

The David Hicks saga – the Federal A-G responds to LSNT

In January this year, at the request of LSNT member and former councillor Diana Elliott, the Law Society NT wrote to the Federal Attorney-General and the President of the United States of America expressing its concern about the continued detention of Australian citizens David Hicks and Mamdouh Habib.

In his letter, LSNT president Ian Morris said the detention was of great concern because the two men were “without access to independent legal representation and without judicial review of their detention”.

Mr Morris said: “It is understood that both these Australian citizens are being held under the Presidential Military Order dealing with Detention, Treatment and Trial of Non-US Citizens in the War Against Terrorism and that this Order allows for foreigners listed as terrorists, apparently detained while fighting or being involved in fighting in Afghanistan, to be held for an indefinite period.”

Referring to the length of time Mr Hicks had been detained, Mr Morris said: “Our Society believes that during this lengthy period of time sufficient information would have been gathered to determine if a prosecution could be mounted under US Law and the US Government should indicate a date for that decision and permit Mr Hicks’ access to legal advice. It is not known what interview process has been conducted in regards to Mr Habib.

“While the Society appreciates that there may be consideration in relation to national security there are some basic entitlements that both men as Australian citizens should continue to enjoy:

1. They are entitled to a presumption of innocence and application of the principles of legality and human rights.
2. Neither should be held indefinitely without charge.

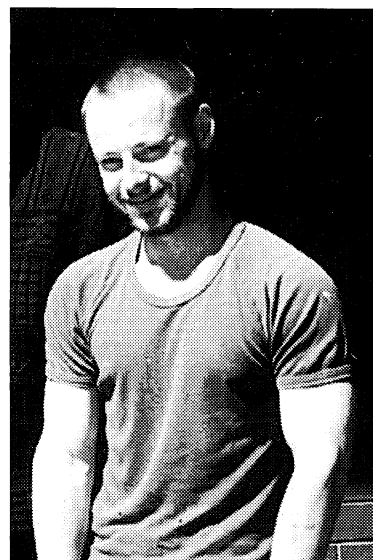
3. Reasonable efforts should be taken to clarify their status, determine the threat to security they may or may not pose. That process should not be indefinite and a time limit must be set for that assessment.
4. Allow judicial review of the continued detention and any trial process or orders; and
5. Order the release of the men if they are not charged or acquitted after trial.”

In his reply to Mr Morris and the LSNT, Federal Attorney-General Daryl Williams says criticism that Australia is taking too long to carry out its investigations “are unfounded”.

He says: “Neither Australia nor the US is yet in a position to commence a prosecution of Mr Hicks or Mr Habib. We are in contact with the US and both governments are cooperating to ensure that the investigations and any potential prosecutions are conducted effectively. However, given the unique circumstances, this may take some time.

“Our concern is that the detainees be treated humanely. The US has indicated that detainees are having three culturally appropriate meals a day, have daily opportunities to shower, and have access to medical attention. In addition, a representative of the International Committee of the Red Cross has access to the detainees for the purposes of independently assessing their health and wellbeing.”

Mr Williams adds: “Australian law



Above: Australian detainee in the US, David Hicks at age 23.

enforcement and intelligence agencies have visited Mr Hicks and Mr Habib during the course of their detention. Officers have consistently reported that both men are in good health and are being well treated.

“The question of access to all non-US nationals detained at the US military facility in Cuba rests with US authorities who have made it clear to the Government that access to Mr Hicks and Mr Habib will only be granted for the purpose of investigations into their activities. The issue of appropriate access to legal representation has been raised with the US. That issue remains to be resolved.” ①

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