



Australian
Human Rights
Commission

Inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty.

Australian Human Rights Commission

Submission to the Joint Standing Committee on Foreign Affairs,
Defence and Trade.

2 August 2024

ABN 47 996 232 602
Level 3, 175 Pitt Street, Sydney NSW 2000
GPO Box 5218, Sydney NSW 2001
General enquiries 1300 369 711
National Information Service 1300 656 419
TTY 1800 620 241

Australian Human Rights Commission
www.humanrights.gov.au

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1. The Australian Human Rights Commission welcomes the opportunity to make a submission to the Inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty. This submission will focus specifically on Australia's international engagement to promote abolition of the death penalty (Terms of Reference 2) and why it continues to be important for Australia to strongly advocate for global abolition.
2. The primary reasons that this should continue to be a priority for Australia are because the universal abolition of the death penalty remains a key human rights issue, and Australia's continued global leadership is strategically important.
3. Australia's opposition to the death penalty reflects our commitment to universal human rights and has become an express part of our global human rights advocacy. [Australia's Strategy for Abolition of the Death Penalty](#) states that Australia 'opposes the death penalty in all circumstances for all people'¹ and commits Australia to pursuing the universal abolition of the death penalty. Australia's opposition stems from the belief 'as a matter of principle that the death penalty has no place in the modern world. It brutalises human society, is degrading, and is an affront to human dignity'.²
4. Australia should reaffirm this commitment and continue to strengthen our global advocacy towards this goal.

International Engagement

5. Australia's international obligations with respect to the abolition of the death penalty stem primarily from our ratification of both the [International Covenant on Civil and Political Rights](#) ('ICCPR') and the [Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty](#).
6. While there is a clear global trend towards abolition, the death penalty is not yet expressly prohibited in international law. Article 6(2) of the ICCPR imposes strict restrictions on the death penalty in countries which have not abolished its use. Given this, 'a staged, sequenced approach [towards abolition] may be most effective, depending on particular countries circumstances'.³

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7. Australia's global leadership on this issue has been evident in recent years. Recent examples include Australia:
- Delivering the [CANZ Statement on High-Level Panel on the Death Penalty](#) on behalf of Canada, New Zealand and Australia on 28 February 2023;
 - Presenting, with Costa Rica, the biennial resolution on a [Moratorium on the use of the death penalty](#) that was adopted by the General Assembly on 15 December 2022;
 - [Australia's Input: Secretary-General's Report on a Moratorium on the Use of the Death Penalty](#)
 - Delivering the [Joint statement led by Australia on the death penalty as a punishment for blasphemy and apostasy](#) on 9 March 2021 on behalf of more than 40 states.

Continuing Use of the Death Penalty

8. Despite these and other efforts, global use of the death penalty has been increasing. [Amnesty International](#) reported that there were 1,153 recorded executions in 16 countries in 2023, which marks a 31 per cent increase in the number of executions that occurred when compared to the year before.⁴ This is the highest number of executions that have been reported since 2015. The same report recorded 2,428 new death sentences being imposed across 52 countries in 2022.⁵ At the end of 2023, at least 27,687 people around the world were facing death sentences.⁶
9. Australia should be particularly concerned about the way that the death penalty is being both imposed and carried out. For example, the [Special Rapporteur on the situation of human rights in the Islamic Republic of Iran](#) reported that the Iranian authorities have executed at least eight protestors in connection with the nationwide protests that occurred following the death in custody of Iranian woman Mahsa Amini on 16 September 2022. This includes Mohammad Mehdi Karami, a 22-year-old karate champion who was executed after reportedly being given less than 15 minutes to defend himself in court, and Milad Zohrevand, a 20-year-old male who was secretly executed without prior notice being given to his family.⁷ The [UN Human Rights Commission's fact-finding mission on Iran](#) has suggested that these penalties 'are being imposed following legal proceedings that lack transparency and fail to meet basic fair trial and due process guarantees under international human rights law'.⁸

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10. In the United States of America, the [Death Penalty Information Centre](#) labelled 2022 'the year of the botched execution'.⁹ A shortage of lethal-injection drugs resulted in Idaho passing a law (which took effect on 1 July 2023) authorizing executions by firing squads,¹⁰ and on 25 January 2024 Alabama became the first place in the world to execute a prisoner using nitrogen hypoxia. In calling for a ban on the use of nitrogen gas inhalation as a method of execution, UN experts described the execution of Kenneth Smith as 'nothing short of State-sanctioned torture'.¹¹
11. Australia's continued leadership in this area is strategically significant given that the list of retentionist countries around the world includes some of our key allies and regional neighbours. Examples include the United States of America, Singapore, Japan and Indonesia. This gives rise to both opportunities and risks for Australia when advocating for the abolition of the death penalty internationally. Continuing to take a principled stance on this issue will provide a tangible demonstration of Australia's commitment to human rights and the rule of law, promote international dialogue on human rights, and contribute to a more just and humane global society.
12. A key step in Australia continuing to effectively advocate for the universal abolition of the death penalty is the renewal and updating of [Australia's Strategy for Abolition of the Death Penalty](#). This Strategy was first published in June 2018. The updating of this Strategy should be prioritized by government, and the Department of Foreign Affairs and Trade should be appropriately resourced to ensure that the updated Strategy can be effectively implemented.

Recommendation 1:

The Australian Government should prioritize the updating of Australia's Strategy for Abolition of the Death Penalty and ensure that the Department of Foreign Affairs and Trade is provided with sufficient resources to allow for the effective implementation of the updated Strategy.

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Domestic Advocacy

13. While this Inquiry is focused on Australia's efforts to advocate for the worldwide abolition of the death penalty, it is also important not to lose sight of the need for continued domestic education and advocacy on this issue. The prohibition on the death penalty throughout Australia is clearly set out in the *Death Penalty Abolition Act 1973* (Cth). For many decades Australia's opposition to the death penalty has been 'bipartisan, multipartisan, unanimous, principled, consistent and well known'.¹² However, we cannot simply assume that future generations of Australians will automatically be abolitionist, or that they will necessarily understand why Australia has consistently opposed the death penalty for so many years.
14. It is important to ensure that Australians continue to understand exactly why the death penalty should never be used. This includes 'that it is an irrevocable punishment and for that reason alone has no place in an inevitably imperfect criminal justice system. It is too often used disproportionately against the most vulnerable and disadvantaged, is not an effective deterrent, and is irreconcilable with both human dignity and the right to life'.¹³
15. Strengthening human rights education and pro-actively building a culture within Australia of respect for human rights and dignity are essential if we want to ensure that progress on key human rights issues – such as the abolition of the death penalty – is not reversed in the future.

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Endnotes

- ¹ Department of Foreign Affairs and Trade, *Australia's Strategy for Abolition of the Death Penalty* (June 2018). <<https://www.dfat.gov.au/sites/default/files/australia-strategy-abolition-death-penalty.pdf>>.
- ² Department of Foreign Affairs and Trade, *Australia's Input: Secretary-General's Report on a Moratorium on the Use of the Death Penalty*. <<https://www.ohchr.org/sites/default/files/documents/issues/deathpenalty/moratorium-2022/member-states/2022-07-12/CFI-DP-2022-australia.pdf>>.
- ³ Department of Foreign Affairs and Trade, *Australia's Input: Secretary-General's Report on a Moratorium on the Use of the Death Penalty*. <<https://www.ohchr.org/sites/default/files/documents/issues/deathpenalty/moratorium-2022/member-states/2022-07-12/CFI-DP-2022-australia.pdf>>.
- ⁴ Amnesty International, *Death Sentences and Executions 2023* (Amnesty International Global Report, 2024). <<https://www.amnesty.org/en/documents/act50/7952/2024/en/>>.
- ⁵ Amnesty International, *Death Sentences and Executions 2023* (Amnesty International Global Report, 2024). <<https://www.amnesty.org/en/documents/act50/7952/2024/en/>>.
- ⁶ Amnesty International, *Death Sentences and Executions 2023* (Amnesty International Global Report, 2024). <<https://www.amnesty.org/en/documents/act50/7952/2024/en/>>.
- ⁷ Javaid Rehman, *Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran*, UN Doc A/HRC/55/62 (9 February 2024), [12]-[14]. <<https://documents.un.org/doc/undoc/gen/g24/012/59/pdf/g2401259.pdf?token=Dx1LWYUvnUp2DUqnxP&fe=true>>.
- ⁸ Independent International Fact-Finding Mission on the Islamic Republic of Iran, *Iran must end crackdown against protesters and uphold rights of all Iranians, especially women and girls, Fact-Finding Mission say* (Press Release, 5 July 2023). <<https://www.ohchr.org/en/press-releases/2023/07/iran-must-end-crackdown-against-protesters-and-uphold-rights-all-iranians>>.
- ⁹ Death Penalty Information Centre, *Death Penalty Information Center 2022 Year End Report* (16 December 2022). <<https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2022-year-end-report>>.
- ¹⁰ Death Penalty Information Centre, *Death Penalty Information Center 2023 Year End Report* (1 December 2023). <<https://deathpenaltyinfo.org/facts-and-research/dpic-reports/dpic-year-end-reports/the-death-penalty-in-2023-year-end-report>>.
- ¹¹ Office of the United Nations High Commissioner for Human Rights, *United States: UN experts horrified by Kenneth Smith's execution by nitrogen in Alabama* (Press Release, 30 January 2024). <<https://www.ohchr.org/en/press-releases/2024/01/united-states-un-experts-horrified-kenneth-smiths-execution-nitrogen-alabama>>.
- ¹² Commonwealth, *Parliamentary Debates*, House of Representatives, 15 June 202, 4367 (The Hon. Scott Morrison MP). <https://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/16283df1-dcd4-4919-bcd2-4f21c8ca3c60/0299/hansard_frag.pdf;fileType=application%2Fpdf>.
- ¹³ Lorraine Finlay and Zahli Hansen, 'Why World Day Against the Death Penalty matters in Australia', *The Strategist* (10 October 2023). <<https://www.aspistrategist.org.au/why-the-world-day-against-the-death-penalty-matters-in-australia/>>.