

# Attorney responds: what about the right to security?

In their haste to criticise me, Messrs Barker QC and Toner SC have resorted to views based on unsupported assumptions and misrepresentations of fact. Of course, they are entitled to their opinion, but in some cases, they are just plain wrong.

Mr Hicks is, and Mr Habib was until his release, detained by the United States as an enemy combatant. Mr Hicks has been charged with three military commission offences and proceedings in his trial were held in August and November 2004. Further proceedings have been delayed pending the outcome of an appeal from a decision by the United States District Court of Appeal.

Since Mr Habib was detained in May 2002, the Australian Government consistently urged the United States either to bring charges against him or to release him. The government repeatedly impressed on the United States our desire to see his case dealt with expeditiously and fairly. In January 2005 United States authorities advised they did not intend to charge Mr Habib with a military commission offence. In those circumstances, the Australian Government requested Mr Habib's repatriation and he was returned to Australia in January 2005.

Mr Habib will remain of interest in a security context because of his former associations and activities. This is not to say he is not entitled to the right to a presumption of innocence in relation to any alleged criminal offence. However, that is a different matter entirely to relevant agencies lawfully and legitimately undertaking appropriate measures to ensure he does not engage in any terrorist activities or any acts that support such activities.

The Australian Government does not condone the use of torture. The government has taken an active interest in the welfare of Mr Hicks and Mr Habib. Government officials have visited Mr Hicks 14 times since he was first detained by United States in December 2001. Mr Habib was visited 11 times during his detention in Guantanamo Bay and three times during his detention in Pakistan. Visiting officials have never seen any evidence of torture.

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In addition to visits, the government has received assurances from former deputy secretary of defense Wolfowitz that Mr Hicks and Mr Habib have been humanely treated at Guantanamo Bay and Mr Hicks will continue to be so treated.

As a result of the government's representations, the United

States undertook a comprehensive review of the treatment of both men at all times while in United States custody. As part of a concluded investigation, an examination of medical records and other documents concerning the detention of both men revealed no information to support the abuse allegations. In addition to that investigation, the Naval Criminal Investigative Service is currently conducting an independent investigation. The findings of this investigation are pending but a preliminary report states that as yet there is no evidence to support the allegations.



Attorney-General Phillip Ruddock at a press conference responding to allegations of torture on Australian terror suspect Mamdouh Habib.  
Photo: Graham Crouch / News Image Library

In relation to Mr Habib's allegations of torture in Egypt, Australia sought consular access to Mr Habib in Pakistan immediately upon notification of his arrest. Access for non-consular purposes was granted on three occasions in October 2001 and Australian officials reported that he showed no signs of physical maltreatment. Australian officials have recently made public statements confirming this. Subsequently, the government became aware he may have been moved to Egypt. Although Mr Habib is an Australian citizen, Egypt also considers him to be an Egyptian citizen. The Australian Government had no role in his transfer to Egypt.

The government made numerous requests to the Egyptian Government for consular access, including at the highest levels. Egypt has, however, never acknowledged it had Mr Habib in its custody. In such circumstances, the government was unable to confirm Mr Habib's presence in Egypt.

The government will continue to impress on the United States our desire to see Mr Hicks' case dealt with expeditiously and fairly and we will continue to take an active interest in his welfare.

It is disappointing legal counsel of the eminence of Barker and Toner would seek to diminish their points of view by subscribing to a theory that does not recognise a government's duty to protect its citizens; or that pursuing this objective is

somehow an affront to human rights. In doing so, Barker and Toner overlook the most fundamental right of all – the right of citizens to live safely and securely in their communities. I would simply direct them and other detractors to Article 3 of the Universal Declaration of Human Rights which states: 'everyone has the right to liberty, safety and security of person'.

The government's domestic efforts to combat terrorism balance our duty to protect Australia and its citizens with the need to protect the civil liberties that are part of our great democratic tradition. The government has never sought to remove the activities of intelligence or law enforcement agencies from any and all forms of scrutiny or sought to put the acts of those agencies beyond the reach of the courts.

The very nature of the role and function of the Australian Security Intelligence Organisation (ASIO) means much of its work cannot be conducted in the public domain. However, ASIO must exercise its powers in accordance with the law and is subject to vigorous parliamentary and judicial oversight.

Any legislation relating to ASIO is subject to extensive scrutiny and debate. For example, the passage of the legislation conferring terrorism-related questioning and detention powers was examined by various parliamentary committees and was the subject of significant media attention. The legislation contains extensive reporting, accountability and oversight mechanisms. The government will continue to create appropriate legislation to counter the evolving threat of terrorism and ensure that Australians remain safe and secure and free to exercise their civil liberties.



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