

## INTRODUCTION TO SEMINAR ON DAVID HICKS, MILITARY COMMISSIONS AND THE RULE OF LAW

When this seminar was first planned by the Queensland Branch of the International Commission of Jurists, David Hicks was imprisoned in Guantanamo Bay in Cuba and grave uncertainty attached to his future. He had been imprisoned for five years without being convicted of any crime.

Many informed commentators were concerned about the legality of the charge laid against him. Advice had been sought on the question by the Law Council of Australia. The joint advice received was signed by Professor Tim McCormack, the Australian Red Cross Professor of International Humanitarian Law at the University of Melbourne, Peter Vickery QC, Special Rapporteur, International Commission of Jurists, Victoria, the Honourable Alistair Nicholson AO RFD QC, former Judge Advocate General of the Australian Defence Force, Professor Hilary Charlesworth, Professor of International Law and Human Rights at the Australian National University, Gavin Griffith AO QC, Professor Andrew Byrnes, Professor of International Law at the University of New South Wales, Mr Gideon Boas, former senior legal officer of the International Criminal Tribunal in Yugoslavia, Professor Stuart Kaye, Professor of Law at the University of Melbourne and Professor Don Rothwell, Professor of International Law at the Australian National University. That opinion concluded that the charge formally laid against David Hicks of providing material support for terrorism pursuant to s 950(v)(25) of the *Military Commissions Act 2006* did not constitute a war crime contrary to the law of war and it was clearly retrospective in its application to David Hicks.

Affidavit material filed in support of Mr Hicks' application for British citizenship alleged that Mr Hicks had been abused during interrogations in Afghanistan and elsewhere before his arrival at Guantanamo Bay in early 2002. He described abuse of other detainees at Guantanamo Bay.

Amongst others, Major Michael Mori, the American military lawyer appointed to defend Mr Hicks had successfully raised concern of the Australian community about the legal black hole into which Mr Hicks appeared to have fallen.

On 20 March 2007, the New York Times ran a story about David Hicks detailing the allegations of abuse and then ending with the following paragraph,

“After Mr Hicks was formally charged earlier this month, Australian officials said publicly that they hoped a plea bargain allowing Mr Hicks to come home could be negotiated. Two American officials close to the case said they expected that the deal would be for Mr Hicks to plead guilty to the one charge, in exchange for the five years he has already been held.”<sup>1</sup>

That last paragraph of the article was remarkably prescient. Mr Hicks pleaded guilty to one count on 31 March 2007 and in exchange he was given seven years imprisonment of which six years and three months are to be suspended. He can expect therefore to be released from custody on 31 December 2007. It is expected

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<sup>1</sup> New York Times, 20 March 2007.

that he will be returned to Australia by the end of May and serve out his term of imprisonment in a South Australian prison.

An unusual aspect of the plea bargain is that he has apparently agreed not to speak to the media for one year about his treatment or at all.

To examine the questions raised by the events that have unfolded we have two eminent speakers: Justice George Fryberg of the Supreme Court of Queensland and Ms Carla Klease of the Queensland Bar.

#### JUSTICE FRYBERG

- 1968 Called to the Bar in Queensland; appointed Associate to Sir Victor Windeyer, of the High Court of Australia.
- 1970 Commenced practice at the Bar in Queensland.  
He was also admitted as a practitioner in New South Wales, Papua New Guinea, Solomon Islands, Northern Territory and Western Australia.  
For thirteen years, Justice Fryberg held both command and staff postings in the Army Reserve, in the infantry and artillery corps. He retired having attained the rank of Major to concentrate on his legal practice.
- 1983 Appointed one of Her Majesty's Counsel for Queensland.  
Subsequently appointed one of Her Majesty's Counsel for New South Wales and for the Northern Territory.
- 1994 Appointed a Judge in the Trial Division of the Supreme Court of Queensland.

#### CARLA KLEASE

The presentation of both speakers should take about an hour and there will be the opportunity for questions and discussions both formal and informal after their presentations.