



THE LAW SOCIETY
OF NEW SOUTH WALES

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Dr James Popple
Chief Executive Officer
Law Council of Australia
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By email: charlotte.stubbs@lawcouncil.au

Dear Dr Popple,

Australia's efforts to advocate for the worldwide abolition of the death penalty

Thank you for the opportunity to contribute to the Law Council's submission to the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, in response to its inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty. The Law Society's Human Rights Committee contributed to this submission.

The Law Society opposes the death penalty in all circumstances, for all people. While there is a global trend towards progressive abolition of the death penalty, advocacy on this fundamental issue of human rights remains of critical importance, given the situation identified by Amnesty International in its 2023 global report (**2023 Amnesty International Report**) which found that the 'lowest number of countries on record carried out the highest number of known executions in close to a decade'.¹ In addition, it is well recognised that data on the use of the death penalty is not available from several countries, for example China and Vietnam, as this information is classified as a state secret.²

We endorse the Law Council's Policy Statement on the Death Penalty, issued in 2021, and suggest that, alongside the advocacy principles contained in that document, attention could be drawn to the following issues in the submission to the inquiry:

A multi-pronged approach to universal abolition

The Law Society supports a multi-pronged approach to the Australian Government's advocacy on the universal abolition of the death penalty, as was reflected in the June 2018 publication, 'Australia's Strategy for Abolition of the Death Penalty'.³

We commend the Government's continued commitment in multilateral fora to this goal, including, for example, through co-leading the UN General Assembly Third Committee

¹ See Amnesty International, [Death Sentences and Executions](#), 7. See also at p 9 that that 'Amnesty International recorded 1,153 executions in 2023, an increase by 31% (270) from the 883 known executions in 2022. It is the highest figure recorded by Amnesty International since the exceptionally high number of 1,634 in 2015; and the first time since 2016 (1,032) that the known total was over 1,000'.

² Ibid.

³ Department of Foreign Affairs and Trade, [Australia's Strategy for Abolition of the Death Penalty](#), June 2018.

resolution 'Moratorium on the Use of the Death Penalty', on behalf of 44 countries in October and November 2022.⁴ Apart from advocacy at the United Nations, it is important that, as Australia deepens its engagement with Southeast Asian nations, it uses partnerships with regional organisations such as ASEAN to advocate for abolition on appropriate occasions. Regional engagement is of particular significance given the 2023 Amnesty Report found that 'the Asia-Pacific continued to be the region with the highest number of executions in the world'.⁵

The Law Society appreciates that much of the bilateral advocacy for abolition of the death penalty, for example at political and senior officials meetings, is not made public, given the sensitive nature of such representations. However, we note that it is important not only to make representations when countries are proposing to take backwards steps (e.g., the lifting of a moratorium on executions), but also when positive developments occur, even if these are only incremental steps.⁶

In particular, we consider that multilateral and bilateral advocacy should be supplemented by Australia drawing on its diplomatic networks to engage fully with non-government organisations and actors. These groups have in-depth knowledge of the political and cultural concerns that shape public perceptions of the death penalty in key jurisdictions, and can assist in tailoring government advocacy, so it has the best chance of resonating with foreign governments and political parties.

Bipartisan support for universal abolition

Australia holds a politically bipartisan position for the worldwide abolition of the death penalty. However, it is important that this is not taken for granted. As noted by the Australian Human Rights Commissioner:

History teaches us that when it comes to human rights, progress can be reversed and hard-won rights and freedoms can easily be lost. We need to constantly renew and strengthen our commitment to human rights and freedoms, and make sure that the generations that follow are left in no doubt about why these things matter.⁷

While the executions of Myuran Sukumaran and Andrew Chan in Indonesia galvanised support for advocacy to abolish the death penalty, it is important that these cases do not fade in the public consciousness. A refreshed bipartisan strategy should be communicated broadly to the Australian public, as well as being adequately resourced to sustain momentum on this important human rights issue.

International Cooperation

Australia's 2018 Strategy for Abolition of the Death Penalty explicitly excluded discussion of Australia's approach to government-to-government assistance or police cooperation in a death penalty context, noting these matters are governed by the *Extradition Act 1988* (Cth), the *Mutual Assistance in Criminal Matters Act 1987*(Cth) and the *Australian Federal Police National Guideline on international police-to-police assistance in death penalty situations*.⁸ The Law Society considers any refreshed strategy should include discussion of these matters,

⁴ *Moratorium on the use of the death penalty*, Resolution 77/222 adopted by the General Assembly on 15 December 2022.

⁵ 2023 Amnesty Report (above n 1), 22.

⁶ For example, 2023 saw the abolition of the mandatory death penalty for certain offences in Malaysia, the abolition of the death penalty for drug related offences in Pakistan, and affirmation by the authorities in Sri Lanka of an intention not to carry out executions.

⁷ Australian Strategic Policy Institute, '[Why World Day Against the Death Penalty matters in Australia](#)', blog post by Lorraine Finlay and Zahli Hansen, 10 October 2023.

⁸ Department of Foreign Affairs and Trade, Australia's Strategy for Abolition of the Death Penalty (above n 3).

which are central to ensuring that the Australian Government's cooperation with foreign law enforcement agencies does not expose people to risk of imposition of the death penalty.⁹

Engagement of the legal profession

The skills and networks of the legal profession could be better leveraged to support the Government in advocating for the elimination of the death penalty. It may be useful, for example, for the Government to offer private briefings to Australian organisations and institutions that engage with legal counterparts in retentionist countries to share advocacy strategies, experience, and explore collaboration opportunities. Lawyers are well placed to advocate for the importance of legal and procedural protections in retentionist countries, to ensure, as far as possible, that those facing the death penalty, at a very minimum, have access to appropriate safeguards.

Thank you for the opportunity to contribute to the Law Council's submission. Questions at first instance may be directed to Sophie Bathurst, Policy Lawyer, at (02) 9926 0285 or Sophie.Bathurst@lawsociety.com.au.

Yours sincerely,



Brett McGrath
President

⁹ In this context, we note that commentators have argued that states may be in violation of Article 6(2) of the *International Covenant on Civil and Political Rights* if they were to transfer a person to a country where they would risk imposition of the death penalty. See Christof Heyns, Thomas Probert, Tess Borden 'The Right to Life and the Progressive Abolition of the Death Penalty' in Margaret M de Guzman and Diane Marie Amann (eds) *Arcs of Global Justice: Essays in Honour of William A Schabas* (2018) pp.117-136. Heyns, Probert and Borden noted that this principle 'applies in the case of mutual assistance, for example if states were to provide intelligence, funds for projects such as drug control, or technical assistance to states that maintain a system of capital punishment' (p 133).