

of America. Concerningly, some of those executions related not to offences considered to be ‘the most serious of crimes’, but rather, were applied to drug-related offences and offences committed by children and young people.⁴

In that context, the LIV submits that the Australian government has a clear responsibility to strongly advocate for a worldwide abolition of the death penalty, and to ensure that none of its laws or public policy decisions inadvertently facilitate the death penalty overseas.

LIV Position on the Death Penalty

In June 2006, the LIV adopted a policy statement on the use of the death penalty (the **policy statement**) which was developed by LIV’s Administrative Law & Human Rights Section. The policy statement outlines the LIV’s opposition to the use of death penalty and provides a framework for the LIV to lobby on behalf of Australian residents and others in foreign jurisdictions who face or have been sentenced to the death penalty.⁵

The full policy statement is contained in Annexure A, but the substantive content of the policy is set out in Clause 2, which provides that:

- (a) The LIV is fundamentally opposed to the use of the death penalty in any circumstances.
- (b) The LIV is committed to the independence of the judiciary in all sovereign jurisdictions and is, accordingly, fundamentally opposed to the mandatory imposition of the death penalty in any circumstances.
- (c) The LIV encourages the provision of pro bono assistance to Australian residents facing the death penalty in foreign jurisdictions by members of the Victorian legal profession.
- (d) The LIV supports the Australian Government, on behalf of Australian residents who face or have been sentenced to the death penalty in a foreign jurisdiction seeking that the death penalty is commuted to a term of imprisonment and the Australian resident being transferred to Australia to serve that term of imprisonment.
- (e) The LIV supports the Australian Government’s position that it will not extradite or transfer a non-Australian resident or Australian resident where such a person may face or has been sentenced to the death penalty in a foreign jurisdiction, unless an appropriate undertaking between the Australian and foreign government is given. Such an undertaking should expressly provide that the person the subject of the request will not face or be sentenced to the death penalty in the foreign jurisdiction.
- (f) The LIV is opposed to the Australian Government, through the Australian Federal Police, providing mutual assistance in criminal matters to foreign jurisdictions which have the death penalty where such assistance may lead to the arrest of an Australian resident for an offence subject to punishment

⁴ Ibid.

⁵ Clause 1, Law Institute of Victoria Policy Statement on the Use of the Death Penalty (2006).

by death, unless an appropriate undertaking between the Australian and foreign government is given.

Whilst review of the LIV's policy statement is timely, the LIV continues to endorse the principal policy position expressed therein and specifically, the substantive statements of policy in Clause 2.

Terms of reference

The following section will focus squarely on paragraph one of the Inquiry's Terms of Reference:

"Progress against the recommendations in the 2017 Joint Standing Committee on Foreign Affairs, Defence and Trade report: A world without the death penalty: Australia's Advocacy for the Abolition of the Death Penalty"

The LIV welcomes commitment by the Government to the majority of the recommendations outlined in the 2017 Report⁶ and is heartened that action has been commenced, or in some cases finalised, to implement some of the accepted recommendations, including launching Australia's Strategy for Abolition of the Death Penalty in 2018,⁷ adopting a human rights-based approach to public messaging advocating against the death penalty,⁸ and reviewing the current legislative arrangements for extradition and mutual assistance to ensure consistency with Australia's obligations as a Party to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

However, the LIV wishes to highlight concerns regarding the partial non-acceptance of recommendation 2 of the 2017 Report, and the non-acceptance of recommendation 3 of the 2017 Report. Recommendations 2 and 3 concern the implementation of policies within the Australian Federal Police (**AFP**) to ensure a stronger focus on preventing exposure of all persons to the risk of the death penalty (Recommendation 2), and on obtaining a guarantee that prosecutors in partner countries will not seek to apply the death penalty before providing information in relation drug related crimes (Recommendation 3).

The LIV submits that the Government should reconsider its response to the above-mentioned recommendations. In particular, it should take steps to introduce safeguards regarding the sharing of information by the AFP with overseas police services in relation to drug offences committed by an Australian citizen and/or resident if that information sharing would be likely to lead to imposition of the death penalty. Such an approach would be consistent with United Nations' position, as recognised in the 2017 Report, that drug crimes do not constitute 'most serious crimes' for which the death penalty may be applied under international law.

⁶ Australian Government response to the Joint Standing Committee on Foreign Affairs, Defence and Trade report - A world without the death penalty: Australia's Advocacy for the Abolition of the Death Penalty (March 2017) available here: [Microsoft Word - FINAL collated response.DOCX \(dfat.gov.au\)](#)

⁷ Ibid, Recommendation 13.

⁸ Ibid, Recommendation 6.

Further, it would go some way to ensuring that our mutual assistance and agency assistance arrangements reflect Australia's commitment to abolishing the death penalty.

If you would like to discuss any aspect of this submission further, please contact Nadia Quinn Sciascia, Section Lead of the Administrative Law and Human Rights Section at nquinn@liv.asn.au.

Sincerely yours,



Adam Awty
Chief Executive



LIV Policy

Use of the Death Penalty

A policy developed by the Administrative Law & Human Rights Section of the Law Institute of Victoria

Date June 2006

Queries regarding this policy statement should be directed to:

Contact person Joanne Kummrow
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1 Background

In recognition of Australia's accession to various international treaties which support the abolition of the death penalty, namely the:

- (a) Universal Declaration of Human Rights (Article 3);
- (b) International Covenant on Civil and Political Rights (Article 6); and
- (c) Second Optional Protocol to the International Covenant on Civil and Political Rights, aimed at the abolition of the death penalty;

the Law Institute of Victoria (LIV) has adopted this policy statement to outline its opposition to the use of death penalty and to provide a framework for the LIV to lobby on behalf of Australian residents and others in foreign jurisdictions who face or have been sentenced to the death penalty.

2 Policy

- (a) The LIV is fundamentally opposed to the use of the death penalty in any circumstances.
- (b) The LIV is committed to the independence of the judiciary in all sovereign jurisdictions and is, accordingly, fundamentally opposed to the mandatory imposition of the death penalty in any circumstances.
- (c) The LIV encourages the provision of pro bono assistance to Australian residents facing the death penalty in foreign jurisdictions by members of the Victorian legal profession.
- (d) The LIV supports the Australian Government, on behalf of Australian residents who face or have been sentenced to the death penalty in a foreign jurisdiction seeking that the death penalty is commuted to a term of imprisonment and the Australian resident being transferred to Australia to serve that term of imprisonment.
- (e) The LIV supports the Australian Government's position that it will not extradite or transfer a non-Australian resident or Australian resident where such a person may face or has been sentenced to the death penalty in a foreign jurisdiction, unless an appropriate undertaking between the Australian and foreign government is given. Such an undertaking should expressly provide that the person the subject of the request will not face or be sentenced to the death penalty in the foreign jurisdiction.
- (f) The LIV is opposed to the Australian Government, through the Australian Federal Police, providing mutual assistance in criminal matters to foreign jurisdictions which have the death penalty where such assistance may lead to the arrest of an Australian resident for an offence subject to punishment by death, unless an appropriate undertaking between the Australian and foreign government is given.

3 Commitment

The LIV is committed to:

- (a) Lobbying on behalf of Australian residents facing or sentenced to the death penalty in a foreign jurisdiction.
- (b) Lobbying the Australian Government to ensure that Australian residents facing or sentenced to the death penalty in a foreign jurisdiction have access to independent legal representation and due legal process in the criminal justice system.
- (c) Providing support to Victorian legal practitioners who provide pro bono and legal assistance to Australian residents facing the death penalty in foreign jurisdictions.
- (d) Lobbying the Australian Government to ensure that Australian residents facing or sentenced to the death penalty in a foreign jurisdiction have their death sentence commuted to a term of imprisonment and be transferred to Australia to serve a term of imprisonment under a prisoner transfer scheme.
- (e) Lobbying the relevant foreign government to agree to the extradition or transfer of Australian residents in the foreign jurisdiction who face or have been sentenced to the death penalty.
- (f) Working collaboratively with Australian and foreign governments, the Law Council of Australia, other law societies, bar associations, non-government organisations to bring about the abolition of the death penalty and mandatory death sentences in foreign jurisdictions, with a particular emphasis on the Asian region.
- (g) Lobbying the Australian Government to proactively seek extradition treaties and prisoner transfer agreements with those foreign jurisdictions with which treaties and agreements are not currently held. Such extradition treaties and prisoner transfer agreements should expressly provide that the person the subject of an extradition or prisoner transfer request will not face or be sentenced to the death penalty in the foreign jurisdiction.
- (h) Lobbying the Victorian and Australian parliaments to affirm their opposition to the re-introduction of capital punishment in Australia.