

## Australia's opposition to the death penalty

A reflection on recent legislative and policy changes

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## Outline

- Snapshot of use of the death penalty internationally
- International human rights obligations
- Summary of Australia's ratification of international obligations
- Recent legislative and policy changes
  - *Crimes Legislation Amendment (Torture, Prohibition and Death Penalty Abolition) Act 2010*
  - New guidelines for the AFP on international police to police assistance in death penalty charge situations

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## Use of the death penalty internationally

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## International Covenant on Civil and Political Rights

- Article 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
- Article 6(2) In countries which have not abolished the death penalty, sentence of death may be imposed for the most serious of crimes ...this penalty can only be carried out pursuant to a final judgement rendered by a competent court.

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## International Covenant on Civil and Political Rights

- Article 6(4) Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence.
- Article 6(5) Sentence of death shall not be imposed for crimes committed by persons below 18 years of age and shall not be carried out on pregnant women.
- Article 7 No one shall be subjected to torture or to cruel, inhuman or degrading punishment

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## Roger Judge v Canada

*"For countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application. Thus, they may not remove, either by deportation or extradition, individuals from their jurisdiction if it may be reasonably anticipated that they will be sentenced to death, without ensuring that the death sentence would not be carried out."*

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## Second Optional Protocol

- Article 1 - No one within the jurisdiction of a State Party to the present Protocol shall be executed
- Article 2 – Each State Party shall take all necessary measures to abolish the death penalty within its jurisdiction

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## Australia's Ratification of International Obligations

- Compliance with ICCPR and Second Optional Protocol
  - Death penalty abolished in each State and for Commonwealth and Territory offences
  - *Crimes Legislation Amendment (Torture, Prohibition and Death Penalty Abolition) Act 2010*

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## Australia's Ratification of International Obligations

- Compliance with *Judge v Canada*
  - *Extradition Act 1988 (Cth)*
  - *Mutual Assistance in Criminal Matters Act 1987 (Cth)*

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## Is Australia's opposition to the death penalty absolute?

The AFP's relationship with death penalty countries

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## The Bali 9 and AFP Guidelines

- *Rush v Commissioner of Police* [2006] FCA 12
- AFP Guidelines in place at the time
  - *No assistance once a charge had been laid*
  - *The AFP may provide such assistance as requested...irrespective of whether the investigation may later result in charges being laid which may attract the death penalty*

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## The Bali 9 and the AFP Guidelines

- Amended AFP Guidelines
  - AFP can still provide assistance in death penalty crimes as long as the suspect has not been arrested or detained
  - However, the decision to provide assistance must take into account:
    - the purpose of providing the information and the reliability of that information;
    - the seriousness of the suspected criminal activity;
    - the nationality, age and personal circumstances of the person involved;
    - the potential risk to the person, and other persons, in providing or not providing the information; and
    - Australia's interest in promoting and securing co-operation from overseas agencies in combating crime.

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## What are our obligations?

- ICCPR and the Second Optional Protocol

- *Judge v Canada*

*"For countries that have abolished the death penalty, there is an obligation not to expose a person to the real risk of its application. Thus, they may not remove, either by deportation or extradition, individuals from their jurisdiction if it may be reasonably anticipated that they will be sentenced to death, without ensuring that the death sentence would not be carried out."*

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## Moving Forward

- Do we need to regulate the AFP's relationship with death penalty jurisdictions through:
  - A Bill of Rights or a Human Rights Act; or
  - Other legislation?

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The Hon. John von Doussa QC,  
President of HREOC  
22 October 2006

*"In an era where law enforcement requires international co-operation Australian commitment to the universal abolition of the death penalty should be uncompromising not vary from case to case depending on the crime, citizenship and country."*

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