Law Council
OF AUSTRALIA

4 November 2026

Mr Jason Lim
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
BARTON ACT 0221

By email: jason.lim@dfat.gov.au

Dear Mr Lim

Australia–Vietnam 2026 Human Rights Dialogue: Civil Society Consultation

1. The Law Council of Australia welcomes the opportunity to engage with the Department of Foreign Affairs and Trade (**DFAT**) through its Civil Society Consultation, and to provide a submission ahead of the 21st Australia–Vietnam Human Rights Dialogue (**Dialogue**).

2. The Law Council thanks its National Human Rights Committee for its contribution to this submission.

3. The Law Council's submission is focused on the death penalty, the independence of the judiciary and legal profession, Vietnam's engagement with UN Human Rights Council special procedures, and the recent arrest of Australian-Vietnamese democracy advocate Mr Hiep Tran.

Death Penalty

4. The Law Council has a longstanding policy against the death penalty in all circumstances for all people.[1] The Law Council believes that, because all States are bound by customary international law on the subject and some States are bound by specific treaty obligations, the imposition and execution of the death penalty by any State is a legitimate subject of scrutiny and comment by individuals and agencies within and outside the State and indeed by other States.

5. Australia recently launched its updated Strategy for the Global Abolition of the Death Penalty, which sets out its approach to engagement and advocacy across bilateral and multilateral contexts.[2] The Strategy outlines thirteen policy goals for Australia's international engagement,[3] including to:

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1 Law Council of Australia, Law Council Policy Statement on the Death Penalty (Policy Statement, October 2021).
2 Department of Foreign Affairs and Trade, *Australia's Strategy for Global Abolition of the Death Penalty* (October 2026).
3 Ibid, 7.

(a) reduce the number of crimes attracting the death penalty, especially where inconsistent with international legal obligations relating to imposition of the death penalty, including for acts which do not meet the threshold of 'most serious crimes' under the International Covenant on Civil and Political Rights (**ICCPR**);[4]

(b) comply with relevant obligations under international law, including ensuring that individuals facing a death sentence can access adequate legal representation and that their rights to a fair trial and due process are realised at all stages of legal proceedings; and

(c) increase transparency on the application of the death penalty, including by releasing comprehensive and disaggregated statistics on the use of the death penalty.

6. The Strategy notes that Australia will raise the abolition of the death penalty as a priority human rights issue wherever appropriate, including during bilateral human rights dialogues. It also notes that Australian missions in retentionist countries will develop and implement tailored bilateral strategies to account for specific circumstances, opportunities and risks.[5]

7. At the time of writing, Vietnam maintains the death penalty for 10 criminal offences, including offences which do not meet the threshold of the 'most serious crimes' under Article 6(2) of the ICCPR, which Vietnam has ratified.[6] Amnesty International has reported that of the 132 death sentences recorded in Vietnam in 2025, 100 were imposed for drug-related offences.[7] Comprehensive data on the number of persons executed or on death row in Vietnam is unavailable, as data on capital punishment is considered a state secret.[8]

8. The Law Council welcomes Vietnam's efforts to reduce the number of offences that carry the death penalty, particularly drug-related offences. In its previous submission to DFAT, the Law Council noted amendments to Vietnam's penal code adopted in 2025 that reduced the number of crimes punishable by the death penalty.[9] The offences included activities aimed at overthrowing the people's government, espionage, sabotage of material and technical infrastructure of the Socialist Republic of Vietnam, production and trading of counterfeit medicines, illegal transportation of drugs, accepting bribes, embezzlement of property, and disrupting peace and waging aggressive war.[10]

9. In recent months, the Law Council understands that the Government of Vietnam has proposed a further narrowing of the use of the death penalty, including removing the

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4 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

5 DFAT, Australia's Strategy for Global Abolition of the Death Penalty (above, n 2) 10.

6 *ICCPR*, (above n 4).

7 Amnesty International, *Amnesty International Global Report Death Sentences and Executions 2025* (Report, 18 May 2026) 25.

8 Human Rights Council, *Compilation of information prepared by the Office of the United Nations High Commissioner for Human Rights*, UN Doc A/HRC/WG.6/46/VNM/2 (27 February 2024) 2.

9 See Law Council of Australia, *Australia-Vietnam 2025 Human Rights Dialogue: Civil Society Consultation* (Submission, 1 July 2025).

10 Penal Code (Vietnam) arts 109, 110, 114, 194, 250, 353, 354 and 421.

death penalty for six additional offences: illegal drug trafficking, rape of a minor under 16, rioting, crimes against humanity, war crimes and terrorism (by merging the state-opposing terrorism offence under Article 113 to the broader terrorism offence under Article 299).[11]

10. We urge the Australian Government to use this Dialogue to encourage the Government of Vietnam to further limit the application of the death penalty under domestic law, and to ensure that the right to access adequate legal representation and fair trial and due process guarantees are realised at all stages of proceedings.

11. We also reiterate our recommendation made in previous Civil Society Consultations that DFAT use this Dialogue as an opportunity to advocate for increased transparency and regular reporting regarding the imposition of the death penalty in Vietnam.

Independence of the judiciary and the legal profession

12. The right, in full equality, to a fair and public hearing by an independent and impartial tribunal is enshrined both in the Universal Declaration of Human Rights and the ICCPR.[12]

13. According to the UN Human Rights Committee, the requirement of independence and impartiality under Article 14(1) of the ICCPR is an absolute right, and refers to procedures for appointment as well as the actual independence of the judiciary from political interference by the executive branch.[13]

14. The Law Council maintains its concerns in relation to the independence of Vietnam's judiciary. While independence of the judiciary is guaranteed by statute[14] and the Vietnamese Constitution,[15] the appointment of judges is directly influenced by the Communist Party of Vietnam (**CPV**).

15. The Law Council understands that the Vietnam Bar Federation and local bar associations also lack independence. All leaders of these legal professional associations must be CPV members, and CPV leaders must agree to their appointments.[16] The Law Council has previously noted reports that lawyers risk harassment, expulsion from the bar and imprisonment for defending their clients.[17]

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[11] Penal Code (Vietnam) arts 112, 113, 142, 299, 251, 422 and 423. See Vietnam News, 'Vietnam explains proposal to remove death penalty for drug trafficking, child rape' *Tuoi Tre News* (25 September 2026).

[12] *Universal Declaration of Human Rights*, GA Res 217A (III) UN GAOR, UN Doc A/810 (10 December 1948) Article 10; *ICCPR* (above n 4) art 14.

[13] Human Rights Committee, *General Comment No. 32 Article 14: Right to equality before courts and tribunals and to a fair trial*, UN Doc CCPR/C/GC/32 (23 August 2007) 5.

[14] See for example, Law on the Organization of People's Courts, The National Assembly (Vietnam) Order No 34/2024/QH15, 24 June 2024, art 11.

[15] The Constitution of the Socialist Republic of Vietnam (Vietnam) art 103.

[16] Börje Ljunggren, Vietnam – the scope and limits of transition *The Swedish Institute of International Affairs* (2024) 7.

[17] Human Rights Council, *Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21* UN Doc A/HRC/WG.6/18/VNM/3 (7 November 2013) 32. See also, Lawyers for Lawyers, 'Lawyers forced to flee their country' (27 September 2023).

16. This year, the independence of Vietnam's legal profession has been placed under additional pressure following the issue of Decree No. 109/2026/NĐC-P (**Decree 109**), which entered into force on 18 May 2026. The Decree empowers State authorities to impose administrative sanctions on lawyers, law firms and professional organisations – including by issuing fines, suspending or revoking practising rights, and suspending law practices from operating.[18]

17. The Law Council shares concerns that the Decree may interfere with the ability of lawyers to perform their professional functions independently and without improper interference, with provisions regulating lawyers' speech, conduct in proceedings, advice to clients, and interaction with procedural bodies and government agencies.[19] Moreover, the Decree's broadly-framed provisions may capture ordinary acts of legal representation and be arbitrarily or selectively enforced.[20] For example, the Decree prescribes fines for conduct "aimed at delaying, prolonging, creating difficulty for, or obstructing the activities of procedural bodies and other State agencies" and acts "insulting the honour" of authorities or "affecting the image and reputation" of the legal profession.[21]

18. The Law Council also notes concerns that the Decree further undermines the institutional autonomy of legal professional associations and their exercise of regulatory functions by exposing them to potential administrative sanction in relation to their governance, activities and training functions.[22]

19. The Vietnamese Government has justified the Decree as "merely prescrib[ing] sanctions for violations of law committed by lawyers" and sought to distinguish the administrative sanctions from the existing disciplinary framework for lawyers and law firms provided under the Law on Lawyers.[23]

20. The Law Council calls on the Australian Government to urge Vietnam to comply with both the UN *Basic Principles on the Independence of the Judiciary* and the *Basic Principles on the Role of Lawyers,* noting that although these instruments do not constitute binding international law obligations, they have been formulated to assist UN Member States in their task of securing and promoting the independence of the judiciary and promoting and ensuring the proper role of lawyers.

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18 Communication from the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights defenders to the Government of Vietnam OL VNM 2/2026 (Communication 2/2026) (17 June 2026).

19 Ibid 4. See also Human Rights Watch, 'Vietnam: New Retaliatory Decree Targets Lawyers' (News Release, 23 April 2026); Lawyers for Lawyers, 'Concerns over Decree 109/26 threatening the independence of lawyers in Viet Nam' (14 May 2026); Asian Lawyers Network, 'ALN Protests the Passage of Vietnam's Decree 109/2026 and its Abusive Targeting of Lawyers and Legal Activities' (Media Release, 25 May 2026); Tap Chi DongNamA, 'Proposal to temporarily suspend the regulation on penalties for lawyers in Decree 109' *DongNamA* (7 May 2026).

20 Lawyers for Lawyers, 'Concerns over Decree 109/26 threatening the independence of lawyers in Viet Nam' (14 May 2026).

21 Communication 2/2026 (above n 18) 3.

22 Ibid 8.

23 Correspondence from Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, World Trade Organization and other International Organizations in Geneva to the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights, 18 August 2026.

Human rights special procedures

21. The Law Council understands that Vietnam has still not extended a standing invitation to the special procedures of the UN Human Rights Council and that several requests for country visits remain pending.[24]

22. The Law Council reiterates its recommendation that Australia encourage Vietnam to join the 128 UN Member States which have issued a standing invitation to the special procedures of the Human Rights Council, noting that specific dates for visits must still be mutually agreed upon.

Individual cases

23. The Law Council is concerned by the recent arrest of Australian-Vietnamese pro-democracy campaigner, Mr Hiep Tran. Mr Tran was detained and charged with terrorism offences in September 2026.[25] We note that Mr Tran, his family and supporters have challenged the account of Vietnamese authorities regarding the circumstances leading to his arrest.

24. The Law Council encourages the Australian Government to continue to make representations in the case of Mr Tran.[26]

25. More broadly, we encourage the Australian Government to use the Dialogue as an opportunity to advocate against the continued repression of human rights defenders and pro-democracy advocates in Vietnam, and draw attention to the violation of fair trial standards and discriminatory treatment of political prisoners in detention.

Contact

26. If you wish to discuss this submission, or have any questions or comments, please contact Dominic Harvey-Taylor, Senior Policy Lawyer on +61 2 6246 3798 or by email to [redacted].

Yours sincerely



Elizabeth Shearer
President-elect

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[24] Office of the United Nations High Commissioner for Human Rights 'Standing Invitations' (Website, accessed 26 October 2026) <https://spinternet.ohchr.org/standinginvitations.aspx>.

[25] Victoria Pengilley, 'Former detainee warns Australian activist Hiep Tran could face years behind bars in Vietnam' *ABC News* (1 October 2026).

[26] Evidence to Senate Foreign Affairs, Defence and Trade Legislation Committee, Parliament of Australia, Canberra, 28 October 2026 (Elizabeth McGregor, First Assistant Secretary, Consular and Crisis Management Division).