

## As Thailand resumes executions, Australia must push its abolitionist stance

Written by Amy Maguire, Senior Lecturer in International Law and Human Rights, University of Newcastle

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Thailand recently carried out its [first execution](#) since 2009. Theerasak Longji had been convicted of aggravated murder.

This execution ends an almost decade-long *de facto* moratorium on the death penalty in Thailand. Informal moratoriums are often precursors to the abolition of capital punishment, so this is a backward step.

However, despite Thailand having written the moratorium into a national action plan on human rights, courts continued to hand down death sentences over the past ten years. According to the [Corrections Department](#), 517 people currently face a sentence of death.

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**Read more:** [\*\*\*Despite a reduction in executions, progress towards the abolition of the death penalty is slow\*\*\*](#)

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Close to half of those facing a death sentence were convicted of murder. A similar proportion were convicted of drug crimes. A number of other crimes are punishable by death, and it appears that [mandatory death sentences](#) apply in some cases.

Thai lawyers have [claimed](#) that judges are particularly unlikely to consider mitigating factors in relation to drug trafficking charges.

## Australian national under death sentence in Thailand

Australian man [Antonio Bagnato](#) is on death row in Thailand. He was convicted of the murder of Wayne Schneider in 2015. Bagnato has a current [appeal](#) in the Thai courts, which could take years to be resolved.

A [coronial inquest](#) held in Sydney in December 2017 concluded that Schneider died of injuries sustained during a beating, which NSW police believe Bagnato orchestrated. However, it is also believed that Schneider died alone, having been left temporarily by his attackers.

Bagnato is reported to have told police that Schneider's death was "[an accident](#)". Should an appeal court find that Bagnato did not intend to cause Schneider's death, this could reduce his culpability and spare him from a death sentence.

## Opposing the death sentence for Bagnato

Bagnato's case has had relatively little coverage in Australia. In contrast, there was an [intense focus](#) on the [death sentences](#) for Andrew Chan and Myuran Sukumaran in Indonesia. Public and political perceptions of Bagnato's character and crime are hardly likely to attract a groundswell of popular support on his behalf.

In such a case, it is essential to distinguish between the crime and perpetrator on one hand, and the punishment of death on the other. Advocacy against the death penalty does not require the defence of a convicted person or their crime.

Australia should take every opportunity to intervene diplomatically in favour of the quashing of Bagnato's death sentence. Australia has strong diplomatic relations with Thailand that can be leveraged in this effort.

Australia should also advocate against Thailand's resumption of executions more broadly. Capital punishment is to be opposed for several reasons:

- it violates the [right to life](#) and the right to [freedom from torture](#)
- it constitutes [cruel and unusual punishment](#)
- it is becoming increasingly common for countries to [turn away](#) from the death penalty, whether in law or practice or both
- it is impossible to ensure [innocent people](#) will not be executed if a country practices capital punishment

- the punishment lacks any [deterrent value](#) beyond the deterrent value of imprisonment, which itself is generally low
- it is very [costly](#), in monetary terms and in terms of the stains it leaves on a country's criminal justice process.

## Australia acting to enhance its abolitionist advocacy

I have previously [reported](#) on the Australian government's patchy uptake of recommendations from the 2016 report, [A World Without the Death Penalty](#). This [report](#), from the parliamentary inquiry charged with enhancing Australia's advocacy for death penalty abolition, made 13 recommendations to government.

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**Read more:** [What more can Australia do to end the death penalty worldwide?](#)

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The government's initial response, 10 months after the report, did not show overwhelming [support](#) for the committee's work.

However, progress has come this month with the [publication](#) of Australia's Strategy for Abolition of the Death Penalty by the Department of Foreign Affairs and Trade (DFAT).

It should be noted that two areas of Australia's interaction with capital punishment have been kept [deliberately separate](#) from the strategy. The strategy does not seek to guide Australia's consular support for Australian nationals facing the death penalty overseas. Guidelines for such arrangements are contained in the DFAT Consular Policy Handbook.

The more controversial matter of Australia's cooperation with foreign police has also been left out of the strategy. The government has [rejected](#) the specific recommendation to amend Australian Federal Police (AFP) guidelines to protect against the overseas conviction of

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Australian nationals in cases where the death penalty could apply.

The government claims that any restrictions on the AFP's collaboration with foreign police would be compromised by insisting that this not lead to death sentences.

However, other aspects of the strategy represent important steps towards Australia's [goal](#) of death penalty abolition. This effort was one of Australia's [primary pledges](#) in its campaign for membership of the UN Human Rights Council.

The strategy strongly reinforces the principled reasons for Australia's opposition to capital punishment. It emphasises the universal nature of abolitionist advocacy:

Australia opposes the death penalty in all circumstances for all people.

The strategy sets out pragmatic policy goals that take into account the often gradual process of abolition in a given jurisdiction. Australia will, for example, advocate for retentionist countries to abolish the death penalty for pregnant women, juveniles and people with mental and intellectual disabilities.

All Australian diplomatic missions will be required to report at least annually on the status of the death penalty in their country of accreditation. They will work to build links with agencies advocating for abolition. Australian officials will raise the death penalty as a priority human rights issue in political meetings and official visits.

Australia also commits to increasing its abolitionist advocacy in the UN, ASEAN, Pacific Islands Forum and the Commonwealth. It will look to fund civil society agencies engaged in abolitionist advocacy, and support awareness-raising events around the world.

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These commitments are to be welcomed, particularly because they are represented as a whole-of-government strategy grounded in human rights principles. They reflect Australia's [comprehensive legal prohibition](#) on the death penalty and evidence a desire for Australia to be a leader in global abolition efforts.

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