



Law Council  
OF AUSTRALIA

United Nations Human Rights Council  
45th Regular Session  
14 September – 6 October 2020  
Agenda Item 3

**Item 3: Interactive dialogue with the Working Group on arbitrary detention  
Statement presented to the 45<sup>th</sup> session of the Human Rights Council  
by the Law Council of Australia**

**18 September 2020**

The Law Council of Australia commends the Working Group on Arbitrary Detention for its timely reiteration of the importance of the right to legal assistance across all settings of detention.

The right to legal assistance must be ensured from the moment of deprivation of liberty, and includes guaranteeing access to effective legal representation to all persons at all stages of criminal proceedings.<sup>i</sup> This is fundamental to realising the right to a fair trial.

Effective access includes adequate opportunity, time and facilities to communicate with legal counsel without delay, interception or censorship.<sup>ii</sup> This threshold is heightened where the charges faced, or the penalties attached, are serious.

Independent legal advice by counsel of the person's choice should be granted before questioning by authorities, and the presence of counsel during questioning provides an important safeguard to ensure that any admissions are given freely.<sup>iii</sup>

The Law Council is concerned by State policies and practices that deny access to legal advice during an investigation period and delay access to a lawyer until shortly before trial. This deprives the detained person of their right to challenge the lawfulness of their detention, undermines the presumption of innocence and the fairness of the trial.

We ask the Working Group to reiterate the obligation of states to guarantee effective access to independent, competent legal assistance at all stages of the criminal process; and affirm how this duty continues to apply in the context of national security cases.

Thank you.

**240 words.**

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<sup>i</sup> Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, A/HRC/45/16 (24 July 2020) para 51. See also principles 17 and 18 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, GA Res 43/173 (9 December 1988).

<sup>ii</sup> Rules 61 and 120 of the *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)* A/RES/70/175 (17 December 2015).

<sup>iii</sup> Working Group on Arbitrary Detention, *Report of the Working Group on Arbitrary Detention*, A/HRC/45/16 (24 July 2020) para 53.