



**Australian  
Human Rights  
Commission**

# Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017

**AUSTRALIAN HUMAN RIGHTS COMMISSION SUBMISSION TO  
THE SENATE STANDING COMMITTEE ON LEGAL AND  
CONSTITUTIONAL AFFAIRS**

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## 1 Introduction

1. The Australian Human Rights Commission makes this submission to the Senate Committee on Legal and Constitutional Affairs for its Inquiry into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 (the Bill).
2. The Bill raises a number of human rights concerns. In this submission, the Commission comments only on the changes to the *Australian Federal Police Act 1979* (the AFP Act) in Schedule 1 of the Bill.
3. The Commission endorses the Australian Government's long-standing, principled opposition to the death penalty. It is rightly a source of national pride that this approach is widely agreed among major Australian political parties.
4. The Commission considers that where an Australian Government entity shares information with another jurisdiction, and that information might lead to the imposition of the death penalty, this could contravene Australia's international human rights law obligations. The Commission's position is that no Australian Government entity, including the AFP, should support the investigation and prosecution of offences in another jurisdiction in circumstances where Australia's actions might contribute to the death penalty being carried out.
5. The Commission urges that a similar policy position be adopted by the AFP and other Australian Government entities that could lead to torture or cruel, inhuman or degrading treatment.
6. This submission explains how the Bill could be amended to ensure that this policy position is most effectively adhered to.

## 2 Recommendations

7. The Commission makes the following recommendations:

**Recommendation 1:** The Bill or the Explanatory Memorandum should be amended to provide further detail on the permissible range of information-sharing practices to enable a proper assessment of whether the proposed new provisions provide sufficient safeguards to protect the right to privacy.

**Recommendation 2:** The Commission recommends that a provision be inserted into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 to amend the *Australian Federal Police Act 1979* (Cth) to require a request for police services and police support services where the requesting jurisdiction may apply the death penalty.

**Recommendation 3:** If the Government does not support Recommendation 2 above, the Commission recommends that the *Australian Federal Police Act 1979* (Cth) be amended to require a request for police services and police support services to be refused where the requesting jurisdiction may apply the death penalty, unless:

(a) the other jurisdiction provides a formal assurance that the death penalty will not be sought; and

(b) the AFP has rigorously assessed this assurance, with reference to independent legal advice, and concluded that this assurance is sufficient to ensure that the death penalty will not in fact be carried out.

**Recommendation 4:** The Commission recommends that a provision be inserted into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 to amend the *Australian Federal Police Act 1979* (Cth) to require a request for police services and police support services to be refused unless:

(a) the other jurisdiction provides a formal assurance that the information will not lead to, or be used in connection with, torture or cruel, inhuman or degrading treatment; and

(b) the AFP has rigorously assessed this assurance, with reference to independent legal advice, and concluded that this assurance is sufficient to ensure that torture or cruel, inhuman or degrading treatment will not in fact take place.

### 3 Changes proposed to the AFP Act

8. Schedule 1 of the Bill proposes to amend section 8 of the AFP Act to clarify its functions as they relate to co-operation with international organisations.
9. Section 8(1)(bg) of the AFP Act empowers the AFP to provide ‘police services and police support services in relation to establishing, developing and monitoring peace, stability and security in foreign countries’. ‘Police services’ are defined by section 4 of the AFP Act to include those services to prevent crime and protect people and property, whether arising from criminal acts or otherwise. ‘Police support services’ are defined in section 4 to include the provision of police services by an Australian or foreign law enforcement, intelligence or security or regulatory agency.
10. The Bill proposes to insert a new provision into section 8(1) of the AFP Act, which will extend the provision of police services and police support services to:
  - (i) an international organisation, being one that is established under an international agreement, arrangement or otherwise under international law, or a ‘public international organisation’ defined by s 70.1 of the *Criminal Code* to include an organisation with two or more countries as members; and
  - (ii) a non-governmental organisation, ‘in relation to acts, omissions, matters or things outside Australia’.
11. The Bill widens the organisations the AFP will be able to share information with, including organisations such as Interpol and ad hoc international tribunals.<sup>1</sup> The Explanatory Memorandum notes that this change is necessary given the organisations the AFP ‘shares information with changes regularly, depending on the types of investigations on foot and the changing criminal threat environment’.<sup>2</sup>

Accordingly, the proposed amendments to the AFP Act will enhance the information-sharing arrangements the AFP already has in place.

## **4 Information sharing and human rights**

12. The practice of the AFP sharing information with other police, intelligence and security agencies around the world is well established.<sup>3</sup> Similarly, in jurisdictions comparable to Australia, law enforcement bodies that correspond with the AFP undertake similar information-sharing activities – subject to important safeguards to protect human rights.

13. Hence, the Commission acknowledges the importance of the AFP sharing information to fulfil its functions, and further acknowledges that this practice is widespread among comparable jurisdictions, including those with whom Australia cooperates on security matters. Nevertheless, given that the sharing of information raises a number of human rights concerns, the legal and broader policy framework must be crafted in a way that ensures those human rights are protected.

### **4.1 Right to privacy**

14. The right to privacy is protected by Article 17 of the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> It requires states not to interfere arbitrarily or unlawfully with a person's privacy, family, home or correspondence. The right is not absolute; it can be limited where the interference is lawful, for a legitimate aim and where it is proportionate to achieving that aim.

15. The Statement of Compatibility with Human Rights (the Compatibility Statement) for the Bill recognises that disclosure of information under these provisions by the AFP engages the right to privacy, but considers that the interference is proportionate as it links to a 'pressing social need' of effective cooperation with international organisations such as Interpol.<sup>5</sup> The Compatibility Statement also states the disclosure of information to these bodies will be subject to existing safeguards, including the privacy protections set out in the *Privacy Act 1988* (Privacy Act) and the offence in section 60A of the AFP Act of unlawfully disclosing personal information obtained by the AFP.<sup>6</sup>

16. The Commission agrees that the 'pressing social need' of public safety and protection requires police to have co-operative relationships with international police and security agencies, and that those co-operative relationships necessarily involve the mutual exchange of information.

17. The disclosure of personal information is contemplated by the Australian Privacy Principles, where required by law but there must be adequate safeguards are in place.<sup>7</sup> Similarly, the Australian Privacy Principles do not require full compliance with the privacy obligations regarding cross-border disclosure of personal information when the disclosure occurs in a law enforcement context, or is otherwise required or authorised by law.<sup>8</sup>

18. The Commission agrees with the conclusions drawn by the Parliamentary Joint Committee on Human Rights<sup>9</sup> (PJCHR) and the Australian Information and Privacy Commissioner<sup>10</sup> (the Information and Privacy Commissioner) that it is unclear how the purported safeguards in the Privacy Act will apply to the operation of these provisions. The Commission notes that, at the time of writing, the government response addressing these concerns has not yet been received by the PJCHR.<sup>11</sup>
19. Given these concerns, the Commission agrees with the recommendation made by the Information and Privacy Commissioner that further detail be provided in the text of the Bill or in the Explanatory Memorandum to enable an assessment of the privacy impacts of the proposed amendments, and whether this impact could be considered reasonable, necessary and proportionate to achieve the policy aim.<sup>12</sup>

**Recommendation 1: The Bill or the Explanatory Memorandum should be amended to provide further detail of the permissible range of information-sharing practices to enable a proper assessment of whether the proposed new provisions provide sufficient safeguards to protect the right to privacy.**

## **4.2 Right to life**

20. Article 6(1) of the ICCPR provides that every human has the ‘inherent right to life’, which shall be protected by law. In addition to this obligation, Australia has committed to opposing the death penalty by becoming a party to the *Second Optional Protocol on the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty* (the Second Optional Protocol).<sup>13</sup>
21. The sharing of information, in circumstances where that information can or will be used to prosecute an individual for a crime for which the death penalty is a punishment available in the relevant jurisdiction, arguably contravenes Australia’s obligations under the ICCPR and the Second Optional Protocol.<sup>14</sup>
- (a) *Advocacy to abolish the death penalty*
22. The Commission has long advocated for the global abolition of the death penalty. In recent years, the Commission has called for a moratorium on the death penalty across the Asia-Pacific region and has committed to working with national human rights institutions in the region in pursuit of this goal.<sup>15</sup>
23. The focus of the Australian community on the use of the death penalty in other jurisdictions has been heightened in recent years following the highly-publicised executions of Australian citizens, primarily for drug trafficking. This opposition to the death penalty is reflected in statements made by the Australian Government that global abolition of the death penalty is ‘one of Australia’s core human rights objectives’.<sup>16</sup> In 2016, the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Foreign Affairs Committee) conducted an inquiry into Australia’s advocacy for the abolition of the death penalty and made a number of recommendations to strengthen the government’s approach to this issue.<sup>17</sup>

24. Given this clear commitment, any action by the AFP that makes it more likely that the death penalty will be imposed on an individual is incongruous.<sup>18</sup> Accepting that information sharing with other jurisdictions is an important part of the work of the AFP, there must be adequate safeguards in place to ensure adherence to Australia's international human rights law obligations. The proposed amendments to the AFP Act in this Bill provide an opportunity to put those safeguards in place.

(b) *Information sharing, Article 6 and the Second Optional Protocol*

25. The practice of sharing information by the AFP with overseas jurisdictions that retain the death penalty is well established.<sup>19</sup> Authority for the sharing of information can be found in sections 4 and 8 of the AFP Act and the *AFP Guideline on International Police-to-Police Assistance in Death Penalty Situations* (the AFP Guideline).

26. In the AFP Guideline, the AFP must take into account a number of relevant factors before agreeing to provide information to assist in the prosecution of an identified person where the offence in question carries the death penalty, such as the purpose of providing the information, the relevance of the information, the seriousness of the criminal activity and the age of the suspect.<sup>20</sup> The Commission notes that in its 2016 submission to the Foreign Affairs Committee the AFP stated it was in the process of reviewing these Guidelines.<sup>21</sup>

27. The Commission considers that where an Australian Government entity shares information with another jurisdiction, and that information might lead to the imposition of the death penalty in that other jurisdiction, this arguably contravenes Australia's international human rights commitments. This concern was shared by the United Nations Human Rights Committee. In its 2009 report on Australia, the Committee noted, with concern,

the lack of comprehensive prohibition on the providing of international police assistance for the investigation of crimes that may lead to the imposition of the death penalty in another state, in violation of the State party's obligation under the Second Optional Protocol.

28. The Committee recommended:

The State party should ... not provide assistance in the investigation of crimes that may result in the imposition of the death penalty in another State.<sup>22</sup>

29. Similarly, in its recent submission to the Foreign Affairs Committee inquiry into Australia's advocacy for the abolition of the death penalty, the United Nations High Commissioner for Human Rights recommended

the Australian Parliament, the Ministry of Justice and AFP strengthen relevant laws, regulations and policies to ensure that agency-to-agency cooperation does not lead to the application and implementation of the death penalty by cooperating countries. There should not be any exception.<sup>23</sup>

30. The Foreign Affairs Committee also concluded in its report that

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the need to combat transnational crime cannot override the need to uphold Australia's human rights obligations and avoid exposing people to the death penalty.<sup>24</sup>

31. In relation to this Bill, the PJCHR noted in its scrutiny report that the sharing of information under the proposed Schedule 1 amendments could engage the right to life and was not addressed in the statement of compatibility.<sup>25</sup> It sought the advice of the Minister about the compatibility of the proposed amendments with the right to life, including in relation to the existence of relevant safeguards.<sup>26</sup>

(c) *The need for consistency with extradition and mutual assistance*

32. In the related contexts of extradition and mutual assistance, Australian law requires consideration of Australia's human rights obligations before an extradition request is fulfilled or a request for mutual assistance granted.

33. Under s 22(3) of the *Extradition Act 1988* (Cth) (the Extradition Act), the Minister has discretion to refuse an extradition request where the death penalty may be imposed.<sup>27</sup> Similarly, under s 8 of the *Mutual Assistance in Criminal Matters Act 1987* (Cth) (the Mutual Assistance Act), a request for mutual assistance may be refused in circumstances where the death penalty may be requested in the country where the offence is being investigated.<sup>28</sup>

34. In other words, in the extradition and mutual assistance contexts, Australia's human rights law obligations have an important role in inhibiting Australian Government action that might lead to the imposition of the death penalty. However, it should also be acknowledged that this role is limited given that a broad ministerial discretion is retained to share information even in circumstances that would violate Australia's human rights obligations. Nevertheless, it is significant that there is no similar provision in the legislation governing information sharing by the AFP. This Bill presents an opportunity to rectify this inconsistency.

(d) *Recommendation for Schedule 1 of the Bill*

35. The Commission maintains that, in principle, Australia should not support the investigation and prosecution of offences in those jurisdictions where successful prosecution of the offence may result in the death penalty being imposed. This reflects the need to ensure that Australia's opposition to the death penalty is consistently reflected in every aspect of cooperation in international criminal justice matters.<sup>29</sup>

36. At a minimum, the Commission considers that the sharing of information by the AFP should be conditional on two things:

- a. an assurance from the requesting organisation that the death penalty will not be imposed for the offence in relation to which information is being provided;
- b. a rigorous assessment, involving independent legal advice, concluding that this assurance is sufficient to ensure that the death penalty will not in fact be carried out.



37. The Commission believes this issue is best addressed by amending the AFP Act itself, rather than amendments to the AFP Guideline. This is important because of the gravity of the issues at stake, as well as to ensure parity across all areas of Australia's involvement in international criminal justice matters and to guarantee transparency regarding this significant human rights issue. In addition, to ensure public confidence and transparency, if the AFP Guideline is amended, it should also be made public.

**Recommendation 2: The Commission recommends that a provision be inserted into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 to amend the *Australian Federal Police Act 1979* (Cth) to require a request for police services and police support services to be refused where the requesting jurisdiction may apply the death penalty.**

**Recommendation 3: If the Government does not support Recommendation 2 above, the Commission recommends that the *Australian Federal Police Act 1979* (Cth) be amended to require a request for police services and police support services to be refused where the requesting jurisdiction may apply the death penalty, unless:**

**(a) the other jurisdiction provides a formal assurance that the death penalty will not be sought; and**

**(b) the AFP has rigorously assessed this assurance, with reference to independent legal advice, and concluded that this assurance is sufficient to ensure that the death penalty will not in fact be carried out.**

38. In making these recommendations, the Commission notes that reliance on diplomatic or organisational assurances in this context is inherently problematic.

39. The Australian Government recently outlined its reliance on diplomatic assurances in relation to extradition requests in observations submitted to the UN Human Rights Committee. Noting Australia's longstanding opposition to the death penalty, the Government stated that where a requested extradition relates to an offence in another jurisdiction punishable by death,

the Attorney-General may only make a determination to surrender that person if satisfied that the requesting country has, by virtue of a diplomatic undertaking, assured Australia that the death penalty will not be imposed on the person or, if imposed, will not be carried out.<sup>30</sup>

40. The Commission has previously expressed concern about relying on diplomatic assurances where there are substantial grounds to believe that if an individual were surrendered to the extradition country he or she would face a real risk of being subjected to the death penalty.<sup>31</sup> Diplomatic assurances or undertakings are almost always made by a country's executive branch of government. Given most countries adhere to the separation of powers principle, such assurances generally cannot legally bind the judiciary. Thus, in many jurisdictions that still have the death penalty, an independent judge would not be bound by an assurance issued by the executive branch, and could order the death penalty in criminal proceedings notwithstanding such an assurance having been given.

41. The Commission notes that the same concerns arise in the context of information-sharing. Indeed, there is cause for greater concern given there is limited, if any, opportunity to challenge a decision to share information or have that decision reviewed.

### **4.3 *Right to be free from torture and cruel, inhuman and degrading treatment***

42. Article 7 of the ICCPR provides that ‘no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’.<sup>32</sup> Article 7 requires a state party to undertake to take the necessary steps, in accordance with its constitutional processes, to adopt such laws or other measures as may be necessary to give effect to the prohibition on torture or cruel, inhuman or degrading treatment or punishment.<sup>33</sup>

43. In order to comply with this obligation, there must be safeguards in the legislative and policy framework governing the AFP’s information-sharing powers. That is, the practice of sharing information must not be a causal factor in the torture or cruel, inhuman or degrading treatment of an individual.

44. The Commission recommends that the sharing of information by the AFP should be made conditional on obtaining an assurance from the requesting organisation that the individual will not be subjected to torture or cruel, inhuman or degrading treatment.

45. The Commission again notes the difficulty of relying on an assurance in this context. In its Concluding Observations on Australia, the UN Committee Against Torture expressed concern about Australia’s reliance on diplomatic assurances and reminded State parties that

under no circumstances can they resort to diplomatic assurances as a safeguard against torture or ill-treatment where there are substantial grounds for believing that a person would be in danger of being subjected to torture or ill-treatment upon return.<sup>34</sup>

46. In its concluding observations on the United States, the Committee Against Torture has warned against the use of diplomatic assurances, stating they should only be relied upon

in regard to States which do not systematically violate the Convention’s provisions, and after a thorough examination of the merits of each individual case.<sup>35</sup>

47. Accordingly, even where an assurance is provided, the sharing of information should not take place where there are substantial grounds for believing that a relevant person to whom the information relates will nonetheless be subjected to torture or cruel, inhuman or degrading treatment.

**Recommendation 4: The Commission recommends that a provision be inserted into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017 to amend the *Australian Federal Police Act 1979 (Cth)* to require a request for police services and police support services to be refused unless:**

**(a) the other jurisdiction provides a formal assurance that the information will not lead to, or be used in connection with, torture or cruel, inhuman or degrading treatment; and**

**(b) the AFP has rigorously assessed this assurance, with reference to independent legal advice, and concluded that this assurance is sufficient to ensure that torture or cruel, inhuman or degrading treatment will not in fact take place.**

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<sup>1</sup> Explanatory Memorandum, Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017, [138], [141].

<sup>2</sup> Explanatory Memorandum, Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017, [143].

<sup>3</sup> Australian Federal Police, Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee, *Inquiry into Australia's Advocacy for the Abolition of the Death Penalty*, September 2015, 3.

<sup>4</sup> *International Covenant on Civil and Political Rights (ICCPR)*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

<sup>5</sup> Explanatory Memorandum, Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017, [23].

<sup>6</sup> Explanatory Memorandum, Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017, [22].

<sup>7</sup> Australian Privacy Principle 6.2(b) provides for an exception to the general rule that an agency must not use or disclose 'personal information' for a secondary purpose, where such use or disclosure is 'required or authorised by or under an Australian law'.

<sup>8</sup> See Australian Privacy Principle 8.2(e) and (f).

<sup>9</sup> Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report, Report 4 of 2017*, 9 May 2017, [1.18].

<sup>10</sup> Timothy Pilgrim, PSM, Australian Information Commissioner and Australian Privacy Commissioner, Submission No. 5 to the Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017*, 2.

<sup>11</sup> The PJCHR has sought the advice of the Minister for Justice regarding the 'extent to which the provisions of the *Privacy Act 1988* will act as a safeguard against the use and disclosure of personal information for a secondary purpose'. Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report, Report 4 of 2017*, 9 May 2017, [1.23].

<sup>12</sup> Timothy Pilgrim PSM, Australian Information Commissioner and Australian Privacy Commissioner, Submission No. 5 to the Senate Standing Committee on Legal and Constitutional Affairs, *Inquiry into the Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017*, 2, 3.

<sup>13</sup> *Second Optional Protocol on the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty* (Second Optional Protocol), opened for signature 15 December 1989, 1642 UNTS 414 (entered into force 11 July 1991).

<sup>14</sup> Article 1(2) of the Second Optional Protocol requires a state party to 'take all necessary measures to abolish the death penalty within its jurisdiction'. Article 2 of the ICCPR requires signatory states to respect and ensure the rights are protected for all persons in their territory or under their control. The Human Rights Committee has noted that this 'entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm': Human Rights Committee *General Comment 31* (UN Doc CCPR/C/21/Rev.1/Add.13), [12]. See also Human Rights Committee, *Consideration of Reports Submitted by State Parties under Article 40 of the Covenant, Concluding Observations* (CCPR/C/AUS/CO/5), 2 April 2009.

<sup>15</sup> Professor Gillian Triggs, President, *Time to fight for a moratorium on the death penalty in Asia* (7 May 2015) Australian Human Rights Commission. At <https://www.humanrights.gov.au/news/stories/time-fight-moratorium-death-penalty-asia> (viewed 30 June 2017). Australian Human Rights Commission, *World Congress Against the Death Penalty*, News Item, 22 June 2016. At <https://www.humanrights.gov.au/news/stories/world-congress-against-death-penalty> (viewed 30 June 2017).

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<sup>16</sup> Department of Foreign Affairs and Trade, *Australia's candidacy for the United Nations Human Rights Council 2018-2020*. At <http://dfat.gov.au/international-relations/international-organisations/pages/australias-candidacy-for-the-unhrc-2018-2020.aspx> (viewed 30 June 2017).

<sup>17</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *A world without the death penalty: Australia's advocacy for the abolition of the death penalty*, 5 May 2016.

<sup>18</sup> Remeikis, A and McIlroy, A 'AFP helps death penalty nations as Australia campaigns for end to death penalty as part of UN bid', *Sydney Morning Herald* (online), 21 May 2017. At <http://www.smh.com.au/federal-politics/political-news/afp-helps-death-penalty-nations-as-australia-campaigns-for-end-to-death-penalty-as-part-of-un-bid-20170519-gw8gns.html> (viewed 30 June 2017).

<sup>19</sup> Australian Federal Police, Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee, *Inquiry into Australia's Advocacy for the Abolition of the Death Penalty*, September 2015, 9.

<sup>20</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *A world without the death penalty: Australia's advocacy for the abolition of the death penalty*, 5 May 2016, [4.16].

<sup>21</sup> Australian Federal Police, Submission No. 22.1 to Joint Standing Committee on Foreign Affairs, Defence and Trade, Human Rights Sub-Committee, *Inquiry into Australia's Advocacy for the Abolition of the Death Penalty*, January 2016, 14.

<sup>22</sup> Human Rights Committee, *Consideration of reports submitted by states parties under Article 40 of the International Covenant on Civil and Political Rights*, CCPR/C/AUS/CO/5, Ninety-Fifth Session, New York, 16 March to 3 April 2009 (7 May 2009), [20].

<sup>23</sup> Office of the United Nations High Commissioner for Human Rights, Submission No. 49 to the Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry on Australia's advocacy efforts for a worldwide abolition of the death penalty*, October 2015, [23].

<sup>24</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade, *A world without the death penalty: Australia's advocacy for the abolition of the death penalty*, 5 May 2016, [4.139].

<sup>25</sup> Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report, Report 4 of 2017*, 9 May 2017, [1.19].

<sup>26</sup> Parliamentary Joint Committee on Human Rights, *Human Rights Scrutiny Report, Report 4 of 2017*, 9 May 2017, [1.23].

<sup>27</sup> The Commission considers that the refusal should be mandatory in circumstances where the death penalty could be imposed following extradition. Australian Human Rights Commission Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011*, 1 August 2011, [12].

<sup>28</sup>

<sup>29</sup> The Commission has in the past called for consistency across the extradition, mutual assistance and information sharing contexts. See, for example, The Hon. John von Doussa QC, President, Human Rights and Equal Opportunity Commission, 'The Death Penalty – a matter of principle' (United Nations Association of Australia, Ming's Palace, Adelaide, 22 October 2006).

<sup>30</sup> Australia's Sixth period report, *Consideration of reports submitted by States parties under article 40 of the Covenant* (CCPR/C/AUS/6), 2 June 2016, [96].

<sup>31</sup> Australian Human Rights Commission Submission to the House of Representatives Standing Committee on Social Policy and Legal Affairs, *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011*, 1 August 2011, [34]-[35].

<sup>32</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1996, 999 UNTS 171 (entered into force 23 March 1976).

<sup>33</sup> Article 7, *International Covenant on Civil and Political Rights*.

<sup>34</sup> United Nations Committee Against Torture, *Concluding Observations of the Committee Against Torture: Australia* (CAT/C/AUS/CO/3) 22 May 2008, [16].

<sup>35</sup> United Nations Committee Against Torture, *Conclusions and recommendations of the Committee Against Torture: United States of America* (CAT/C/USA/CO/2), July 2006, [21].