COMMONWEALTH OF AUSTRALIA

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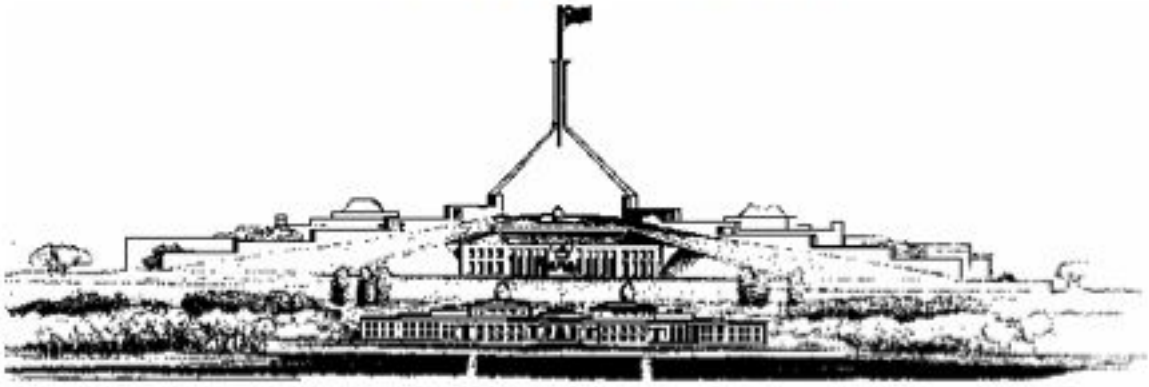

HOUSE OF REPRESENTATIVES

CRIMES LEGISLATION AMENDMENT (TORTURE PROHIBITION AND DEATH PENALTY ABOLITION) BILL 2009

Second Reading

SPEECH

Thursday, 11 February 2010

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Thursday, 11 February 2010	**Source**	House
Page	1184	**Proof**	No
Questioner		**Responder**	
Speaker	Keenan, Michael, MP	**Question No.**	

Mr KEENAN (Stirling) (1.10 pm)—I rise to speak on the Crimes Legislation Amendment (Torture Prohibition and Death Penalty Abolition) Bill 2009. I am sure all members would join me in saying that torture is one of the most profound human rights abuses and it takes a terrible toll, sadly, on millions of people—on the individuals themselves and, of course, on their families. Rape, blows to the soles of the feet, suffocation in water, burns, electric shocks, sleep deprivation, shaking and beating are commonly used by torturers to break down an individual's personality.

As terrible as the physical wounds are, the psychological and emotional scars are equally as devastating and very difficult to repair. Australia has had an influx of people who have come here under our very generous humanitarian program who sadly do bear the scars of this terrible abuse of their human rights. Many of them end up in my electorate of Stirling where they require extensive support and help to get over the psychological and emotional wounds that have been inflicted by having to suffer these terrible experiences. Many torture survivors suffer recurring nightmares and flashbacks. They withdraw from family, school and work and they feel a loss of trust. That loss of trust extends to the authorities and that can also create problems.

The United Nations defines torture as:

> …any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

That is a rather convoluted definition that essentially says something that of course would never happen in modern-day Australia and that is that torture would be inflicted by a public official against one of our citizens.

The death penalty, which this bill seeks to abolish from some of the statute books of the states, has a long and colourful history in Australia. The first recorded execution in Australia took place at Port Jackson on 27 February 1788. Thomas Barrett was hanged for stealing food from public stores, which shows you that, by the standards of the time, that was a pretty severe offence. Governor Phillip commuted the death sentences of the two co-accused at the time. Prior to 1793 only one woman was executed and her name has not been recorded in history. For the following 180 years after that the death penalty was practised in Australia, but nobody has been executed in Australia since 2 February 1967 when Ronald Ryan was hung in Melbourne for shooting a prison guard during an escape attempt.

Since 1973 and the passage of the Death Penalty Abolition Act, the death penalty has not applied in respect of offences under the law of the Commonwealth and territories. The states have enacted their own legislation that has outlawed this practice, at very different times. Queensland was the first state to abolish the death penalty for all crimes, in 1922, and New South Wales was the last state to abolish it, in 1985. New South Wales had actually abolished the death penalty for murder in 1955, but it retained the death penalty for treason and piracy until 1985.

On 2 October 1990, Australia confirmed at an international level its opposition to the death penalty by ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The protocol entered into force in international law on 1 July 1991. Clearly this is an indication that the trend amongst all states around the world is to abolish the death penalty, and we now have reached a point where there are more abolitionist states than states that retain the death penalty—that is, in terms of the number of countries. However, sadly, 60 per cent of the world's population still live in countries where executions take place. So the majority of the world's population still live in countries that retain the death penalty as a form of punishment. They include countries such as the People's Republic of China, India, the United States and Indonesia. It is probably fair to say that none of those states looks as if it will abolish the death penalty at any time soon.

Of course, once we have abolished the death penalty at home and signed on to international conventions to reinforce that, that is not the beginning and end of the death penalty debate in Australia, as we have seen over the last few years, when we have been faced, sadly, with the execution of some of our citizens in other countries abroad. Increasingly, as a community, we need to grapple with the question: what does it mean when we have abolished the death penalty here when we live in the midst of a region where most of our neighbours and allies continue to use capital punishment? It is difficult, and it is a challenge for our foreign policy to strike a balance and to maintain good relations with our neighbours and allies and respect their sovereignty and their right to administer justice within their own jurisdictions as they see fit whilst at the same time always striving to make sure that Australians are protected abroad from this very severe sanction. The coalition opposition are opposed to the death penalty, and this is on the basis that it is a breach of one of our most fundamental rights—that is, the human right to life.

The provisions of this bill are founded on the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Schedule 1 of the bill replaces the existing offence of torture in the Crimes (Torture) Act of 1988 with a new offence in the Criminal Code. The definition of 'torture' is a public official, or someone acting at a public official's behest, engaging in conduct that inflicts severe physical or mental pain or suffering on the victim for the purpose of punishing, intimidating or coercing the victim or a third person. The definition is derived from the UN convention and is in essentially the same terms as it was in in the 1988 act.

In recent years the UN Committee Against Torture has called on nations to enact a specific torture offence. In its concluding observations on Australia, issued in May 2008, the United Nations Committee Against Torture recommended that Australia enact a specific offence of torture at the federal level. Along with this, the UN convention requires that all acts of torture be offences under domestic criminal law, including the application of states' jurisdiction to acts occurring anywhere in the world. The change effected by this bill is to create the extraterritorial offence, applicable beyond acts committed in Australia or by persons subsequently present in Australia. The offence is intended to operate concurrently with state and territory offences.

Schedule 2 of the bill extends the application of the current prohibition on the death penalty to state laws in addition to Commonwealth, territory and imperial laws, to which the Death Penalty Abolition Act 1973 already applies. Accordingly, this will ensure that the death penalty will not be able to be reintroduced anywhere in Australia—clearly something that I think has been ruled out by public opinion a long time ago. It will therefore safeguard Australia's ongoing compliance with the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, to which, as I previously said, Australia became a party in October 1990. The coalition supports the comprehensive rejection of capital punishment, which will also demonstrate Australia's commitment to the worldwide abolitionist movement and complement Australia's international lobbying efforts against the death penalty.

In conclusion, the explanatory memorandum notes that, although the new offence of torture applies to public officials both within and outside Australia, it is not anticipated that it will affect legitimate law enforcement and intelligence-gathering activities routinely carried out by federal, state and territory government agencies in the course of their duties.

As the former Liberal Prime Minister Robert Menzies said when introducing the National Security Bill in 1939, a year when national security was very much on the minds of all Australians:

> … the greatest tragedy that could overcome a country would be for it to fight a successful war in defence of liberty and to lose its own liberty in the process.

I think those words, spoken decades ago, still apply to us, very rightly, in Australia. Australia is a nation with strong democratic and human rights traditions. We must be vigilant to protect these tenets of our democracy. The coalition supports the passage of this bill and I commend the bill to the House.