



22 October 2024

To Whom it May Concern,

Questions taken on notice during the hearing by the Joint Parliamentary Committee on Defence, Foreign Affairs and Trade Human Rights Subcommittee inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty held on October 11, 2024.

Question 1: What would the new policy statement on the death penalty in other countries look like?

As members of the Subcommittee will be aware, a policy statement (the Strategy) was developed after it was advocated in 2015, and was adopted in 2018. This response therefore is about changes that CCL recommends should be made to the Strategy.

In its second paragraph, the Strategy declares 'This strategy does not consider: - Australia's approach to government-to-government assistance or police cooperation in a death penalty context – governed by the Extradition Act 1988, the Mutual Assistance in Criminal Matters Act 1987 and the Australian Federal Police National Guideline on international police-to-police assistance in death penalty situations...'.

As Dr. Bibby pointed out in his opening remarks, the CCL is of the view that the Mutual Assistance in Criminal Matters Act 1987, and the Police Guideline are incompatible with the Government's commitment to have the death penalty abolished in the remaining retentionist countries. It is desirable that the statement begins with a firm commitment to deny cooperation on criminal matters where there is a risk of the death penalty being applied.

Accordingly, we recommend that the Strategy be revised, to include, in place of the material that is headed 'This strategy does not consider' the following:

- A statement that Australian government organisations, including the Australian Federal Police, will not provide information to other countries where that could lead to people being executed, unless our government first receives a guarantee that the death penalty will not be carried out;
- A declaration of intent to pursue a global moratorium on the death penalty;
- A statement that Australia will not respond to Interpol notices that originate from countries that have the death penalty, where the alleged crimes may lead to the death penalty;
- A statement that Australia will not permit the extradition of anybody to countries that retain the death penalty if there is any chance that that penalty will be imposed; and
- Material urging other countries to abolish the death penalty, or to maintain their opposition to it;

CCL recommends that this new material, preceded by the existing account of reasons for rejecting the death penalty, be placed prominently on the home pages of all of Australia's embassies, consulates and high

commissions, with links to the full Statement. The existing statement should be modified to include the following, in addition to the policy goals listed¹:

Australia will clarify, strengthen and extend its prohibition on providing mutual assistance to foreign jurisdictions in criminal matters where such assistance may lead to the arrest, prosecution or conviction of a person for an offence carrying the death penalty. This includes ensuring that Australian law enforcement agencies, including State and Territory agencies, only cooperate with foreign law enforcement agencies to the extent that such cooperation is consistent with Australia's obligation not to expose a person to the real risk of execution.

To assist in the achievement of this latter objective, Australia will seek to enter bilateral agreements with other countries creating standing arrangements with Australia to the effect that, where Australia provides mutual assistance, the person of interest cannot be sentenced to death.

Australia will limit, by legislation, official discretion that may be used to assist cooperation with foreign agencies where such exposure may occur.

Australia will proactively maintain its commitment to the abolition of the death penalty not only in Australia, but across the world. This includes persistently identifying the abolition of the death penalty as a matter of importance in bilateral, regional and multilateral talks, treaties and other political agreements among sovereign States, continuing to raise issues relating to the death penalty in the Human Rights Council Universal Periodic Review procedure, encouraging other States to ratify the Second Optional Protocol to the ICCPR, supporting the activities of anti-death penalty non-government organisations working in priority countries and jurisdictions and continuing collaboration with the organisations described in the Strategy.

Australia will be open, consistent and unequivocal in its condemnation of the death penalty whenever and wherever it is imposed or carried out.

Australia will seek to address existing and emerging gaps in the operation of domestic legislation and policy that may expose persons to the death penalty overseas. This includes matters governed by the Extradition Act 1988 (Cth); the Mutual Assistance in Criminal Matters Act 1987 (Cth); the federal Police Act, the Australian Federal Police National Guideline on International Police-to-Police Assistance in Death Penalty Situations; and Australia's support for Australians at risk of facing the death penalty overseas (governed by the DFAT Consular Policy Handbook).

Australia will maintain its prohibition on extraditing or transferring any person to a foreign jurisdiction in circumstances where that person may face the death penalty, unless an explicit official and non-revocable undertaking is provided to the Australian Government that the death penalty will not be imposed and/or carried out on the person who is the subject of the request.

Australia will adopt all available measures to ensure that Australian nationals or residents facing the death penalty or sentenced to the death penalty in a foreign jurisdiction have their death sentences commuted to a term of imprisonment.

Australia will adopt all available measures to ensure the commutation of a non- Australian resident's death sentence in circumstances where the advocacy of the Australian Government may have particular resonance, for example, where the victims or targets of the relevant crime are Australian or where Australia was the intended destination for trafficked drugs or the object of an intended crime.

¹ CCL acknowledges the Law Council of Australia's Policy Statement on the Death Penalty as the origin of this material.

- Australian nationals or residents facing the death penalty or sentenced to death in foreign jurisdictions will have access to consular assistance, independent interpreters, independent legal representation and the financial assistance necessary to facilitate the preparation of a comprehensive defence, appeal and/or clemency plea. In particular, consular arrangements need to be sufficiently adroit to ensure that high quality legal representation and interpreter support are arranged at the investigation and trial stages of prosecutions when an individual's rights are most at risk and most capable of being protected by competent representation. Australia will consider the submission of amicus curiae briefs in the hearings in foreign jurisdictions of cases of Australian nationals or residents facing the death penalty.

Australia will not become party to international agreements which might expose Australian nationals or residents to the death penalty.

In the section on briefing and regular reporting, the following should be included: Australia will make transparent disclosures by way of annual reporting of data that is relevant to implementation of the Strategy. This includes the:

- extent to which consulates are trained on death penalty issues;
- number of instances where consular access is denied to Australian nationals facing the death penalty, broken down by jurisdiction; and
- number of cases of Australian nationals or residents facing the death penalty with documented mental health issues.

Question 2: ...working with civil society and non government organisations. What are we doing and how can we do it better? What should we do in the future?

CCL notes that in the section 'Civil Society Engagement' in Australia's Strategy for Abolition of the Death Penalty there is a commitment to support the activities of anti-death penalty non-government organisations working in priority countries and jurisdictions. We are not in a position to comment on the extent to which this is occurring; but we recommend that it continue, with financial support being offered as well as encouragement where that is appropriate. We note that opposition within China and Iran is highly dangerous, sometimes leading to execution, so it may be desirable instead to support expatriate organisations opposing the governments of those countries.

CCL supports the call by Amnesty International Australia for Australia to include support for human rights defenders in retentionist countries when they face reprisals for their work against the death penalty through wider diplomatic support, publicly calling out the reprisals and intervening in key moments to ensure protection and legitimacy of human rights defenders.²

Yours sincerely,

Timothy Roberts
Secretary

² Amnesty International Australia submission to this inquiry at 4.15.