

Australian Labor government endorses further punitive measures against David Hicks

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The new Rudd Labor government has lost no time in making clear that the assault on democratic rights carried out by the former Howard government will continue unabated. This was demonstrated two weeks ago when Attorney-General Robert McClelland backed Australian Federal Police (AFP) moves for a control order on former Guantánamo Bay prisoner David Hicks, who is due to be released from a South Australian prison on December 29.

The Australian citizen, who was held illegally by the US military for six years before being repatriated to a South Australian prison in May this year, is due to be released on December 29. Hicks is reported to be suffering serious mental health problems, including agoraphobia and panic attacks produced by the years of physical and psychological abuse, including prolonged periods of solitary confinement, that he endured at the hands of the US military.

The deeply anti-democratic control order, which will undoubtedly intensify the mental disorientation of the 32-year-old father of two, was sought by the AFP and imposed on December 21, after a brief hearing before a federal magistrate.

Under its terms Hicks must live at an address approved by the AFP, where he must remain from the hours of midnight to 6 a.m. He must report to police at least three times a week for the next 12 months, and will be finger-printed on each occasion.

Hicks, whose passport has been cancelled, cannot make contact with any individual or group proscribed by the AFP and his telephone, email and internet communications will be regulated by that body. He is restricted to using an AFP-issued mobile phone and SIM card, and any future email account or internet provider must also be approved. He is banned from using a payphone or any satellite communication device or possessing or having any access to explosives and weapons or even any written information about them.

Hicks must begin reporting to police on January 31, two days after his release from jail. The interim control order will be finalised at another court hearing on February 18. If any one of the conditions is breached he can be jailed for five years. Like Mamdouh Habib, another Australian citizen released from Guantánamo, he will continue being hounded by the police and

the media.

David Hicks was captured in Afghanistan in late 2001 by the Northern Alliance, sold to the US military for \$US1,000 and transferred to Guantánamo in January 2002. Before being shipped to the US detention centre, Hicks was interviewed by the AFP and Australian intelligence officers, who not only ignored his desperate appeals for legal assistance but dismissed his testimony that he had been beaten and tortured.

From then on, the Howard government demonised the Australian as a “dangerous terrorist”, with bi-partisan support from Labor. Labor’s position gave the US authorities a virtual blank cheque to continue its criminal incarceration of the young man, without any formal charge.

In March this year, after almost five and half years of being abandoned by the Australian government, Hicks was finally bullied into pleading guilty to a retrospective charge of “providing material support for a terrorist group”. The sordid arrangement was worked out between the Bush administration and Canberra eight months before the Australian federal election in a desperate attempt to dissipate the mass opposition that had emerged against the Howard government’s treatment of Hicks.

In order to secure his repatriation, however, Hicks had to accept the trumped-up charge—which was retrospective, and therefore illegal, under Australian law and the Geneva Conventions. He had to sign documents claiming he had not been tortured or mistreated by the American military and waive the right to any future legal action against the US government. Hicks is also banned from making any comment to the media until March next year. If he breaches any of the terms of this plea deal the US can demand Hicks’s return to jail.

At last week’s hearing, federal magistrate Warren Donald accepted arguments and “evidence” presented by AFP lawyers, ruling that Hicks constituted a risk to national security. The so-called evidence included excerpts of letters written to his father praising Osama bin Laden in May 2001, sentiments which he has long since publicly repudiated. None of the AFP assertions, which were given sensationalist media coverage in the Australian media, was tested in the hearing.

The Labor Party bears direct political responsibility for the hearing's outcome. In October, Labor leader Kevin Rudd was asked about the attitude of a future federal Labor government towards a control order on Hicks. His reply, that Labor "would take advice" from the AFP, was meant to convey that his government would accept without question whatever the AFP managed to dredge up. Attorney-General McClelland refused to explain his reasons for backing the control order, declaring: "As the attorney-general I perform an administrative function. The question as to whether or not a control order is imposed and the terms of that order will be a matter for the courts and that's how it should be."

As McClelland knows full well, the six-year persecution of Hicks was a politically driven violation of his basic rights that was used by Canberra to demonstrate its loyalty to the Bush administration and the "war on terror".

During his incarceration, not one Labor leader—state or federal—ever called for Hicks's immediate and unconditional release from Guantánamo. At the same time, Labor endorsed all of Howard's anti-terror measures, including detention without trial, sedition and other reversals of long-standing basic democratic rights.

In 2005, when attempts were made by the Democrats and Greens to establish a senate inquiry into the rendition of Mamdouh Habib, Labor voted with the government to quash the resolution. Former Labor leader Kim Beazley told the media that Habib should not be given any opportunity to present evidence to a Senate committee and "we shouldn't waste a minute on him".

Likewise, the South Australian Labor government passed legislation in October this year aimed at politically gagging Hicks. Under the new law, any money Hicks receives, either directly or via his relatives and friends, for media interviews or any future publications, will be confiscated.

According to the *Sydney Morning Herald*, David Hicks has only ventured into the sunshine from his prison cell on one occasion since his return to Australia. In November, when prison officers attempted to take Hicks to a police station in a northern Adelaide suburb, he suffered a panic attack in the prison van, scared that he was back under US military control. Professor Paul Mullen, an Australian forensic psychiatrist who previously examined him, confirmed that Hicks's symptoms were typical of someone who had spent prolonged periods of isolation and would take years of counselling and other medial assistance to overcome.

Following the control order ruling, David McLeod, the lawyer representing Hicks, pointed out that the 32-year-old was in a "mentally fragile state" and did not "have the strength to challenge" the ruling. He then declared that his client would behave as a "model citizen".

Speaking outside a federal court in Adelaide, McLeod said: "We hope that the AFP will see, over the next period, if this order is confirmed, that David has gotten on with his life, is

behaving as a model citizen and so, at the end of any order, they won't seek to extend it... I think that will be the litmus test; whether we can make the federal police happy about the situation".

These remarks are astonishing and a shameful capitulation to the ongoing assault on Hicks's democratic rights. Hicks has not broken any Australian laws, in Afghanistan or anywhere else. He is simply one more casualty of the bogus "war on terror".

Unlike McLeod, the Australian Law Council and other peak legal bodies have criticised the government's control order powers as a means of carrying out political repression, similar to those used by dictatorships around the world. The measures repudiate long-standing legal principles, including the International Covenant on Civil and Political Rights to which Australia is a signatory, and can be imposed on any individual at any time without any evidence of so-called "terrorist" activity.

McLeod's response echoes that of the small "I" liberal establishment, which, following Hicks's repatriation, has remained completely silent on his continuing imprisonment and his subjection to further punitive measures.

Most notably the Greens, who postured as opponents of the anti-terror laws, have so far issued no statement. The online lobby group GetUp!, which previously demanded Hicks's repatriation but never called for his unconditional release, issued a perfunctory two paragraph comment. GetUp! executive director Brett Solomon declared: "Control orders are highly problematic, may be clouded in secrecy and can curtail the liberties of someone who has been convicted of no crime. Get Up opposes their use. Get Up further believes a control order for Hicks is inappropriate based on the information that is publicly available."

The lobby group, which, throughout the federal election campaign, consistently promoted illusions that a vote for Labor and the Greens would defend democratic rights, issued no condemnation of the Labor government.

Labor's collaboration with the AFP makes clear that Rudd has no intention of instigating any inquiry or taking any measures to expose the Howard government's mistreatment and abuse of Hicks, let alone bring forward war crime charges over this terrible affair. Instead, Labor has signalled to the AFP that it is free to continue its terrorist allegations against Hicks and any others it chooses to target.



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