



DPP

Commonwealth Director of Public Prosecutions

24 July 2012

Statement in the Matter of David Hicks

On 19 July 2011, following an investigation and referral by the Australian Federal Police the Commonwealth Director of Public Prosecutions commenced proceedings against Mr David Hicks, pursuant to the *Proceeds of Crime Act 2002* (Cth).

The proceedings were commenced by way of Summons in the Supreme Court of NSW. The Summons sought orders relating to publication of the book *Guantanamo: My Journey*, including a restraining order, pursuant to section 20 of the *Proceeds of Crime Act*, and a literary proceeds order, pursuant to section 152.

On 23 July 2012, the Director made a decision to discontinue the proceedings. The matter was discontinued in Court on 24 July 2012.

In explaining his decision, the Director said:

“As is often the case under the *Proceeds of Crime Act*, these proceedings were commenced with initial steps to preserve assets from dissipation, in order that the assets placed under restraint could remain available to satisfy any orders that the Court might ultimately make.

The evidence available to my Office was sufficient to commence those proceedings on the basis that Mr Hicks stood to benefit financially from the commercial exploitation of his notoriety resulting from the commission of a foreign indictable offence.

The evidence included Mr Hicks' plea of guilty before the United States Military Commission and admissions made by him before that Commission. These admissions are recorded in the following documents, which were obtained through international cooperation:

- A certificate of conviction issued by the Military Commission in relation to Mr Hicks, for an offence against 10 United States Code section 950v Part 25 – providing material support for terrorism, to wit al Qaeda.
- The transcript of the Military Commission hearings on 26 and 30 March 2007.
- The Stipulation of Fact, Charge Sheet and Pre-Trial Agreement produced in the course of the Military Commission proceedings against Mr Hicks.

Following commencement of the proceedings, Mr Hicks challenged the admissibility of the documents listed above, based upon the conditions and circumstances in which he made the relevant admissions. The challenge also relied upon the fact that Mr Hicks entered what is known in the United States as an “Alford plea”. This is a type of plea not recognised in Australia, whereby a defendant is able to acknowledge that the available evidence is sufficient to prove the case beyond reasonable doubt, without admitting commission of the offences charged.

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In support of the challenge, the Defendants served evidential material not previously available to the CDPP and AFP.

If, at any stage in the conduct of legal proceedings by the Office, there is a concern as to the sufficiency of available evidence, then the Office will review the matter regardless of what stage the proceedings have reached in the court process.

Accordingly, I have taken advice from the Queen's Counsel from the private bar who has been briefed in the matter and from lawyers within my Office. After careful consideration of all matters, including the advice received, I reached the view that this Office was not in a position to discharge the onus placed upon it to satisfy the Court that the admissions should be relied upon and decided that these proceedings should not continue".