

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

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Question No. 65

Senator Crossin asked the following questions at the hearing on 31 October 2006:

- (a) Has the Australian Government sought to have its officials independently investigate the sexual abuse claims or other allegations of mistreatment raised by Hicks, his family and his lawyers?
- (b) On how many occasions have Australian officials requested to visit Mr Hicks?
- (c) Have the Australian Government's attempts to visit Mr Hicks ever been restricted by the US Government?
- (d) How recently have you inquired of the US about Mr Hicks' health or wellbeing?
- (e) What is the latest advice regarding Mr Hicks' health?
- (f) When was Mr Hicks last visited? By whom?
- (g) What advice has been sought from the US as to their estimation of how long this process is going to continue until Mr Hicks is again charged and the matters are fully resolved?
- (h) What commitment has the Government sought on timing of when this matter will be resolved?
- (i) Has any legal advice been sought as to the legality of the new military commissions as against international law standards?
- (j) Has any comparison been done by the Australian Government as to the rules and standards of evidence applicable in the commission process as opposed to the Australian rules and standards of evidence and process?
- (k) Is it the case that the military commissions have no rules in relation to the prohibition against the use of evidence that has been obtained through physical or mental torture?
- (l) Is it the case that evidence obtained through torture can be admitted if it is seen to be of probative value?
- (m) The Attorney has stated that he has been given assurances by the US Government that it will not seek the death penalty in relation to Mr Hicks. What format do these assurances take? Who are they from? Is that advice written?
- (n) Has the Attorney sought a commitment from President Bush that he would commute Mr Hicks' sentence if the death penalty was imposed?
- (o) What issues concerning Mr Hicks were specifically on the agenda of the Attorney-General's meeting with the US Attorney-General Alberto Gonzales in September 2006?

(p) Has the Attorney met with Mr Hicks' US military lawyer Major Michael Mori at any time? If not, why not? If so, what has been discussed?

The answers to the honourable senator's questions are as follows:

(a) Mr Hicks has never raised allegations of sexual abuse with Australian officials. The Government informed US officials of the allegations of sexual abuse that were raised by Mr Terry Hicks on the Four Corners program in October 2005. The United States Government advised that they would investigate any credible new information, but that based on the transcript of the Four Corners program, it did not appear there was any such information. The Australian Embassy in Washington also followed up the allegations with Mr Hicks' lawyer, Major Mori, but Major Mori has not provided any new evidence to substantiate the allegations.

At the Australian Government's request, the US has conducted two investigations into claims that Mr Hicks has been mistreated. In May 2004, then US Deputy Secretary of Defense Wolfowitz commenced a comprehensive review of the treatment of Mr Hicks at all times while in US custody. In August 2004, the US advised that their examination of medical records and other documents concerning the detention of Mr Hicks found no information to support the abuse allegations.

In July 2005 a second investigation conducted by the NCIS found no information which would substantiate allegations that Mr Hicks has been mistreated while in US custody. The NCIS investigation involved 39 naval criminal investigators, who reviewed all records pertaining to Mr Hicks' detention and addressed all allegations of abuse raised by Mr Hicks. Mr Hicks was interviewed, along with Department of Defense officials, other detainees at Guantanamo Bay, a prisoner in a US gaol and 64 US service members who had come into contact with Mr Hicks during his detention.

(b) Australian officials have made 17 visits to Mr Hicks since he has been detained by the US.

(c) Mr Hicks is detained on the US naval station at Guantanamo Bay, access to which is controlled by the US Department of Defense. In the early stages of his detention, restrictions were placed on the conduct of "consular visits" by DFAT officials. However, other Government agencies were able to visit and report on his welfare at that time. We are satisfied with the current frequency of consular visits, which take place on an approximately quarterly basis.

(d) On 27 September, the Consul General was provided with an update on the conditions of Mr Hicks' detention at Camp 5 by members of the Joint Task Force at Guantanamo Bay. On 29 September, the Attorney-General discussed issues relating to Mr Hicks with US Attorney-General Gonzales. Following a meeting between the Attorney-General and Mr Terry Hicks, the Australian Government has sought further clarification from United States officials as to Mr Hicks' conditions of detention and access to appropriate medical and other care.

(e) The most recent consular visit to Mr Hicks occurred on 27 September 2006. Although Mr Hicks chose not to speak with the Consul-General, the Consul-General reported that Mr Hicks looked well.

(f) Mr Hicks was last visited on 27 September 2006, by the Consul-General from the Australian Embassy in Washington, Mr John McAnulty.

(g) President Bush has stated that he hopes that “Hicks is one of the early people that will have a day in court.” However, certain procedures have to be followed before the military commission can commence, including the promulgation of regulations giving effect to the new legislation, establishment of the new military commissions and appointment of judges and counsel. Regulations are due to be in place by 15 January 2007. We would not expect Mr Hicks to be re-charged before then.

The time it takes to resolve Mr Hicks’ case may depend on whether any relevant legal challenges are brought in the United States, or in the event that Mr Hicks is found guilty, whether he chooses to avail himself of the appeal options provided for in the new *Military Commissions Act of 2006*.

(h) The Australian Government has not set any deadlines in relation to Mr Hicks’ case. The Attorney-General has had several discussions with US Attorney-General Gonzales, most recently in Washington on 29 September 2006, during which he has emphasised the Australian Government’s expectation that Mr Hicks’ case be resolved as expeditiously as possible. Since then, the Attorney-General has received several telephone calls from the US Attorney-General, who has advised that he expects Mr Hicks to be charged soon after the new regulations are put in place in mid-January.

(i) It is not appropriate for the Government to disclose whether legal advice has been sought on this issue.

(j) Regulations establishing the rules and standards of evidence in the military commission process are yet to be promulgated by the US administration.

(k) No, that is not the case. Section 948r(b) of the Military Commissions Act states that “a statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made”.

(l) See the answer to sub-question (k) above.

(m) The Australian Government sought and received written assurances in 2003 concerning the potential trial by military commission of Australian detainees, including an assurance that the US Government will not seek the death penalty if Mr Hicks is found guilty of an offence. Following the US Supreme Court decision in *Hamdan v Rumsfeld*, the Attorney-General has secured verbal assurances from US Attorney-General Alberto Gonzales that all of the assurances received under the previous military commission system in relation to Mr Hicks will continue to be honoured, including that the US will not seek the death penalty.

(n) See the answer to sub-question (m) above.

(o) At their meeting in September 2006, the Attorney-General and US Attorney-General Gonzales discussed the following issues in relation to Mr Hicks:

- Australia’s expectation that Mr Hicks’ case be dealt with as expeditiously as possible.
- The then Military Commissions Bill, which was being debated in Congress.

(p) The Attorney-General has not met with Major Mori. The Attorney-General has indicated that he considers it preferable that Mr Hicks’ legal representatives argue the case before the courts or through written submissions to relevant ministers where those ministers might have decisions to make about the case. Officers of the Attorney-General’s Department have met with Major Mori.