

Australian Government Has Failed Hicks

The Law Council has condemned the Howard Government's failure to ensure that Guantanamo Bay detainee David Hicks receives a fair trial.

In an open letter to the Prime Minister, written on behalf of the nation's law societies and bar associations, the Law Council says the Government has failed in its duty to seek a fair hearing for one of its own citizens. The Law Council has pleaded with the Government to bring Mr Hicks' case before a properly constituted court instead of a US military commission or, alternatively, return him to Australia.

Law Council President John North said, "It is an outrage that the Australian Government will not help protect an Australian citizen's basic rights, such as the ability to receive fair trial."

"The Government maintains that Mr Hicks will receive a fair hearing by a military commission, despite mounting criticism of the process by Australian legal experts, a Defence Force QC, members of the US military and others."

In the letter, the Law Council points out that Mr Hicks' treatment is inconsistent with the active role the Australian Government has recently played in advocating for the legal rights of other Australian citizens facing trial or being held in foreign countries.

"The Australian Government's inaction over David Hicks can no longer be ignored or accepted. They have dismissed the concerns of the legal profession and denied the application of the rule of law – a principle upon which the entire legal system is based," Mr North concluded.

The letter to Mr Howard

11 August 2005

An open letter to The Hon. John Howard MP
Parliament House
Canberra ACT 2600

Dear Prime Minister

The Law Council has consistently advocated for the fundamental legal

right of Mr David Hicks, an Australian citizen being detained by the US Government, to receive a fair and impartial trial.

Mr Hicks continues to be held at Guantanamo Bay, Cuba, where he has been detained for more than three and half years without trial.

In recent weeks there has been growing criticism from eminent Australian legal experts, including two former High Court judges, a Defence Force QC, and indeed from within the US Military, over the serious flaws in the US Military Commission as a means of determining the charges laid against Mr Hicks. The Australian Government continues to dismiss these criticisms and reiterate its view that Mr Hicks will receive a fair trial by the Military Commission.

The Australian legal profession does not accept that Mr Hicks can receive a fair and impartial trial through the US Military Commission process, as claimed by the Australian and US Governments. A fair and impartial trial is virtually impossible for reasons including that:

- * The significant delay in commencing proceedings has prejudiced a fair trial;
- * The Military Commission can admit unreliable evidence which cannot be cross-examined, such as, hearsay evidence and written records in place of live witnesses;
- * Lack of independence of the Military Commission from the US Government;
- * Absence of appeal rights from a decision of the Military Commission.

The charges laid against Mr Hicks do not rely on international, Australian or US law. The Military Commission process is discriminatory in that it does not apply to US citizens and has been established by the US Government with its non-legally trained Commission members selected by

the US Government.

The Law Council of Australia is the national organisation of the Australian legal profession. It represents 14 constituent bodies, comprising each of the law societies and bar associations of Australia's states and territories, and approximately 50,000 legal practitioners.

We condemn the failure of the Australian Government to carry out its duty to ensure that, as an Australian citizen, Mr Hicks receives a fair trial that accords with internationally accepted standards of legal process and justice. Further, the treatment of Mr Hicks is inconsistent with the active role the Australian Government has recently played in advocating for the legal rights and safety of other Australian citizens facing trial or being held in foreign countries.

We call upon the Australian Government to advocate for the transfer of Mr Hicks' case from the US Military Commission to a properly constituted court or, alternatively, to expedite his return to Australia.

Signed: **The Presidents of the:**

Law Council of Australia, Mr John North; Australian Capital Territory Law Society, Mr Bill Redpath; ACT Bar Association, Mr Robert Crowe SC; New South Wales Law Society, Mr John McIntyre; New South Wales Bar Association, Mr Ian Harrison SC; Law Society Northern Territory, Ms Merran Short; Northern Territory Bar Association, Mr John Reeves QC; Queensland Law Society, Mr Rob Davis; Bar Association of Queensland Inc, Peter Lyons QC (Vice President); Law Society of South Australia, Mr Alex Ward; Law Society of Tasmania, Daniel Zeeman; Law Institute of Victoria, Ms Victoria Strong; The Victorian Bar Inc, Mr Ross Ray QC; Law Society of Western Australia, Ms Celia Searle; and Western Australian Bar Association, Ms Gillian Braddock.①