

**Crimes Legislation Amendment (Torture Prohibition and
Death Penalty Abolition) Bill 2009**

Second Reading Speech

I am pleased to introduce the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill 2009.

The Bill contains two key measures.

First, it enacts a specific Commonwealth torture offence in the Commonwealth Criminal Code, to operate concurrently with existing offences in State and Territory criminal laws.

Second, it amends the Commonwealth *Death Penalty Abolition Act 1973* to extend the application of the current prohibition on the death penalty to State laws, to ensure the death penalty cannot be introduced anywhere in Australia.

The overarching purpose behind these amendments is, in the spirit of engagement with international human rights mechanisms, to ensure that Australia complies fully with its international obligations to combat torture and to demonstrate our commitment to the worldwide abolitionist movement.

Prohibition of torture

Since 1989, Australia has been a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment. Among other obligations, the Convention requires Australia to ensure that all acts of torture are offences under domestic criminal law. Torture is defined in the Convention as any act by which severe pain or suffering is intentionally inflicted upon a person by a public official for certain specified purposes—such as obtaining information or a confession from a person.

In previous periodic reports to the UN Committee Against Torture, Australia has stated that it meets

its obligations on the basis that acts falling within the Convention's definition of torture are offences under State and Territory criminal laws. These acts include the infliction of bodily harm, murder, manslaughter, assault and other offences against the person.

The *Crimes (Torture) Act 1988* (Cth) currently criminalises acts of torture committed outside Australia, only when committed by Australian citizens or other persons who are subsequently present in Australia. Acts of torture that are committed anywhere in the world during the course of an armed conflict or as a crime against humanity are currently criminalised under the *Criminal Code Act 1995* (Cth).

In recent years, the UN Committee Against Torture has been critical of nations that have not enacted torture as a specific criminal offence, and has called on nations to do so. In its Concluding Observations on Australia, issued in May 2008, the Committee recommended that Australia enact a specific offence of torture at the federal level.

Mindful of the Committee's recommendation, and determined to demonstrate the Government's condemnation of torture in all circumstances, the Government is enacting a new offence of torture in the Criminal Code, which will criminalise acts of torture committed both within and outside Australia.

As the new offence will result in the redundancy of the Crimes (Torture) Act, that Act will be repealed. Giving the offence extraterritorial application is intended to reflect a key aim of the Convention, which is to end impunity for torture globally. The new offence is intended to fulfil more clearly Australia's obligations under the Convention Against Torture.

The offence is intended to operate concurrently with existing State and Territory offences. The Bill makes it clear that the enactment of the new offence is not intended to exclude or limit the concurrent operation of any other law of the Commonwealth or any law of a State or Territory.

Abolition of the Death Penalty

Australia has a long-standing policy of opposition to the death penalty. Australia is a party to both the International Covenant on Civil and Political Rights and the Second Optional Protocol to the Covenant Aiming at the Abolition of the Death Penalty.

The ICCPR only permits the death penalty for the 'most serious crimes'. The Second Optional Protocol goes further and requires Australia to take all necessary measures to abolish the death penalty within its jurisdiction and to ensure that no one within its jurisdiction is subject to the death penalty.

The death penalty has been formally abolished in all jurisdictions in Australia.

It was first abolished for Commonwealth and Territory offences in 1973, by the Commonwealth Death Penalty Abolition Act. Each State has independently and separately abolished the death

penalty, and there are no proposals by any State or Territory Government to reinstate the death penalty. The purpose of the legislation is to extend the application of the current prohibition on the death penalty to State laws. This will ensure that the death penalty cannot be reintroduced anywhere in Australia in the future.

The amendments emphasise Australia's commitment to our obligations under the Second Optional Protocol to the International Covenant on Civil and Political Rights, and ensure that Australia continues to comply with those obligations.

Such a comprehensive rejection of capital punishment will also demonstrate Australia's commitment to the worldwide abolitionist movement, and complement Australia's international lobbying efforts against the death penalty.

In summary, this Bill contains important measures which again demonstrate this Government's ongoing commitment to better recognise Australia's international human rights obligations.

I therefore commend the Bill to the House.