

SENATE LEGAL AND CONSTITUTIONAL LEGISLATION COMMITTEE  
AUSTRALIAN FEDERAL POLICE

**Question No. 143**

**Senator Brown asked the following question at the hearing on 17 February 2006:**

***Bali Nine***

- a) Does the AFP accept that no action taken by any person in Australia can lawfully result in a death penalty being imposed on another person?
- b) Is it the AFP's position that the protection given to Australian citizens in Australia to be immune from the death penalty does not extend to the actions of the AFP in respect of Australian citizens overseas?
- c) Is the AFP aware of the position of other Western countries whereby police cooperation is accorded on the express condition that the country's citizens will not be exposed to the death penalty?
- d) Has the AFP considered the opening remarks of Justice Finn's judgment in *Rush v Commissioner of Police* [2006] FCA 12?  
  
[His Honour suggested that there was "a need to address the procedures and protocols followed by members of the AFP when providing information to the police forces of another country in circumstances which predictably could result in the charging of a person with an offence that would expose that person to the risk of the death penalty in that country".]
- e) If so, is the AFP in the process of reviewing its Guidelines?
  - i) Specifically, is the AFP in the process of reviewing its Guidelines where the AFP wishes to request assistance from a country where the death penalty applies?
- f) Does the AFP accept that for the future, when information is provided or assistance requested from a death penalty country, a condition or undertaking is obtained in advance so as to ensure that no Australian citizen is exposed to the risk of the death penalty?
- g) Does the AFP accept that the current Practical Guidelines providing for assistance in criminal matters prior to charge has a different operation from provision of assistance post charge, and provides no protection in a legal system such as Indonesia's, which carries the death penalty?
- h) Does the AFP accept that police to police cooperation ought occur within a policy framework that does not expose Australians to the death penalty?
- i) Does the AFP now realise that the policy protections of the Attorney-General intended in the existing Practical Guidelines in death penalty charge situations has failed for practical purposes in non common law jurisdictions such as Indonesia?
- j) In regard to the AFP decisions about the Bali 9 were the guidelines invoked?
  - i) If so, how and with what result?
  - ii) If so, by whom?
  - iii) If not, why not and who made that decision?

**The answer to the honourable senator's question is as follows:**

- a) No.
- b) The AFP's position is that all persons should be cognisant of, and adhere to, the laws of any country they visit regardless of the citizenship of an individual.
- c) The AFP is aware of differing international practices amongst law enforcement agencies where the death penalty applies. The AFP operates within its legal and regulatory framework as it applies to international cooperation where an individual has been charged or convicted of a death penalty offence.
- d) The AFP has considered the remarks of Justice Finn in *Rush v Commissioner of Police* [2006] FCA12 who found the AFP acted appropriately and in accordance with its legal authority. The procedures and protocols that apply to the AFP in death penalty matters are a combination of legal powers and designated authority by the Attorney-General. As a result the AFP cannot unilaterally amend existing procedures and protocols without consultation and input from a range of other stakeholders.
- e) The AFP from time to time considers the appropriateness of existing guidelines in association with the Minister for Justice and Customs and the Attorney-General. It would be inappropriate to individually comment on any specific guideline that relates to operational practice given that it relates to police methodology.
  - i) Refer to answer d).
- f) The AFP does not consider that an undertaking is required in future operations with international law enforcement partners where a person has not been charged or sentenced to a death penalty offence. This is consistent with the AFP's legal authorities and responsibilities.
- g) No.
- h) The AFP currently operates within an existing policy framework.
  - i) No.
- j) No, because no-one had been charged at that time therefore the guidelines had not been invoked.
  - i) Not applicable.
  - ii) Not applicable.
  - iii) The decision concerning the exchange of intelligence with the Indonesian National Police was based upon the AFP's legal capacity to do so by virtue of the *AFP Act 1979* and made by the National Manager, Border and International Network.