, the Australian Government does not consider the obligation in article 14 to require States Parties to the Convention to provide redress in relation to alleged acts of torture committed in another country by a public official of another country as Senator Wright's question supposes. The obligation to provide redress attaches to the State Party allegedly responsible for the act of torture. This reflects the basic obligation in article 2 of the Convention that States Parties must take effective measures to prevent acts of torture in any territory under their jurisdiction.