



Australian Government

Department of Foreign Affairs and Trade



AUSTRALIA'S STRATEGY FOR ABOLITION OF THE DEATH PENALTY

June 2018

STATEMENT OF INTENT

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

We support the universal abolition of the death penalty and are committed to pursuing this goal through all the avenues available to us.

This whole-of-government strategy sets out Australia's policy on the death penalty, outlines our overarching approach to pursuing global abolition of the death penalty, and provides guidance to Australian overseas missions on developing and implementing advocacy strategies to pursue abolition.

This strategy does not consider:

- Australia's approach to government-to-government assistance or police cooperation in a death penalty context – governed by the *Extradition Act 1988*, the *Mutual Assistance in Criminal Matters Act 1987* and the Australian Federal Police National Guideline on international police-to-police assistance in death penalty situations; or
- Australia's support for Australians at risk of facing the death penalty overseas – this function is guided by the Department of Foreign Affairs and Trade (DFAT) Consular Policy Handbook, which includes specific guidelines for supporting Australians and Australian long-term residents facing the death penalty overseas.

CONTENTS

STATEMENT OF INTENT	i
AUSTRALIA'S OPPOSITION TO THE DEATH PENALTY	2
Why is abolition of the death penalty important?	2
Australia's policy goals	3
International legal framework	4
BILATERAL ADVOCACY	5
Briefing and regular reporting	5
Representations	6
Project support	7
Public diplomacy	7
MULTILATERAL ADVOCACY	8
United Nations	9
ASEAN	9
Pacific Islands Forum	9
Commonwealth	9
CIVIL SOCIETY ENGAGEMENT	10
THE ROLE OF OTHER AUSTRALIAN GOVERNMENT AGENCIES	11
APPENDIX: MINIMUM STANDARDS	12

AUSTRALIA'S OPPOSITION TO THE DEATH PENALTY

All jurisdictions in Australia abolished the death penalty by 1985. In 2010, the federal government passed legislation that prohibited the reintroduction of capital punishment. Abolition of the death penalty has broad bipartisan political support.

Reflecting our commitment to universal human rights, we believe as a matter of principle that the death penalty has no place in the modern world. It brutalizes human society, is degrading, and is an affront to human dignity.

In particular, we oppose the death penalty because:

- it is irrevocable, miscarriages of justice cannot be rectified, and no legal system is safe from error;
- it denies any possibility of rehabilitation to the convicted individual;
- there is no convincing evidence that it is a more effective deterrent than long-term or life imprisonment; and
- it is unfair – it is used disproportionately against the poor, people with intellectual or mental disabilities and minority groups.

The international trend is strongly in favour of global abolition – we want this to continue. Australia will be a leader in efforts to end use of the death penalty worldwide.

WHY IS ABOLITION OF THE DEATH PENALTY IMPORTANT?

Australia's commitment to human rights is enduring. As long as people face execution by a government, we will pursue abolition of the death penalty.

The death penalty affects Australians. A number of Australian citizens and long-term residents have been sentenced to death, some have been executed, and others await trial for crimes which may carry the death penalty.

The death penalty affects our cooperation with foreign law enforcement agencies and our provision of police or other justice and security assistance in countries that retain the death penalty. For example, we cannot extradite an individual to a country where the offence concerned is punishable by death. An exception may apply when the foreign government requesting assistance gives a credible and reliable diplomatic assurance stating that the death penalty will not be imposed or, if it is imposed, that it will not be carried out.

AUSTRALIA'S POLICY GOALS

Our overarching goal is global abolition of the death penalty.

Australia recognises that for some countries the move towards abolition will be gradual. We recognise that a staged, sequenced approach may be most effective, depending on particular country circumstances.

Therefore, our specific goals are to:

- increase the number of abolitionist countries, increase the number of countries with a moratorium on the use of the death penalty, and increase commutations of existing death sentences;
- reduce both the number of executions and the number of crimes that attract the death penalty, especially for those offences which do not meet the threshold of 'most serious crimes' under the International Covenant on Civil and Political Rights (ICCPR), such as economic, property, political and religious offences, minor violent crimes, and offences not involving the use of force, including drug-related offences;
- abolish the mandatory death penalty where it still exists;
- end the use of the death penalty on pregnant women, persons below 18 years of age at the time of the offence, and people with mental or intellectual disabilities;
- ensure that people facing a death sentence can access adequate legal representation, and that their rights to a fair trial and due process under Article 14 of the ICCPR are realised;
- increase adherence to the United Nations (UN) 'Safeguards guaranteeing protection of the rights of those facing the death penalty', which enumerates the minimum standards to be applied in countries which still impose the death penalty (see appendix);
- improve the conditions and treatment of prisoners on death row;
- increase transparency in the application of the death penalty, including by encouraging countries to report the numbers of people sentenced to death and executed;
- prevent the reintroduction of the death penalty where it has been abolished;
- prevent the resumption of executions where a moratorium has been in place, including through accession to the Second Optional Protocol to the ICCPR; and
- achieve universal adherence to the Second Optional Protocol to the ICCPR.

INTERNATIONAL LEGAL FRAMEWORK

International law permits the death penalty to be imposed in certain limited circumstances. The ICCPR strictly limits the application of the death penalty in countries where it remains in force: it may only be imposed for the most serious crimes (article 6(2)), and it shall not be imposed for crimes committed by persons under 18 years old or pregnant women (article 6(5)). Other relevant protections under the ICCPR include the right to a fair and public hearing by a competent, independent and impartial tribunal established by law, the presumption of innocence, the right to review by a higher tribunal and the right to seek pardon or commutation of the sentence. The ICCPR has near universal adherence, with over 170 state parties and signatories.

Australia recognises the abolitionist spirit of the ICCPR. Article 6(6) provides that “nothing in this Article shall be invoked to delay or prevent the abolition of capital punishment by any State Party to the present Covenant”, thereby aiming to set states parties on a path towards abolition.

The key international legal instrument seeking to abolish the death penalty is the Second Optional Protocol to the ICCPR, adopted by the UN General Assembly in 1989. The protocol requires states parties to take all necessary measures to abolish the death penalty within their jurisdictions. Australia acceded to the Second Optional Protocol in 1990 and is one of more than 80 parties to the Protocol.

International momentum is towards abolition of the death penalty. In 1967, when Australia carried out its last execution (Ronald Ryan on 3 February), only 12 countries had completely abolished the death penalty; fifty years later, that number had risen to 107, with a further six countries abolitionist for ordinary (non-military) crimes. The pace at which abolition has spread globally has led some to argue that a customary norm is emerging that considers the death penalty to be a violation of the absolute prohibition on torture or cruel, inhuman and degrading treatment of punishment.

BILATERAL ADVOCACY

Diplomatic and consular missions, in collaboration with geographic desks and other relevant government agencies, will develop and implement tailored strategies for engaging with countries of accreditation that retain the death penalty in any form. Given the sensitive nature of representations on the death penalty, bilateral strategies will not be publicly available.

Australia's focus is on our Indo-Pacific region, and includes countries with whom we have close and friendly relations.

While incremental reform is a common path to abolition, it is important that posts are nimble and flexible enough to respond to key shifts in circumstances (such as public opinion or changes in leadership) that might present a window for more rapid change.

BRIEFING AND REGULAR REPORTING

Information about the status of the death penalty in any given country should be included in briefings, including visit briefings, prepared for ministers, parliamentarians and senior officials.

Posts should report to Canberra by cable at least annually on the status of the death penalty in their countries of accreditation. This reporting should cover:

- legislation regulating the use of the death penalty and its practical application;
- statistics on the use of the death penalty, including to note where these are not publicly available;
- public opinion and the role of civil society; and
- prospects for progress towards abolition.

In addition, posts should report as required on developments – positive or negative – in the application of the death penalty, including recommendations on Australian responses to these developments.

In gathering information, posts are encouraged to develop and maintain relationships with national human rights institutions (NHRIs), local anti-death penalty campaigners, human rights organisations and the media. NHRIs can be particularly important sources of information, especially if they are independent.

REPRESENTATIONS

Australian ministers and officials should raise abolition of the death penalty as a priority human rights issue where appropriate, including at political-level meetings and during official visits, in political dialogues, human rights dialogues, in consultations on human rights with other countries and in written official correspondence. Senior officials in Canberra should look for opportunities to raise abolition of the death penalty on a regular basis with the heads of mission of retentionist countries.

Responsible geographic desks, posts and agencies should carefully consider the timing, frequency and target audience of these representations to ensure our advocacy is effective.

Parliamentarians are invited to raise Australia's opposition to the death penalty in the course of their own international engagement.

In the majority of cases, our representations will be private. Posts, in consultation with desks, should determine on a case-by-case basis whether to make representations known to the public. Public representations, such as media releases, open letters, or other public comment, should be used when these would be more effective than private conversations or would complement private representations.

Lobbying is particularly important:

- when a country is considering retrograde steps, such as ending a moratorium or expanding the range of offences which attract the death penalty;
- following a country's appearance before the UN Universal Periodic Review when Australia has recommended abolition of the death penalty (see further below); and
- to increase support for the biennial UN General Assembly resolution on the moratorium on the use of the death penalty.

Representations should outline Australia's position on the death penalty, including the reasons we reject it, and urge retentionist countries to move towards a moratorium on the death penalty and eventual abolition. Talking points are available from DFAT's Human Rights Branch, Multilateral Policy Division.

Australia may make representations in coordination with other like-minded countries when appropriate and effective. However, at times it is better for Australia to make representations in its own right.

In some circumstances, Australia may raise the individual cases of foreign nationals (non-Australians) facing the death penalty. Given the large number of individuals executed every year, it is not viable to raise every case. In determining when to make individual representations, the following criteria are relevant:

- the strict conditions for the use of the death penalty required under international law have not been met;
- making representations or public statements would not be counter-productive to either the individual concerned or the broader abolitionist cause; and
- the individual's family or legal advisers have approved representations/public statements, or comment on the case is widespread and Australian representations are in good company.

In all cases, posts should consult with the relevant geographic desk and Human Rights Branch in determining the most appropriate response to individual cases. If a post makes representations in country, a senior official should also make concurrent and consistent representations to the head of mission of the country concerned in Canberra.

When an Australian citizen or permanent resident is facing or potentially faces the death penalty, the DFAT Consular Policy Handbook details the steps posts should take.

PROJECT SUPPORT

Where funding is available, posts should consider supporting NHRIs or civil society organisations to deliver projects that further global abolition of the death penalty. Appropriate projects include (but are not limited to):

- awareness-raising of pro-abolition arguments for parliamentarians, policy-makers and opinion-shapers in retentionist countries;
- activities aimed at increasing public support for abolition of the death penalty;
- training and networking opportunities for representatives of abolitionist civil society groups; and
- academic or legal research and analysis into the constitutionality of the death penalty or aspects of its application (for example, mandatory death sentences, public attitudes, or deterrence) or to inform the specific actions and advocacy approaches which may be most effective;

PUBLIC DIPLOMACY

Public diplomacy is a core element of Australia's advocacy in opposition to the death penalty, and is essential to fostering public understanding of Australia's commitment to abolition. DFAT uses a variety of public diplomacy tools, including online and social media, cultural diplomacy and media engagement, to inform and influence attitudes towards the death penalty.

Posts are encouraged to undertake appropriate public diplomacy activities throughout the year, including in association with the World Day Against the Death Penalty on 10 October.

Posts with responsibility for countries that retain the death penalty are encouraged to incorporate an anti-death penalty narrative into their public diplomacy strategies across the three-year term of Australia's membership of the Human Rights Council (2018-2020). Further guidance is available from Multilateral Policy Division.

It will often be appropriate to coordinate activities with the missions of like-minded countries and with non-governmental organisations that are working against the death penalty.

Posts and desks should work with Human Rights Branch, the Communications and Media Branch and the Soft Power, Partnerships and Research Branch when developing public diplomacy activities.

MULTILATERAL ADVOCACY

Posts with multilateral responsibilities play a special role in supporting Australia's opposition to the death penalty in multilateral forums. In consultation with Multilateral Policy Division, these posts should:

- promote widespread accession and adherence to those international law instruments central to abolition of the death penalty;
- monitor and report on multilateral developments where the death penalty is relevant, such as the fight against terrorism, drugs and organised crime;
- contribute to and, where relevant, co-sponsor multilateral activities that promote abolition of the death penalty;
- develop and maintain relationships with civil society, human rights defenders and relevant UN agencies to advance global abolition of the death penalty; and
- take appropriate opportunities, for example by making national statements, and supporting resolutions, joint statements, panel discussions and side events, to condemn the use of the death penalty and promote global abolition.

Australia will consider membership of multilateral organisations/groupings opposing the death penalty on a case-by-case basis. An effective coalition of countries opposing the death penalty in the Indo-Pacific region does not presently exist. Australia will look for and foster appropriate opportunities to build a regional network of abolitionist countries. We will continue to work collaboratively with regional like-minded countries.

UNITED NATIONS

As a member of the UN Human Rights Council for the 2018-20 term, Australia has pledged to continue our strong commitment to the global abolition of the death penalty. This strategy forms part of that commitment.

Every second year, a resolution at the UN General Assembly calls for a global moratorium on the death penalty. Australia co-sponsors this resolution. In 2016, we joined the Inter-Regional Taskforce on the resolution, which initiates and negotiates the text. Australia undertakes lobbying in support of the resolution, particularly in the Indo-Pacific region, to secure strong and clear text and increased support for each successive resolution.

In alternate years to the General Assembly resolution, the Human Rights Council considers a resolution on the question of the death penalty. Australia co-sponsors this resolution.

Australia makes recommendations regarding the death penalty at the Universal Periodic Review of each retentionist country. Australia is committed to following up these recommendations.

ASEAN

The ten member states of the Association of Southeast Asian Nations (ASEAN) have varied approaches to the death penalty, with some countries maintaining a strong commitment to capital punishment. Australia will continue to engage ASEAN member states, both collectively and individually, including through cooperation and regular dialogue with, and support for the ASEAN Intergovernmental Commission on Human Rights.

PACIFIC ISLANDS FORUM

The majority of the 18 members of the Pacific Islands Forum (PIF) are abolitionist. As a member of the PIF, Australia will continue to support the abolitionist position of our Pacific neighbours, including by encouraging the PIF to adopt abolition of the death penalty as a regional commitment.

COMMONWEALTH

Despite regular discussion, the Commonwealth has been unable to agree a unified position on the death penalty and a number of Commonwealth countries retain it as an available form of punishment. Encouragingly, however, many Commonwealth countries have not carried out executions for a considerable time. Australia will continue to push for reform in this area, using the following tools:

- the biennial Commonwealth Heads of Government Meetings (CHOGM);
- the biennial Commonwealth Law Ministers Meeting;
- the Commonwealth Magistrates' and Judges' Association; and
- the Commonwealth Lawyers Association, which is opposed to the death penalty.

CIVIL SOCIETY ENGAGEMENT

DFAT will establish a death penalty consultative group, consisting of Australia-based civil society organisations with an interest in advocacy against the death penalty. This group will meet in the margins of DFAT's annual NGO Human Rights Forum in Canberra. The consultative group will:

- share advocacy priorities;
- update civil society on bilateral and/or multilateral trends in abolition;
- coordinate responses to individual cases; and
- explore joint public diplomacy opportunities.

DFAT will stay in close contact with civil society groups at other times, including through the establishment of a death penalty point of contact to enable civil society to directly inform the department of particularly concerning or time-sensitive individual death row cases.

Australia will support the activities of anti-death penalty non-government organisations working in priority countries and jurisdictions, continuing our collaboration with organisations such as Reprieve Australia, Amnesty International, Parliamentarians for Global Action, Together Against the Death Penalty (Ensemble contre la peine de mort), the Asia-Pacific Forum of National Human Rights Institutions, and the Death Penalty Project. Similarly, Australia will continue to support the triennial World Congress Against the Death Penalty, with the 7th Congress now due to take place in February 2019.

THE ROLE OF OTHER AUSTRALIAN GOVERNMENT AGENCIES

The Department of Foreign Affairs and Trade has primary responsibility for determining, in consultation with other relevant agencies, the content and focus of Australia's international advocacy for abolition of the death penalty.

Other government agencies which have an international presence or maintain relationships with international government partners must also be cognisant of Australia's opposition to the death penalty and should take all relevant opportunities to raise Australia's opposition to the death penalty. Materials to support representations and guidance on appropriate engagement are available from Multilateral Policy Division.

Australia may also discourage countries from using the death penalty by refusing to provide or placing conditions around the provision of information, assistance, goods or services in situations where the death penalty may be applied.

APPENDIX: MINIMUM STANDARDS

Safeguards guaranteeing protection of the rights of those facing the death penalty

Approved by Economic and Social Council resolution 1984/50 of 25 May 1984

1. In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.
2. Capital punishment may be imposed only for a crime for which the death penalty is prescribed by law at the time of its commission, it being understood that if, subsequent to the commission of the crime, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.
3. Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.
4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.
5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.