

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

Output 2.2

Question No. 62

Senator Stott-Despoja asked the following question at the hearing on 31 October 2005

On 16 Feb 2004 the Secretary of AGD Mr Robert Cornall told Senator Bolkus at the Senate Estimates Committee that "...we have an agreement with the US that if the outcome negotiated by the British in respect of their detainees is more favourable than the outcome we have negotiated then the benefit of those additional negotiations shall flow through to the Australian detainees as well". As all 9 UK nationals have been released – including 2 that had already been designated by the US President for trial by the Military Commission, why has the Government not called for Mr Hicks to be released?

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

The agreement between Australia and the United States in relation to the treatment of Australian detainees vis a vis British detainees, relates to the processes and procedures of the Military Commission, not the decision (by the United States) to prosecute detainees. The British detainees released in early 2005 were not charged by the United States, whereas Mr Hicks has been charged. I refer the Senator to Mr Cornall's remarks to the Committee on 14 February 2005 (Hansard, Senate Legal and Constitutional Legislation Committee, 14 February 2005, pages 30 to 33).

The United States has indicated that a detainee will not be repatriated to their home country unless the home country can guarantee that the detainee will be successfully prosecuted or the United States has determined that the detainee is no longer of law enforcement, intelligence or security interest. Relevant authorities have concluded, on the evidence available to them, that there is no Australian law under which Mr Hicks could be charged. However, Australia and the United States are currently negotiating a prisoner transfer arrangement to enable Mr Hicks to serve any sentence of imprisonment imposed by a Military Commission in Australia.