



Law Council
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Media Release

Jurists Conclude that Hicks' Charge is Retrospective

The only remaining charge against Australian Guantanamo Bay detainee David Hicks is retrospective, according to expert legal advice released today by the Law Council.

All previous charges against Mr Hicks have been abandoned, leaving only the new charge of 'providing material support for terrorism'.

Law Council President Tim Bugg said, "The advice, authored by nine of Australia's leading international law experts, concludes that, without doubt, this offence is not a crime known to the law of war."

According to the advice, prior to the enactment of the Military Commissions Act last September the offence simply did not exist in its current form. Furthermore, the legal experts are of the view that the domestic US offences, on which the charge is roughly based, had no application to David Hicks in Afghanistan in 2001.

"The disturbing conclusion reached is that, although the charge against David Hicks violates the US Constitution, because Mr Hicks is a non-US citizen held in the legal black hole of Guantanamo, the Constitution may not protect him," Mr Bugg said.

The advice was authored by Peter Vickery QC, Professor Tim McCormack, the Hon Alastair Nicholson AO RFD QC, Professor Hilary Charlesworth, Gavan Griffith AO QC, Professor Andrew Byrnes, Mr Gideon Boas, Professor Stuart Kaye and Professor Don Rothwell.

"When advice this important from jurists of this calibre is made available to us, we believe it should be shared. The debate should be informed, and we have provided the advice to all Australian MPs" Mr Bugg concluded.

The advice released by the Law Council is available at:
<http://www.lawcouncil.asn.au/shared/2435666621.pdf>

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The Law Council of Australia exists to represent the legal profession at the national level, to speak on behalf of its constituent bodies on national issues, and to promote the administration of justice, access to justice and general improvement of the law.

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