
The Parliament of the Commonwealth of Australia

A world without the death penalty

Australia's Advocacy for the Abolition of the Death Penalty

Joint Standing Committee on Foreign Affairs, Defence and Trade

May 2016
Canberra

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Foreword

There is no place for the death penalty in the modern world. State execution is a barbaric act that demeans the State that carries it out. The death penalty is cruel and inhumane, and is inevitably associated with miscarriages of justice, the inadvertent execution of innocents, and the disproportionate execution of the poor and ethnic and religious minorities. Not only does an eye for an eye leave the world blind, but the deliberate destruction of human life as a response to crime is an affront to the 'right to life', enshrined under international human rights law.

The world has come a long way towards ceasing the practice of capital punishment. Amnesty International tells us that in 1977 only 16 countries had abolished the death penalty. Since that year, Amnesty and many others have campaigned vigorously for an end to capital punishment, and by 2015 140 countries had abolished it law or in practice.

However, there is no room for complacency. There are still 56 countries that actively retain the death penalty, including some that execute hundreds of people each year. Disturbingly, the year 2015 saw the highest number of executions recorded worldwide since 1989. It also saw the appalling executions of Australians Andrew Chan and Myuran Sukumaran in Indonesia for drug trafficking, despite impassioned appeals from many Australians and sympathetic Indonesians.

Thankfully this spike in executions was counterbalanced by four countries abolishing the death penalty for all crimes. This was the highest number to join the abolitionist list in a single year for almost a decade. Half of the countries in the world have now abolished capital punishment completely.

Australia has long supported abolition, and is an active advocate on the world stage. As a nation, we can be proud of our advocacy and our support for the United Nations' work on abolition. But Australia can do more. Evidence received

in the course of this inquiry offered many ideas for invigorating Australia's advocacy; from multilateral and bilateral strategies, to an increase in funding for civil society organisations, especially those in retentionist countries. Witnesses also offered useful suggestions for improving Australia's messaging around our opposition to capital punishment.

In light of evidence received, this report makes recommendations that go towards focussing Australia's international advocacy and dedicating additional resources to this work. Specifically, the report recommends the Australian Government develop, fund and implement a whole-of-government strategy that focusses our efforts on retentionist countries in the Indo-Pacific region, as well as our ally the United States of America. The recommendations propose overarching goals for the strategy, as well as concrete actions to focus Australia's efforts.

The inquiry also facilitated an energetic discussion on the issue of drug trafficking and law enforcement, with many witnesses concerned about the number of people executed for drug-related crimes, particularly in Asia and the Middle East. As such, the report makes recommendations aimed at strengthening the safeguards currently in place to prevent exposing people to the death penalty as a result of police-to-police cooperation on transnational crime.

On behalf of the Committee I would like to thank the foreign governments, Australian government agencies, academics, legal professionals, non-government organisations and individuals who made submissions to the inquiry or appeared at public hearings and private briefings. Your ideas and expertise were invaluable to the Committee in the production of this report. As Chair of the Human Rights Sub-Committee I would also like to thank my Committee colleagues, who have engaged closely with the inquiry, many of whom are strong advocates against capital punishment in their own work.

This report comes at a critical juncture in the movement for abolition. As Australia campaigns for a seat on the United Nations Human Rights Council for the period 2018-2020, we have additional opportunities for advocating for abolition around the world. If we do not wish to see a further increase in executions, as we have in 2015, we must continue to campaign in a strong and consistent manner to rid the world of this cruel practice for all time.

The Hon Philip Ruddock MP
Chair
Human Rights Sub-Committee

Membership of the Joint Standing Committee on Foreign Affairs, Defence and Trade

Chair	The Hon Teresa Gambaro MP	
Deputy Chair	Mr Nick Champion MP	
Members	The Hon Bob Baldwin MP (from 19 October 2015)	Senator Mark Bishop (until 30 June 2014)
	The Hon Michael Danby MP	Senator Sean Edwards (from 1 July 2014)
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	Mr Laurie Ferguson MP	Senator David Fawcett
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	Mr Andrew Nikolic AM CSC MP	Senator Stephen Parry (until 30 June 2014)

The Hon Melissa Parke MP
(from 3 September 2014 to 10 February 2015 and
from 24 June 2015)

Mr Keith Pitt MP
(from 19 October 2015 to 2 March 2016)

The Hon Tanya Plibersek MP
(until 24 June 2015)

Mrs Jane Prentice MP
(from 22 September 2014 to 2 March 2016)

Mr Don Randall MP
(until 21 July 2015)

Mr Wyatt Roy MP
(until 21 September 2015)

The Hon Philip Ruddock MP

The Hon Bruce Scott MP

Mr Luke Simpkins MP
(until 22 September 2014)

The Hon Dr Sharman Stone MP

Ms Maria Vamvakinou MP

Mr Nickolas Varvaris MP
(from 19 October 2015)

Mr Matt Williams MP
(from 2 March 2016)

Senator Linda Reynolds CSC
(from 1 July 2014)

Senator the Hon Lisa Singh

Senator the Hon Ursula Stephens
(until 30 June 2014)

Senator Peter Whish-Wilson

Senator Nick Xenophon

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Members	Mr Nick Champion MP <i>ex officio</i>	Senator the Hon Lisa Singh
	The Hon Michael Danby MP	
	Mr Laurie Ferguson MP	
	The Hon Teresa Gambaro MP <i>ex officio</i>	
	The Hon Alan Griffin MP (from 4 December 2013 until 3 September 2014) (from 11 February 2015)	
	Mr Ewen Jones MP (23 June 2015 until 11 November 2015)	
	The Hon Melissa Parke MP (from 24 September 2014 to 10 February 2015) (and from 12 August 2015)	
	Mrs Jane Prentice MP (from 24 September 2014 to 2 March 2016)	
	The Hon Dr Sharman Stone MP (from 4 December 2013 until 3 September 2014) (until 9 September 2015)	
	Ms Maria Vamvakinou MP	

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Terms of reference

The Joint Standing Committee on Foreign Affairs, Defence and Trade shall inquire into and report on Australia's efforts to advocate for worldwide abolition of the death penalty, having particular regard to:

1. reviewing how Australia currently engages internationally to promote abolition of the death penalty; and
2. further steps Australia could take to advocate for worldwide abolition, including by:
 - i. engaging with international institutions and likeminded countries;
 - ii. cooperating with non-government organisations;
 - iii. bilateral engagements and other diplomatic activities; and
 - iv. other appropriate means.



List of abbreviations

ABA	Australian Bar Association
ACLU	American Civil Liberties Union
ACP-EU	Africa Caribbean Pacific - European Union Joint Parliamentary Assembly
ACU	Australian Catholic University
ADPAN	Anti-Death Penalty Asia Network
AFP	Australian Federal Police
AGD's	Attorney General's Department
AICHR	ASEAN Intergovernmental Commission on Human Rights
ALHR	Australian Lawyers For Human Rights
AMA	American Medical Association
ANU	Australian National University
APF	Asia Pacific Forum of National Human Rights Institutions
ASEAN	The Association of Southeast Asian Nations
CHOGM	Commonwealth Heads of Government Meeting
CLA	Civil Liberties Australia
CND	Commission on Narcotic Drugs

DFAT	Department of Foreign Affairs and Trade
DIBP	Department of Immigration and Border Protection
EC	European Commission
ECHR	European Convention on Human Rights
ECPM	<i>Ensemble Contre la Peine de Mort</i> - Together Against the Death Penalty
EJUSA	Equal Justice USA
EU	European Union
FCO	Foreign & Commonwealth Office - UK Government
FLEAs	Foreign Law Enforcement Agencies
HMG	Her Majesty's Government - UK
HRC	Human Rights Council
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
IDPC	International Drug Policy Consortium
LCA	Law Council of Australia
LCAC	Louisiana Capital Assistance Center
MCAM	Mutual Assistance in Criminal Matters Act 1987 (Cth)
NADP	Nebraskans for Alternatives to the Death Penalty
OHCHR	Office of the High Commissioner for Human Rights
PGA	Parliamentarians for Global Action
QoN	Questions on Notice
UDHR	Universal Declaration of Human Rights
UN	United Nations

UNGA	United Nations General Assembly
UNGASS	UN General Assembly Special Session
UNODC	United Nations Office on Drug and Crime
UPR	Universal Periodic Review - at the United Nations Human Rights Council
WCADP	World Coalition Against the Death Penalty



List of recommendations

3 Australia and the death penalty

Recommendation 1

The Committee recommends that the Attorney-General's Department conduct a review of the current legislative arrangements for extradition and mutual assistance to ensure that they uphold Australia's obligations as a signatory to the Second Optional Protocol to the International Covenant on Civil and Political Rights.

4 Law enforcement and the death penalty

Recommendation 2

The Committee recommends the *Australian Federal Police (AFP) National Guideline on International Police-to-Police Assistance in Death Penalty Situations* (the Guideline) be amended to include a stronger focus on preventing exposure of all persons to the risk of the death penalty, by:

- articulating as its primary aim preventing the exposure of persons to arrest or charge in retentionist countries for crimes that are likely to attract the death penalty;
- explicitly applying the Guideline to all persons, not just Australian citizens;
- including a requirement that the AFP seek assurances from foreign law enforcement bodies that the death penalty will not be sought or applied if information is provided;
- including a provision that, in cases where the AFP deems that there is a 'high risk' of exposure to the death penalty, such cases be directed to the Minister for decision; and
- articulating the criteria used by the AFP to determine whether requests are ranked 'high', 'medium' or 'low' risk.

Recommendation 3

In light of the United Nations' position that drug crimes, including drug trafficking, do not constitute 'most serious crimes' for which the death penalty may be applied under international law, the Committee recommends that the Australian Federal Police (AFP) obtain guarantees that prosecutors in partner countries will not seek to apply the death penalty before providing information in relation these crimes. In situations where such guarantees cannot be obtained, the AFP should withhold provision of information that may be relevant to the cases concerned.

5 Australia's international engagement

Recommendation 4

The Committee recommends that the Australian Government revisit the 2011 decision to decline becoming a member of the international group the 'Friends of the Protocol'.

Recommendation 5

The Committee recommends that the Department of Foreign Affairs and Trade develop guidelines for the Department's support for Australians at risk of facing the death penalty overseas. This document should guide the coordination of:

- consular assistance;
- diplomatic representations;
- legal support and funding assistance;
- communications and media strategies; and
- other forms of support offered by the Government.

Recommendation 6

The Committee recommends that, where appropriate and especially in relation to public messaging, Australian approaches to advocacy for abolition of the death penalty be based on human rights arguments and include:

- references to human rights law, including highlighting the 'right to life' enshrined in the Universal Declaration of Human Rights;
- condemnation for the imposition of the death penalty on juveniles and pregnant women;
- opposition to its use on people with mental or intellectual disabilities;

-
- highlighting the disproportionate use of capital punishment on the poor, and ethnic and religious minorities;
 - communicating the risks associated with miscarriages of justice, including the irreversibility of capital punishment;
 - emphasising the inherently cruel and torturous nature of the death penalty and executions; and
 - refer to the ineffectiveness of the death penalty as a deterrent.

Recommendation 7

The Committee recommends that the Attorney-General's Department amend the guidelines governing the Serious Overseas Criminal Matters Scheme and the Special Circumstances Scheme, and make necessary adjustments to the schemes' operation, to ensure that:

- legal representatives working pro-bono on death penalty cases can access funding from the schemes in a timely manner;
- where practical, legal representatives are able to communicate with a specific contact person for the duration of a case; and
- where necessary due to time restraints, legal representatives have the ability to apply for funding for reasonable expenses already incurred.

6 Improving Australia's advocacy

Recommendation 8

The Committee recommends that the Department of Foreign Affairs and Trade coordinate the development of a whole-of-government Strategy for Abolition of the Death Penalty which has as its focus countries of the Indo-Pacific and the United States of America.

Recommendation 9

The Committee recommends that the goals of the Strategy for Abolition of the Death Penalty include:

- an increase in the number of abolitionist countries;
- an increase in the number of countries with a moratorium on the use of the death penalty;
- a reduction in the number of executions;
- a reduction in the number of crimes that attract the death penalty;
- further restrictions on the use of the death penalty in retentionist countries of the Indo-Pacific region; and

- greater transparency of states' reporting the numbers of prisoners sentenced to death and executions carried out.

Recommendation 10

The Committee recommends that the specific aims of the Strategy for Abolition of the Death Penalty include:

- acknowledging the positive steps taken by countries in the region, for example where countries reduce the number of crimes that attract the death penalty or remove mandatory death sentences;
- promoting greater transparency in the number of executions carried out in China, Vietnam, Syria, North Korea and Malaysia, the crimes for which death sentences were imposed and the number of people under sentence of death in each country;
- promoting a reduction in the number of crimes that attract the death penalty in China, Vietnam, Thailand, Taiwan and India;
- promoting an end to mandatory sentencing in death penalty cases in Malaysia and Singapore, especially in relation to drug crimes;
- advocating for Pakistan and Indonesia to resume their moratoria;
- advocating for an improvement in the conditions and treatment of prisoners on death row in Japan;
- encouraging Papua New Guinea not to reinstate capital punishment;
- assisting Nauru, Tonga, Republic of Korea and Myanmar to move from abolitionist in practice to abolitionist in law;
- promoting abolition of the death penalty at the federal level in the United States and encouraging state-level moratoria and eventual abolition; and
- forming a coalition of like-minded countries who can work in concert to promote abolition of the death penalty in the Indo-Pacific region.

Recommendation 11

The Committee recommends that the following techniques, among others, be utilised to achieve the aims of the Strategy for Abolition of the Death Penalty:

- intervening to oppose death sentences and executions of foreign nationals, especially in cases where there are particular human rights concerns, such as unfair trials, or when juveniles or the mentally ill are exposed to the death penalty;

-
- commissioning research and analysis to inform the specific actions and advocacy approaches which may be most effective in each priority country;
 - provision of modest annual grants funding to support projects which seek to advance the cause of abolition within the region, such as efforts to influence public opinion, promoting alternatives to the death penalty, engaging with the media, political representatives, religious leaders, the legal profession and policy makers;
 - provision of funding to support the Anti-Death Penalty Asia Network and abolitionist civil society groups within the region, including to assist with advice and representation in individual cases;
 - provision of training and networking opportunities in Australia and elsewhere for representatives of abolitionist civil society groups within the region;
 - where their involvement would help achieve specific objectives under the Strategy, utilising the Australian Parliamentarians Against the Death Penalty group, Parliamentarians for Global Action, and experts such as Australian jurists;
 - engaging with the private sector and supportive high-profile or influential individuals in priority countries, where this may be effective;
 - supporting the continued participation by Australian delegations at the 6th World Congress Against the Death Penalty and subsequent congresses; and
 - Australia to continue to co-sponsor resolutions on abolition of the death penalty at the United Nations.

Recommendation 12

The Committee recommends the Australian Government provide dedicated and appropriate funding to the Department of Foreign Affairs and Trade to fund grants to civil society organisations, scholarships, training, research and/or capacity building projects aimed at the abolition of the death penalty.

Recommendation 13

The Committee recommends that the Australian Government make available to the Department of Foreign Affairs and Trade ongoing operational funds to resource the preparation and implementation of the Strategy for Abolition of the Death Penalty, including a budget for adequate staffing.

