



## **NSWCCL SUBMISSION**

### **JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

### **INQUIRY INTO AUSTRALIA'S EFFORTS TO ADVOCATE FOR THE WORLDWIDE ABOLITION OF THE DEATH PENALTY**

**2 August 2024**

## **Acknowledgment**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

## **Contact NSW Council for Civil Liberties**

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## 1. Introduction

- 1.1. The New South Wales Council for Civil Liberties (**NSWCCL**) welcomes the opportunity to make a submission to the Inquiry on the important issue of the death penalty. Our submission concerns Terms of Reference 2 and 3.
- 1.2. NSWCCL submits that: (1) the death penalty is a legally and morally unacceptable form of criminal punishment and notes that this is an important value almost universally accepted across the Australian community and amongst political representatives; (2) the Australian Government should never again put Australians at risk of overseas executions and that stronger measures are required to ensure this; and (3) the Australian Government should do more to campaign for the global abolition of the death penalty.

## 2. NSWCCL's opposition to the death penalty

- 2.1. Historically, NSWCCL has campaigned against the death penalty, in coalition with other civil liberties and human rights organisations. For example, NSWCCL was strongly involved in encouraging the passing of the *Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Act 2010*, one of the few Acts to have been passed by unanimous votes in the Commonwealth parliament. NSWCCL continues to absolutely and unequivocally oppose the death penalty, whether overseas or abroad.

## 3. International cases where Australians face the death penalty

- 3.1. Australia has an international human rights obligation to ensure that it does not expose *anyone* to the risk of execution. This obligation was recognised by the UN Human Rights Committee in the case of *Judge v Canada*:

*For countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application.*<sup>1</sup>

- 3.2. Notwithstanding comprehensive abolition of the death penalty within Australia, the Australian Government has allowed cooperation by the Australian Federal Police with Indonesian, Malaysian and Tongan authorities *after* death penalty charges have been laid, as was admitted in a 2007 letter from the federal Justice Minister to NSWCCL.
- 3.3. The Australian Government should ensure that it never again assists a foreign government in cases where the death penalty is a possible outcome.
- 3.4. Specifically, NSWCCL submits that there should be stronger legislation to the effect that the Australian Federal Police is prohibited from sharing information with other law

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<sup>1</sup> *Judge v Canada* (2002) UN Doc CCPR/C/78/D/829/1998, [10.4]

enforcement agencies that could result in suspected perpetrators facing the death penalty.

3.5. This is especially important in cases where Australians' civil liberties are compromised by a lack of due process, such as closed trials and an absence of legal representation.

3.5.1. As the Committee will be aware, Dr Yang Hengjun is an Australian pro-democracy activist who is currently serving a suspended death sentence in China for 'espionage'. As recognised by the Law Council of Australia, Dr Hengjun has been denied his basic civil liberties and human rights throughout his time in China, and remains on death row today.<sup>2</sup> NSWCCCL submits the Australian Government should do everything in its power to assist Dr Hengjun.

#### **4. Campaigning for the global abolition of the death penalty**

4.1. NSWCCCL submits that the Australian Government should, in its dealings with foreign states, do more to campaign for the global abolition of the death penalty.

4.2. This is consistent with NSWCCCL's previous advocacy on this question. On 20 May 2015, NSWCCCL – alongside seven other human rights organisations – called on the Australian Government to help end the death penalty across the world.<sup>3</sup>

4.3. At that time, we called on the Australian Government to take the following steps:

- 1. Developing a new Department of Foreign Affairs and Trade public strategy document aimed at ending the death penalty, everywhere;*
- 2. Using the aid program to support civil society organisations campaigning for abolition in countries which retain the death penalty; and*
- 3. Joining forces with other nations to push for universal adoption of a global moratorium on the death penalty.*

4.4. We reiterate our calls for the Australian Government to take those steps today. The Australian Government should use its considerable influence in the international community to campaign against the death penalty.

#### **5. Conclusion**

5.1. NSWCCCL is grateful for the opportunity to make a submission to this Inquiry. The death penalty should always be opposed by the Australian Government, whether at home or abroad. It is an inhuman and immoral form of punishment that has no place in a society where civil liberties and human rights flourish. That is a society which NSWCCCL will

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<sup>2</sup> Law Council of Australia Media Release, 6 February 2024: <https://lawcouncil.au/media/media-releases/suspended-death-sentence-of-dr-yang-hengjun>

<sup>3</sup> NSWCCCL Death Penalty Joint Media Release, 20 May 2015: [https://www.nswccl.org.au/death\\_penalty\\_joint\\_mediarelease](https://www.nswccl.org.au/death_penalty_joint_mediarelease)

continue to passionately pursue, and we call on the Australian Government to join us by strengthening its opposition to the death penalty on the international stage.

This submission was prepared by Felix Archibald on behalf of the New South Wales Council for Civil Liberties.

Yours sincerely,

**Timothy Roberts**  
**Secretary**  
**NSW Council for Civil Liberties**

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