

PRIVATE MEMBERS' BUSINESS**Mr David Hicks**

The Federal Member for Calwell moved the following motion. Lindsay Tanner seconded the motion.

Ms VAMVAKINO (Calwell) (4.23 p.m.)—I move:

That the House:

- (1) acknowledges that the ongoing detention without trial of David Hicks is inconsistent with both international and Australian legal standards (including the principle of *habeas corpus*) and contravenes the individual rights and protections for which these standards provide;
- (2) acknowledges that the newly revised rules for the US Military Commissions under which David Hicks is to be tried, but under which no US citizen can or will be tried, remain in breach of both the Geneva Conventions and the Australian Criminal Code and for this reason, do not constitute a fair trial but instead set an unacceptable precedent for the detention and trial of an Australian citizen overseas, especially by sanctioning the use of hearsay evidence and evidence obtained by coercion and by not permitting the accused to be privy to all the evidence;
- (3) notes that one of the charges laid against David Hicks relies on the use of retrospective legislation, while the Government asserts that he cannot be tried in Australia because it would require retrospective legislation;
- (4) calls for the immediate repatriation of David Hicks to Australia to face trial under Australian law;
- (5) urges members of the United States Congress to help facilitate David Hicks' repatriation to Australia by passing a resolution in Congress to this effect;
- (6) calls on the Government to release advice provided by the Commonwealth Director of Public Prosecutions concerning the viability of charging David Hicks in Australia;
- (7) acknowledges that we in this place have a responsibility to monitor and protect the welfare and rights of Australian citizens imprisoned overseas; and for this reason:
- (8) calls for an immediate and independent assessment of the mental and physical health of David Hicks by relevant experts to ascertain the validity of allegations made concerning the deteriorating well being of David Hicks;
- (9) seeks concrete assurances that any such assessment will not jeopardise or in any way prejudice the treatment of David Hicks whilst he is in Guantanamo Bay; and
- (10) acknowledges that the ongoing imprisonment of David Hicks, and the denial of his basic rights, runs counter to the principles of freedom and democracy in the name of which the 'war against terror' is being fought, and threatens to undermine the international effort to combat terrorism.

Mr TANNER (Melbourne) (4.33 p.m.)—The principle at the heart of the issue that is before the House today has been central to 100 years of evolution of common law and the individual freedoms that we take for granted in nations that have been built on the British legal tradition. The principle is also central to the belief systems which we are purportedly upholding in our battle against fundamentalist terrorists. That principle is the right of the individual to be protected from arbitrary imprisonment. It may seem quaint and odd that we should need to worry about the prospect of governments locking people up and throwing away the key without charging them or subjecting them to any kind of independent judicial process, but that still occurs in many countries in the world and the absence of that is one of the fundamental things that makes Australia a great country and makes the other British common law countries so strong and robust when it comes to individual freedoms. That is ultimately what this issue is about: the right of individuals not to be arbitrarily and indefinitely imprisoned by the state.

It goes as far back as 1627 and the battles between Charles I and the parliament in the famous five-knights case, or Darnell's case, where the knights had refused to pay forced loans and were arbitrarily imprisoned by the Crown as a result. There have been many landmarks in the historical development of this core principle and the entrenching of the notion of habeas corpus as a central component of our legal system and our rights. The basic principle is that individuals cannot be held indefinitely without trial by the state.

David Hicks has been held now for five years with no trial and with no serious attempt by the Australian government to get him out or to uphold his rights as an individual, and it is still unclear when he will be tried. There appears to be evidence to suggest that he is guilty of a range of things, that he has associated himself with al-Qaeda and with the Taliban and that he has done bad things or intended to do bad things. We do not know the full details. We have not heard his defence. We have not heard alternative explanations. These have not been tested in any court of law. No jury has been asked to examine all the evidence, to hear the arguments, to hear the evidence of David Hicks and those seeking to prosecute him and to form a view and make a judgement; nor has any judge been asked to hand down a sentence based on any kind of guilty finding. Those principles are at the core of our legal system and central to the individual rights of all Australian citizens, no matter how bad they may be as individuals and no matter how bad we may think they are.

The Howard government has brushed all of these principles aside. You hear the mealy-mouthed obfuscations of the Attorney-General and the back-of-the-hand observations from various supporters and cheer squad members of the Howard government: 'Well, he's really a terrorist. He's consorting with terrorists.' In other words, it does not matter and the core legal principles that govern the rights of all individuals in our nation are dispensable and can be arbitrarily removed or brushed aside by a government—by the United States government or by our government—at its whim. That is ultimately a recipe for governments being able to arbitrarily imprison people indefinitely without trial, without charge and without a jury of their peers determining whether or not they have committed any crime.

And this from the party of individual freedoms, the party that calls itself the Liberal Party, the party that purportedly stands up for the dignity of the individual and is there to uphold the rights of individual against the intrusions of authoritarian states! In fact what it reveals is that the DNA of the Liberal Party is predominantly 'authoritarian' DNA, not 'individual freedom' DNA. Arbitrary imprisonment is the hallmark of arbitrary government and abusive power by governments.

Yes, mistakes are being made. We have seen a Canadian citizen who went to Syria and was allegedly tortured because he was wrongly believed to be associated with terrorism. We have seen a Lebanese man kidnapped in the Balkans and ultimately tortured when clearly he was the wrong person. Do we know what David Hicks is guilty of, if anything? No, not until there has been a proper trial in a proper court where he has the right to defend himself and where he has the ability to put his case. That is the issue here. It is not about whether he is a bad man or a good man; it is about whether the right of all Australian citizens to have a fair trial and not be arbitrarily imprisoned by the state is to be upheld. That is what needs to be enforced. (*Time expired*)