

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

Output 2.1

Question No. 61

Senator Ludwig asked the following question at the hearing on 24 May 2004:

Which papers were advertisements put in for the new National Community Crime Prevention Programme? How much has been budgeted for media announcements and advertising?

The answer to the honourable senator's question is as follows:

Advertisements appeared in the following papers on Saturday 22 May: the Australian; the Canberra Times; The Courier Mail; the Sydney Morning Herald; the Melbourne Age; the Hobart Mercury; the Adelaide Advertiser; the West Australian and the Northern Territory News. The advertisement subsequently appeared in: the Koori Mail; the National Indigenous Times; the Illawarra Mercury; the Coffs Harbour Advocate; the Wagga Advertiser; the Newcastle Herald; the Cairns Post; the Gold Coast Bulletin; the Townsville Bulletin; the Toowoomba Chronicle; the Sunshine Coast Daily; the Bunbury Mail; the Border Morning Mail (Albury); the Geelong Advertiser; the Ballarat Courier; the LG News; and the Launceston Examiner.

The cost of this advertising will be around \$30,000 (some invoices are still outstanding). The Department has budgeted \$30,000 for advertising per grants round.

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Question No. 62

Senator Ludwig asked the following question at the hearing on 24 May 2004:

Was a report prepared or was there an outcome from the consultancy [undertaking a review of the National Crime Prevention Programme? Is it available to the Committee?

The answer to the honourable senator's question is as follows:

A report was prepared. This report will not be released as it is classified "Cabinet-in-Confidence".

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 63

Senator Ludwig asked the following question at the hearing on 24/5/04

Which branch will the South Pacific section be in?

The answer to the honourable senator's question is as follows:

Community Safety and Justice Branch

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

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Question No. 64

Senator Ludwig asked the following question at the hearing on 24 May 2004:

On how many occasions has the Attorney-General's Department been asked to supply advice on extradition matters in relation to the Minister's use of his or her discretion to block extradition orders by courts since January 2001 in relation to both section 16 and 22?

The answer to the honourable senator's question is as follows:

The Department makes a submission to the Minister on every extradition request received by Australia. For every request received the Minister must determine whether to issue a notice under section 16 of the *Extradition Act 1988* ('the Act'). The effect of the section 16 notice is to commence extradition proceedings before the courts. The Department would recommend that a s16 notice be issued if the conditions set out in the Extradition Act and the applicable Treaty for the making of an extradition request are met.

The Department makes a submission to the Minister on every extradition case in which the Minister has to decide whether to surrender a person under section 22 of the Act. The Minister must make a determination under section 22 of the Act in every case where a court has found a person eligible for extradition under section 19 of the Act, or the person has consented to his or her extradition under section 18 of the Act.

For each of these requests and decisions, the Department would make a submission to the Minister on the exercise of his powers under either s16 or s22, or both.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
ATTORNEY-GENERAL'S DEPARTMENT

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Question No. 65

Senator Ludwig asked the following question at the hearing on 24 May 2004:

Do you know how many times the Attorney-General's Department recommended that the Minister use his discretion since January 2001? How many times did the Attorney-General's Department recommend that the Minister not use his discretion?

The answer to the honourable senator's question is as follows:

To answer this question would reveal confidential advice from the Department to the Minister. The Department's responsibility is to ensure the Minister has before him all relevant information to enable him to make a lawful decision in the exercise of a statutory discretionary power.

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 66

Senator Ludwig asked the following question at the hearing on 24 May 2004

Provide a list of all the telephone calls and emails that were received in relation to the Hong Kong extraditions.

The answer to the honourable senator's question is as follows:

Please see attached list.

Telephone Calls and Emails Received in the Voigt and Hendy Extradition Matters

Voigt

Name	Description	Nature of Correspondence
ALLEN, Terry	AFP Liaison Officer, Hong Kong	Phone call to AGD enquiring whether provisional arrest warrants had been issued for Hendy and Voigt.
BRUNGS, Mariana	Department of Foreign Affairs	Phone call to AGD noting that they have reviewed and approved draft diplomatic note to Hong Kong.
COURTNEY, John	Director, Hong Kong Macau Taiwan Section, Department of Foreign Affairs and Trade	Email to AGD regarding meeting with AGD officers
GREY, Valerie	Department of Foreign Affairs	Phone call to AGD requesting that written briefing be forwarded to post in Hong Kong.
GREY, Valerie	Department of Foreign Affairs	Phone call to AGD requesting further information on the Voigt and Hendy matters.
O'LEARY, David	Australian Consul-General, Hong Kong Department of Foreign Affairs and Trade	Email to AGD attaching Hong Kong press articles.
O'LEARY, David	Australian Consul-General, Hong Kong Department of Foreign Affairs and Trade	Email to AGD attaching Hong Kong press articles.
PARRY, Geof	Journalist, Channel 7, Canberra	Email to AGD requesting information under the <i>FOI Act</i>
PARRY, Geof	Journalist, Channel 7, Canberra	Phone call to AGD requesting information on the lawyers representing Voigt and Hendy.
PATTERSON, David	Friend of Voigt	Phone call to AGD asking whether anything else should be done in relation to the Minister's decision on Voigt's surrender, and whether Voigt's time in custody in Australia would be taken into account by Hong Kong.
PILBEAM, John	Deputy General Consul, Hong Kong	Phone call to AGD discussing draft diplomatic note to Hong Kong, and press coverage of the Voigt and Hendy matters in Hong Kong.
PILBEAM, John	Deputy General Consul, Hong Kong	Email to AGD attaching Hong Kong press articles.
PILBEAM, John	Deputy General Consul, Hong Kong	Email to AGD attaching Hong Kong press articles.
PILBEAM, John	Deputy General Consul, Hong Kong	Email to AGD attaching Hong Kong press articles.
PILBEAM, John	Deputy General Consul, Hong Kong	Email to AGD attaching Hong Kong press articles.

PILBEAM, John	Deputy General Consul, Hong Kong	Email to AGD about the Minister's decision not to surrender Voigt and Hendy.
PILBEAM, John	Deputy General Consul, Hong Kong	Email to AGD about the Minister's decision not to surrender Voigt and Hendy.
PILBEAM, John	Deputy General Consul, Hong Kong	Email to AGD attaching Hong Kong press article.
ROBINSON, Jeff	Department of Foreign Affairs and Trade	Phone call to AGD discussing latest communication from Hong Kong on the Voigt and Hendy matters.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting update on proceedings in the Hendy matter
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD noting that information on SARS in Hong Kong will be provided shortly. Also asked whether Hong Kong can be provided with the representations made by Voigt and Hendy.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD stating penalties that could be imposed on Voigt if convicted of extradition offences in Hong Kong.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD commenting on the judicial finding that Voigt was eligible for surrender to Hong Kong. Requesting information on when a surrender decision may be made.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting information on the outcome of Voigt's section 19 hearing
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD offering to provide assistance if required.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD noting that extradition request has arrived in Canberra. Comments on Diplomatic Note from Australia to Hong Kong dated 14 July 1997
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD stating that extradition request has been forwarded by courier.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD commenting on outcome of Voigt bail hearing and asking to be kept informed of progress of Hendy matter.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting an update on the outcome of the Voigt bail hearing.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting update on the Voigt matter.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD noting that extradition request will be provided shortly.

TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD commenting on the arrest of Voigt and Hendy and noting that formal extradition requests will be provided shortly
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD noting receipt of information provided by AGD regarding provisional arrest of Voigt and Hendy.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD asking whether warrants have been issued for Voigt and Hendy.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD suggesting a meeting in Brisbane between Hong Kong and Australian officials.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD noting that he will be away from Hong Kong for a one week period.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD stating that he will facilitate the provision of formal extradition requests to Australia.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding provisional arrest of Voigt and Hendy.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD amending passport details for Voigt and Hendy previously provided by Hong Kong.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Telephone call to AGD to discuss provisional arrest and preparation of formal extradition requests.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting details of AGD case officer handling the requests.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD offering to provide future assistance in relation to eligibility hearings.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD describing procedure used to certify translation of Chinese language documents included in the extradition request.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting information on whether Voigt and Hendy will contest extradition.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting information on whether a section 16 notice has been issued in each case.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD discussing translation of Chinese language documents.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD providing background on the conduct of the Voigt and Hendy matters for the new AGD case officer.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD enquiring whether Hong Kong may do anything to facilitate the return of Voigt and Hendy to Hong Kong.

TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD providing names of escort officers.
TUCKER, Gerry	Hong Kong resident	Email to Department of Prime Minister and Cabinet criticising the decision to refuse to surrender Voigt and Hendy.
WALSH, Wayne	Deputy Principal Government Counsel, International Law Division, Department of Justice, Hong Kong	Phone call to AGD seeking information on reasons for the decision in Voigt

Hendy

Name	Description	Nature of Correspondence
BOWDEN, Michael	Hendy's lawyer	Phone call to AGD regarding finalisation of submissions on Hendy's behalf, and likely timeframe for a final determination by the Minister for Justice and Customs.
BOWDEN, Michael	Hendy's Lawyer	Phone call to AGD noting that he has received numerous press enquiries on the Hendy matter.
HENDY, Dennis	David Hendy's father	Phone call to AGD regarding when the Minister for Justice and Customs will make his determination.
HENDY, Dennis	David Hendy's father	Phone call to AGD regarding medical examination of a family member.
HENDY, Michelle	Hendy's wife	Email to AGD requesting confirmation of receipt of facsimile.
HENDY, Michelle	Hendy's wife	Email to Minister for Justice and Customs requesting a meeting.
HENDY, Michelle	Hendy's wife	Phone call to AGD requesting confirmation of receipt of facsimile by the office of the Minister for Justice and Customs.
HENDY, Michelle	Hendy's wife	Phone call to AGD requesting information on Hendy's matter in light of the decision made in the Voigt matter.
HENDY, Michelle	Hendy's wife	Email to Minister for Justice and Customs regarding the extradition of Hendy.
HENDY, Michelle	Hendy's wife	Phone call to AGD regarding appointment of The Hon Philip Ruddock as Attorney-General, and how this will affect her husband's case.
HENDY, Michelle	Hendy's wife	Email to the Minister for Justice and Customs attaching a letter regarding Hendy's extradition to Hong Kong.
HENDY, Michelle	Hendy's wife	Email to Minister for Justice and Customs attaching a letter from Hendy's parents.
HENDY, Michelle	Hendy's wife	Email to Minister for Justice and Customs attaching a letter from herself.
HENDY, Michelle	Hendy's wife	Email to Minister for Justice and Customs criticising Australia's extradition system.
LAM, Linda	Hong Kong Department of Justice	Email to AGD offering assistance with the Voigt and Hendy matters.
SPENCE, Liz	Australian Federal Police	Phone call to AGD requesting information on the basis for the Minister's decision in the Voigt matter, and requesting information on the status of the Hendy matter.

TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding hearing dates, and the possibility of a pre-hearing conference.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD discussing translation of Chinese language documents provided as part of the request.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD asking whether Voigt and Hendy will consent to extradition. Also requesting information on hearing dates.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD enquiring whether an Authority to Proceed has been issued.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding receipt by AGD of documents in the Hendy matter.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding delivery to AGD of documents in the Hendy and Voigt matters.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding delivery to AGD of documents in the Hendy and Voigt matters.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding requirement to provide diplomatic notes with the formal extradition requests.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding delivery of formal extradition requests.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding assistance provided by Commonwealth DPP.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding progress of Hendy matter.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding possible appeal against the bail decision in the Hendy matter.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding formal extradition request. Requesting information on 'special circumstances' established at Hendy's bail hearing.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding Hendy's bail conditions.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding delivery of the formal extradition requests.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding the arrests of Voigt and Hendy
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD expressing thanks for provision of information by AGD

TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting an update on the Voigt and Hendy matters.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding possibility of a conference between AGD and Hong Kong officials.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding possibility of a conference between AGD and Hong Kong officials.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding provision of formal extradition requests in the Voigt and Hendy matters.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding request for additional information by Commonwealth DPP.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD correcting passport details of Voigt and Hendy
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding provision of supplementary extradition request containing further information.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD notifying of change of responsible officer in the Hong Kong Department of Justice.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD enquiring about the outcome of a hearing in the Hendy matter.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD providing background on the Voigt and Hendy matters for new AGD case officer.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD asking whether anything can be done by Hong Kong to expedite the extradition of Voigt and Hendy.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD providing details of responsible ICAC officer in Hong Kong.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD providing names of ICAC escort officers.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD providing details of responsible ICAC officer in Hong Kong.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD enquiring whether the section 19 judgment in the Hendy matter was delivered in writing.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD requesting update on outcome of hearing on Hendy's application for a stay of proceedings.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD seeking information on the judicial ruling on the application for a stay of proceedings in the Hendy matter.

TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding representations against surrender made by Voigt and Hendy, and representations in reply to be provided by Hong Kong.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD enquiring about the possibility of a pre hearing conference between Hong Kong and Australian officials.
TO, Joseph	Government Lawyer, Hong Kong Department of Justice	Email to AGD regarding the possibility of a pre-hearing conference.
WALSH, Wayne	Deputy Principal government Counsel, International Law Division, Department of Justice, Hong Kong	Email to AGD regarding medical examination of a Hendy family member.

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Output 2.1

Question No. 67

Senator Ludwig asked the following question at the hearing on 24 May 2004:

Was the Attorney-General's Department contacted by the Department of Prime Minister and Cabinet on the matter (in relation to the Hong Kong extraditions)?

The answer to the honourable senator's question is as follows:

I am advised that on 2 February 2004 the Department of Prime Minister and Cabinet sent an email to the Attorney-General's Department attaching an email from a member of the public about the extradition cases.

There has also been communication between junior officers of both Departments about media enquiries on the cases.

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Question No. 68

Senator Ludwig asked the following question at the hearing on 24 May 2004:

In following up the answer provided to Question on Notice 120 from Additional Estimates concerning the new Commonwealth Fraud Control Guidelines.

Paragraph (c) of the answer stated that the “majority of agencies were unable to provide a dollar figure for fraud for the 2002-03 financial year”.

- a) Under the new Guidelines, should agencies be able to provide that information?
- b) What information are the agencies required to provide? Can the relevant extract of the Guidelines be provided to the Committee?
- c) Is the Department satisfied with all agencies' compliance with the new Guidelines?

The answer to the honourable senator's question is as follows:

- a) Yes. The Guidelines require agencies to provide information on the estimated dollar figure of losses against all their programs for the relevant financial year.
- b) Agencies are required to provide the number of cases and the dollar value of the loss estimated at the initial investigation stage of the following kinds: financial (eg cash, currency, credit); physical assets; information; benefits (eg housing, use of services); and disruption and/or damage to ordinary service delivery. A copy of the fraud annual report questionnaire is attached.
- c) The Minister for Justice and Customs wrote to all portfolio Ministers on 24 March 2004 to highlight the need for improved compliance in some agencies. The Department is consulting with individual agencies to improve compliance with the Guidelines.

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Output 2.1

Question No. 69

Senator Ludwig asked the following question at the hearing on 24 May 2004:

Senator Ellison mentioned a decision to extradite a person to Hong Kong was made last week. Was this decision a reversal of a previous decision not to extradite that person? If so, what matters were involved which persuaded the Minister to reverse the decision?

The answer to the honourable senator's question is as follows:

No.

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Question No. 70

Senator Ludwig asked the following question at the hearing on 24 May 2004:

Did Hong Kong authorities express any dissatisfaction to the Attorney-General's Department with the decision not to extradite these two persons, Hendy and Voigt?

The answer to the honourable senator's question is as follows:

No. The views of the Hong Kong authorities on the decision not to extradite Hendy and Voigt were communicated to Australia through normal diplomatic channels

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE
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Question No. 71

Senator Bolkus asked the following question at the hearing on 24 May 2004:

Can you find out whether we have sought access to those (medical) records of Mr Hicks?

The answer to the honourable senator's question is as follows:

During a visit to Mr Hicks and Mr Habib by DFAT and ASIO officers in November 2003, visiting officers were able to view the written summaries of Mr Hicks's and Mr Habib's medical histories prepared by the Base Chief Surgeon.

During a visit in May 2004, the Australian Counsel General was given full access to Mr Habib's medical records.

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Output 2.2

Question No. 72

Senator Bolkus asked the following question at the hearing on 24 May 2004:

Did we make inquiries as to the conditions of the prisoners at Guantanamo Bay? If so, was that through American officials at Guantanamo Bay or through officials in Washington or elsewhere?

The answer to the honourable senator's question is as follows:

Examination of the Hansard for the Senate Legal and Constitutional Committee for 24 May 2004 reveals that Senator Bolkus's question relates specifically to conditions of the cells in which Mr Hicks and Mr Habib are detained.

Information about the physical attributes of the cells was provided by Australian officials during a visit to Camp Delta in May 2002. Those officials reported that each detainee was then held in "a cell about two and a half metres by three metres in size, with one solid exterior wall and wire-mesh internal walls. The facilities are air-conditioned. Each cell contains one bed, squat-style toilet and water fountain."

Further inquiries about the size of the detainees' cells were made in February 2004 and those inquiries were responded to by Pentagon officials. The response was provided to the Committee in question number 124 asked during the Committee hearings of 16 February 2004. Mr Hicks is in a cell 7.5 feet x 15 feet x 10 feet. There is a larger area adjacent to his cell in which he meets with his defence team. Mr Habib is in a cell 6 feet x 8 feet x 8 feet. The cell has see through wire mesh walls. The Australian Consul General's March 2004 visit with David Hicks was held in Mr Hicks's cell in Camp Echo. The Consul General reported that the cell was air-conditioned and clean. Australian officials did not have access to Mr Hicks's cell prior to that date. ASIO officers who visited Mr Hicks and Mr Habib in May 2003 reported that they "sought to view detainee accommodation on this and previous visits" but those requests were not granted by camp officials.

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Output 2.2

Question No. 73

Senator Bolkus asked the following question at the hearing on 24 May 2004:

Human Rights Watch presented to the Australian Embassy in late 2002 their assessment of activities in Guantanamo Bay. Was that handed over to the Attorney-General's Department?

The answer to the honourable senator's question is as follows:

No.

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Question No. 74

Senator Bolkus asked the following question at the hearing on 24 May 2004:

We have had public allegations about ICRC reports from early 2002, and that they dealt with Australian citizens or one Australian citizen. My understanding is that we can actually seek those assessments and they could be given to us. Why don't we seek them?

The answer to the honourable senator's question is as follows:

The Government has confirmed with the International Committee of the Red Cross (ICRC) that neither Mr Hicks nor Mr Habib was mentioned in the ICRC's reports to the United States on conditions in Guantanamo. The ICRC has also confirmed that those reports are confidential as between the ICRC and the Detaining Power [the United States].

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Output 2.2

Question No. 75

Senator Bolkus asked the following question at the hearing on 24 May 2004:

We have been given assurances before, for instance as in early May 2003, by the US that there would be no improper interrogation. Can you tell us who gave us that assurance?

The answer to the honourable senator's question is as follows:

The Government has frequently sought and received assurances from the United States that Mr Hicks and Mr Habib have been treated humanely at Guantanamo Bay. Assurances have been given to the Government by various United States authorities, including officials from the United States Department of Defense, the United States Deputy Secretary of Defense, the General Counsel to the Pentagon, and the Chief of Staff of Base Headquarters at Guantanamo Bay. In late 2003, President Bush publicly denied allegations of torture and abuse.

The Department does not have on record an assurance about interrogation dating from May 2003.

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Question No. 76

Senator Bolkus asked the following question at the hearing on 24 May 2004:

Can we seek from the US authorities as to whether there is information about whether there are interrogation records (of Mr Hicks) and, if so, can we get copies of them?

The answer to the honourable senator's question is as follows:

An examination of pages 18 – 19 of the Hansard of 24 May 2004 for the Senate Legal and Constitutional Committee reveals that Senator Bolkus's question relates to whether the Government will request that copies of interrogation records be provided to Mr Stephen Kenny, the Australian legal consultant acting on behalf of Mr Hicks.

Defence requests for access to evidential material should be made through the established military commission process, and not directly to the Australian Government.

Military Commission Order no. 1 states, in part, at article 5(E) that:

The Prosecution shall provide the Defense with access to evidence the Prosecution intends to introduce at trial and with access to evidence known to the Prosecution that tends to exculpate the Accused.

In accordance with Article 5(E), the prosecution is required to provide Mr Hicks's defence team with access to evidence it intends to introduce at trial. This requirement would extend to Australian sourced evidence as well as United States sourced evidence.

As there is an established process for requesting access to evidential material, there is no need for the Australian Government to deal directly with the defence about requests for access to such material. The Government would not normally deal directly with defence counsel on such matters and there is no reason for the Government to do so in this case.