

SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS
ATTORNEY-GENERAL'S DEPARTMENT

Program 1.1

Question No. 61

Senator Wright asked the following question at the hearing on 18 October 2011:

Senator WRIGHT: My questions are in relation to David Hicks. Has the government responded yet to the United Nations Commission on Human Rights regarding David Hicks' claims?

Mr Wilkins: These are perhaps some questions that Mr Manning can answer.

Mr Manning: The government's submissions were lodged last Friday.

Senator WRIGHT: Can you tell us what that response was?

Mr Manning: Not at this stage. The usual practice in these matters is not to comment on the detail of submissions while they are ongoing and I doubt, for example, that Mr Hicks' advocates have received a copy of it yet.

Senator WRIGHT: Can you give any idea about when we might be able to see the content of the submission?

Mr Manning: It is in the hands of the committee. I am unable to give you an indication of that off the top of my head.

Senator WRIGHT: Given the intense public interest in the case of David Hicks, can the government publicly release any legal advice it may have received about the compatibility of David Hicks' military commission trial with international law, specifically the 1949 Geneva Conventions and the International Covenant on Civil and Political Rights?

Senator Ludwig: The short answer is no. It is not intended to release it. I will reiterate for those who are new that there is a longstanding convention from Attorneys-General of both political persuasions not to release legal advice. You can ask questions in a limited way about whether the advice exists and a couple of minor procedural questions around that. The former Attorney-General, Mr Ruddock, I think put it eloquently back in 2004. It also goes to the issue of, if there are opinions or advices as the case may be, that it is for government, not for others.

CHAIR: We can ask questions, Senator Wright, on did you seek a legal opinion, who sought it, who was it given to, when was the sort and how was it sought, but the content of it is confidential to the government.

Senator WRIGHT: Thank you. Was a legal opinion sought in relation to those matters which I have just outlined?

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

The Attorney-General's Department provided advice on these matters. It is the long standing practice of governments not to comment on or disclose the nature of legal advice provided.