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Committee Secretary
Parliamentary Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
Parliament House
Canberra ACT 2600

By email: jscfadt@aph.gov.au

Dear Committee Secretary,

Submission on Australia's Advocacy for the Abolition of the Death Penalty

Australian Lawyers for Human Rights (“ALHR”) thanks the Joint Standing Committee on Foreign Affairs, Defence and Trade for the opportunity to make this submission on Australia's efforts to advocate for worldwide abolition of the death penalty, having particular regard to further steps Australia could take to advocate for worldwide abolition.

ALHR was established in 1993 and is a network of over 2,600 Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and a secretariat at La Trobe University Law School in Melbourne.

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1. Summary

ALHR strongly opposes the death penalty in all circumstances as a matter of principle. We consider that its use clearly violates fundamental international human rights norms such as the right to life and the right not to be subjected to torture and other cruel, inhumane or degrading treatment or punishment. Both of these rights are recognised in the *Universal Declaration of Human Rights*, the *International Covenant on Civil and Political Rights* and other international and regional human rights instruments.

The death penalty undermines human dignity, which is inherent to every human being. Furthermore, it has no value as a deterrent, and any miscarriage of justice in capital cases is irreversible and irreparable.

ALHR recognises that every country has the right to approach domestic criminal justice issues in a sovereign manner, and a responsibility to protect the public from crime. However, the death penalty is not an effective way to do so and the taking of life is far too absolute and irreversible a measure for the State to impose, even when backed by legal process.

In this submission, ALHR summarises current international and regional human rights standards concerning the death penalty. We consider that the Australian Government's advocacy for the abolition of the death penalty must be undertaken in the context of these standards.

ALHR is of the firm view that Australia could do much more to advocate for the global abolition of the death penalty.

Australia's position in the Asia Pacific, where mandatory death penalties are retained by many of our closest neighbours, renders the Australian Government uniquely placed to take on a leadership role in regional efforts to abolish the death penalty and achieve a moratorium on death sentences. In ALHR's view, this engagement is particularly important given that the Asia Pacific is the only region without a comprehensive intergovernmental human rights mechanism.

ALHR calls on the Government to take more committed, consistent and strategic action in advocating for the abolition of the death penalty. Australia should be devoting greater resources to offering practical and more effective alternatives to States which retain and implement the death penalty.

In advocating for the abolition of the death penalty the Australian Government should be aiming to achieve legal and policy reforms that ultimately see:

- Countries that still use the death penalty halt all executions.
- Countries that have already stopped executing people, remove the punishment from their statute books.
- All death sentences commuted to prison sentences.

ALHR calls on the Australian Government to urgently develop and fund a national action plan which adopts the four measures recommended by leading NGOs, being: Amnesty International, Human Rights Watch, the Human Rights Law Centre, Reprieve Australia, Australians Detained Abroad, NSW Council for Civil Liberties, Civil Liberties Australia, and Uniting Justice Australia in their paper "*Australian Government and the Death Penalty: A Way Forward*"¹ Those measures are to:

1. *Develop a new Department of Foreign Affairs and Trade public strategy document aimed at ending the death penalty, everywhere;*
2. *Use the aid program to support civil society organisations campaigning for abolition in retentionist countries;*

¹ Amnesty International et al, "*Australian Government and the Death Penalty: A Way Forward*", 20 May 2015, available at <https://www.hrw.org/news/2015/05/20/australian-government-and-death-penalty-way-forward>

3. *Join forces with other nations - through the United Nations and other multilateral and regional bodies - to push for universal adoption of a global moratorium on the death penalty;*
4. *Put in place stronger legislation so that the Australian Federal Police is required by law and in operational procedures not to share information with other law enforcement agencies that would potentially result in suspected perpetrators facing the death penalty.*²

2. Background

In 1977 only 16 countries globally had abolished the death penalty. Since that time Australia has been part of a worldwide movement opposing the death penalty that has seen 140 countries now abolish it in law or practice.³

There is, however, still much work to be done. 100 countries currently retain the death penalty globally. According to Amnesty International, 22 countries recorded executions in 2014⁴. At least 607 people were executed in 2014. It must be noted, however, that this figure excludes China for which there is no reliable data⁵. If reliable data was available in respect of executions in China the above quoted figure is likely to be very significantly higher given at least 2,466 people are known to have been sentenced to death there during 2014.⁶

3. International Human Rights Law Framework

ALHR submits that review of Australia's advocacy for abolition of the death penalty and recommendations as to further steps that could be taken must be made within the context of the relevant international human rights law framework.

International human rights standards have quite clearly developed in a way that favours ever tighter restrictions on the scope of the death penalty⁷ with a view to its total abolition.

The importance of protecting individual life is internationally recognised in Article 3 of the *Universal Declaration of Human Rights* which provides that *'everyone has the right to life, liberty and security of person'*⁸. Similarly, Article 6(1) of the *International Covenant on Civil and Political Rights (ICCPR)* holds that *'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'*⁹.

Where countries are yet to abolish the death penalty, Article 6(2) of the ICCPR imposes strict guidelines on its use, stating that it *'may be imposed only for the most serious crimes.'* In a general comment on Article 6 of the ICCPR, the United Nations Human Rights Committee (the Committee) stated:

"(Article 6) refers generally to abolition (of the death penalty) in terms which strongly suggest... that abolition is desirable. The Committee concludes that all measures of abolition should be considered as progress in the enjoyment of the right to life."¹⁰

2 ibid

3 Amnesty International, *Death Sentences and Executions 2014*, available at <http://www.amnestyusa.org/research/reports/death-sentences-and-executions-2014>

4 Ibid

5 Ibid

6 Ibid

7 Eric Prokosch, "Human Rights v The Death Penalty - Abolition and Restriction in Law and Practice" (Article for a book on the death penalty to be published by the Council of Europe, tentatively entitled *Europe: A Death-penalty-free Zone*) p.1

8 UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html> [accessed 15 September 2015]

9 Ibid

10 General Comment 6 on Article 6 of the International Covenant on Civil and Political Rights adopted by the Committee at its 16th session on 27 July 1982

Second Optional Protocol to the International Covenant on Civil and Political Rights

Australia is a party to the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty*¹¹ (*Second Optional Protocol*), adopted by the UN General Assembly in 1989. More than one-quarter of the UN Member States have acceded to this protocol. It provides for the total abolition of the death penalty but allows states parties to retain the death penalty in time of war if they make a reservation to that effect at the time of ratifying or acceding to the Protocol. The preamble to the Protocol states that:

“..abolition of the death penalty contributes to enhancement of human dignity and progressive development of human rights.”¹²

By ratifying the *Second Optional Protocol*, Australia has committed itself to opposing the death penalty. ALHR submits that our interactions with countries who maintain the death penalty should steadfastly reflect that commitment.

The UN General Assembly has strongly appealed to all States that have not yet done so to become parties to the ICCPR and “to consider as a matter of priority acceding to the *Optional Protocols to the International Covenant on Civil and Political Rights*”.¹³ In resolution 2005/59, adopted on 20 April 2005, the Commission called upon all States that still maintain the death penalty to “abolish the death penalty completely and in the meantime establish a moratorium on executions.”¹⁴ The resolution also calls “States that no longer apply the death penalty but maintain it in their legislation to abolish it”.

This clear international trend towards abolition of the death penalty received resounding support in December 2014 by means of the largest-ever UN General Assembly (UNGA) vote in favour of establishing a worldwide moratorium. 117 out of 193 UN member states voted in favour of the resolution, an increase of six votes since the last UNGA vote on this issue in 2012. While not binding, the growing support for this resolution shows that world opinion is hardening against the use of the death penalty.¹⁵

4. Regional Treaties and Frameworks

4.1 Europe

Article 2 of the *European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)* contains similar provisions on the right to life as those contained in the UDHR and ICCPR¹⁶. In addition, *Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty*¹⁷, adopted by the Council of Europe in 1982, provides for the abolition of the death penalty in peacetime. Taking further action in 2002, the Council of Europe adopted *Protocol No. 13 to the European Convention on Human Rights concerning the abolition of the death penalty in all*

11 UN General Assembly, *Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty*, 15 December 1989, A/RES/44/128, available at: <http://www.refworld.org/docid/3ae6b3a70.html> [accessed 15 September 2015].

12 Ibid

13 Resolution 58/165 of 22 December 2003, adopted without a vote. Also see UN Committee on Human Rights resolution 2004/69 of 21 April 2004.

14 UN Commission on Human Rights, *Human Rights Resolution 2005/59: The Question of the Death Penalty*, 20 April 2005, E/CN.4/RES/2005/59, available at: <http://www.refworld.org/docid/45377c730.html> [accessed 18 September 2015]

15 United Kingdom Government Human Rights and Democracy Report 2014 available at: <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2014/human-rights-and-democracy-report-2014#chapter-v-criminal-justice-and-the-rule-of-law>

16 Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html> [accessed 15 September 2015]

17 Council of Europe, *Protocol 6 to the European Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of Death Penalty*, 28 April 1983, ETS 114, available at: <http://www.refworld.org/docid/3ae6b3661c.html> [accessed 18 September 2015]

*circumstances*¹⁸ which provides for the abolition of the death penalty in all circumstances, including time of war or of imminent threat of war.

In resolution 1044 (1994), adopted on 4 October 1994, the Parliamentary Assembly of the Council of Europe called "*upon all the parliaments in the world which have not yet abolished the death penalty, to do so promptly following the example of the majority of Council of Europe member states.*"¹⁹ Likewise, the *Guidelines to European Union Policy towards Third Countries on the Death Penalty*, adopted by the Council of the European Union in 1998, state that "*abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights*". They establish that it is an EU objective "*to work towards universal abolition of the death penalty as a strongly held policy view agreed by all EU member states.*"²⁰

4.1 Americas

The *Protocol to the American Convention on Human Rights to Abolish the Death Penalty*²¹, adopted by the General Assembly of the Organization of American States in 1990, provides for the total abolition of the death penalty but allows State parties to retain the death penalty in wartime if they make a declaration to that effect at the time of ratifying or acceding to the Protocol.²²

4.3 Asia Pacific

As noted earlier, the Asia Pacific is the only region without a comprehensive intergovernmental human rights mechanism. Unlike Europe, Africa and the Americas, the Asia-Pacific does not have a region-wide inter-governmental system – such as treaties, courts, commissions or other institutions – to protect and promote human rights.²³ Steps have however been taken at a sub-regional level to strengthen human rights. In South-East Asia, the 10-member ASEAN group officially inaugurated the ASEAN Intergovernmental Commission on Human Rights in 2009. In addition, Pacific Island nations are actively exploring strategies to develop human rights bodies.

Importantly, civil society organisations from ASEAN countries are urging the grouping's governments to impose an immediate moratorium on the use of the death penalty with a view to completely abolishing it.²⁴ **ALHR calls on the Australian Government to provide strategic assistance to ASEAN civil society groups in their advocacy efforts towards the abolition of the death penalty. As outlined below this has proven an effective strategy in the United Kingdom's exemplary advocacy for abolition of the death penalty.**

5. Review of Australia's current advocacy for abolition of the death penalty

As a signatory to the *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the Death Penalty*, Australia is recognised on the world stage as being opposed to the imposition of the death penalty.²⁵ Its condemnation of the death penalty is reflected in calls for countries such as Iran, Egypt, China, Malaysia and

18 Council of Europe, *Protocol 13 to the European Convention on Human Rights and Fundamental Freedoms on the Abolition of the Death Penalty in All Circumstances*, 3 May 2002, ETS 187, available at: <http://www.refworld.org/docid/3ddd0e4c4.html> [accessed 18 September 2015]

19 Amnesty International, *International Standards on the Death Penalty*, 1 January 2006, Index Number ACT 50/001/2006

20 Ibid

21 Organization of American States (OAS), *Protocol to the American Convention on Human Rights to Abolish the Death Penalty* ("Pact of San Jose"), 8 June 1990, OAS Treaty Series, N° 73, available at: <http://www.refworld.org/docid/3de4b4884.html> [accessed 18 September 2015]

22 Amnesty International, *International Standards on the Death Penalty*, Op cit

23 See <http://www.asiapacificforum.net/>

24 Ibid

25 See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/2ndOPCCPR.aspx>

Singapore to bring an end to capital punishment through the UN Human Rights Council's Universal Periodic Review Process.²⁶

Australia's current international advocacy for the abolition of the death penalty has a situational focus – that is, it tends to come to prominence when Australian nationals are exposed to the risk of a death sentence overseas.²⁷ This type of advocacy was apparent in the response to the plight of Andrew Chan and Myuran Sukumaran as they faced execution in Indonesia in April 2015. In that case, politicians from all major parties issued official statements in opposition to the executions and pleaded with Indonesian officials to commute the sentences to ones of imprisonment.²⁸ The Australian government issued a similar plea for clemency when Van Tuong Nguyen was executed for drug trafficking in Singapore in 2005.²⁹

As an abolitionist country in a region of retentionist States, Australia's advocacy to end capital punishment is necessarily concentrated on regional and bilateral relations. This is reflected in diplomatic responses to the passing of death sentences on Australian citizens found guilty of capital offences in countries such as Indonesia and Singapore.

Australia's abolitionist stance is also apparent at the bilateral level in its policy of refusing extradition requests in circumstances in which the person the subject of the request faces the real possibility of capital punishment of extradited for trial.³⁰ Since December 2009, Australian government policy guidelines have required the Australian Federal Police to take into account a number of factors when considering requests to provide police-to-police assistance in matters in which accused persons may face the death penalty.³¹ That policy also requires that requests for assistance be granted Ministerial approval in any case in which a person has been charged with an offence which carries the death penalty.³²

6. Further steps Australia could take to advocate for worldwide abolition

It is ALHR's view that, whilst the Australian government has been very vocal in its condemnation of the executions of Australian citizens, it could play a much larger role opposing the death penalty globally. As noted earlier, the Australian Government is uniquely positioned in the Asia Pacific to take on a leadership role in regional efforts to abolish the death penalty and achieve a moratorium on death sentences.

As a nation our domestic, regional and international interactions should very clearly reflect a view that the death penalty is an inhuman, cruel and irreversible punishment that has no place in a modern legal system. We must be consistent and unambiguous in conveying that its abolition is a prioritised task for the Government in efforts to promote and increase respect for human rights.

As stated by Elaine Person, Australia Director at Human Rights Watch:

“The time is ripe for Australia's foreign ministry to make public a new comprehensive policy to end the death penalty worldwide, with specific and achievable goals for individual countries. The strategy should include consistent public and private diplomatic pressure to end this cruel practice, showing how the death penalty has failed to deter crime and been unjustly applied.”³³

26 Amnesty International et al, n 1.

27 Ibid.

28 Ibid.

29 See <https://www.humanrights.gov.au/news/media-releases/hreoc-says-there-no-place-death-penalty-21-st-century>.

30 *Extradition Act* 1988, s 22(3)(c).

31 Australian Government, Attorney-General's Department, *Australia's Universal Periodic Review 2010*, <http://www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/Documents/UniversalPeriodicReview.PDF>

32 Ibid.

33 Elaine Pearson, Human Rights Watch, 20 May, 2015 “Australia: Adopt New Strategy to End Death Penalty Abroad” at: <https://www.hrw.org/news/2015/05/20/australia-adopt-new-strategy-end-death-penalty-abroad>

ALHR strongly supports Human Rights Watch Australia's calls on the Australian Government to develop a strategy which entails a comprehensive public agenda for it to push for abolition of the death penalty.³⁴

6.1 Regional and International Action

On a regional and international level ALHR urges the Australian Government to follow the impressive lead of countries like the United Kingdom and Sweden who are working actively to persuade States that still include the death penalty as part of their legislation to change their attitude.

6.1.1 United Kingdom

The United Kingdom (UK) government's strategy for the abolition of the death penalty, which was updated in October 2011, includes clear benchmarks and goals to guide British embassies in advocating against the death penalty in countries in which executions continue. It defines three goals to support an overarching objective of global abolition:

1. increase the number of abolitionist countries, or countries with a moratorium on the use of the death penalty;
2. in countries that still apply the death penalty, secure further restrictions on its use and reductions in the numbers of executions;
3. when the death penalty is applied, ensure that universal minimum standards on its use are met. These include fair trial rights and the non-execution of juveniles.³⁵

In 2014 the UK government continued to place a particular focus on two geographic regions: Asia and the Commonwealth Caribbean. This strategy enables UK Government embassies in those regions to actively follow developments and offer expert assistance to states and territories where possible, for example, assisting countries in taking steps to reduce the number of offences for which the death penalty may be applied.³⁶

Importantly, the UK Government's strategy also earmarks Foreign Commonwealth Office (UK FCO) funding to aid death penalty research, local lawyers in bringing challenges against the death penalty and civil society groups in their advocacy efforts towards the abolition of the death penalty. For instance, project work funded by the UK FCO, together with other governments, is being used to help to clarify the question of public opinion on the death penalty in Japan, which executed three prisoners in 2014.³⁷

In the Caribbean region, UK FCO funded project work has helped to establish legal safeguards, which have effectively restricted the use of the death penalty. Funding has also been allocated to assist in the creation of regional not-for-profit organisations such as, Greater Caribbean for Life, to direct and support Caribbean activists with training and material, and to mobilise further support for abolition of the death penalty.³⁸

In addition to the above measures, the UK FCO also supports the work of an All-Party Parliamentary Group (APPG) for the Abolition of the Death Penalty which works "*energetically with parliamentarians worldwide to bring about abolition.*"³⁹ In 2014 the UK FCO funded lobbying visits by its members to the United States, Vietnam and Suriname. The group has also

34 See Elaine Pearson, "Australia should lead in abolishing the death penalty in the Asia-Pacific, 23 February 2015, *The Age*, republished at: <http://www.hrw.org/news/2015/02/23/australia-should-lead-abolishing-death-penalty-asia-pacific>

35 Chapter 5, United Kingdom Government Foreign and Commonwealth Office, *Human Rights and Democracy Report 2014* 12 March 2015 available at: <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2014/human-rights-and-democracy-report-2014>

36 Ibid

37 Ibid

38 Ibid, Chapter 3

39 Ibid

held consultations with the Taiwan Representative Office following previous visits by APPG members.⁴⁰

According to the *United Kingdom Government Foreign and Commonwealth Office Human Rights and Democracy Report 2014*:

“the outcome of this work has been readiness by Suriname to take formal steps towards abolishing the death penalty. Following the APPG visit, our Embassy has been involved in setting up expert-level consultations, which will hopefully lead to legislation being tabled during 2015. Each country which formally abolishes the death penalty strengthens the abolitionist trend in world opinion.”

ALHR strongly endorses the comprehensive framework for action developed by the UK in advocating for the global abolition of the death penalty. In particular we applaud its recognition of the need to earmark funding to aid local lawyers and civil society groups in their advocacy efforts towards the abolition of the death penalty.

6.1.2 Sweden

The Swedish government has also been a world leader in working actively at an international level for the total abolition of the death penalty. In Sweden's publicly stated view, *“the death penalty is an inhuman, cruel and irreversible punishment that has no place in a modern legal system, and its abolition is a prioritised task for the Government in efforts to promote and increase respect for human rights.”*⁴¹ Sweden is working actively to persuade states that still include the death penalty as part of their legislation to change their attitude. This work is conducted primarily in the UN, but also in the Council of Europe, within the Organisation for Security and Cooperation in Europe (OSCE) and in bilateral contacts.⁴²

ALHR submits that, like Sweden and the United Kingdom, Australia should be a leading international actor at the forefront of the work that is being conducted to abolish the death penalty, both within multilateral fora such as the United Nations, and in bilateral contacts. At an international level Australia should be working harder and more publicly for the total abolition of the death penalty.

6.2 Domestic Action

We endorse the views of the Parliamentary Joint Committee on Human Rights (PJCHR) expressed in Guidance Note 1 of December 2014⁴³ as to the nature of Australia's human, civil and political rights obligations, and agree that the inclusion of human rights 'safeguards' in Commonwealth legislation is directly relevant to Australia's compliance with those obligations.

As noted by the former President of the Human Rights and Equal Opportunity Commission, The Hon. John von Doussa QC as far back as 2006:

*“In an era where law enforcement requires international cooperation, 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.”*⁴⁴

40 Ibid

41 See <http://www.manskligarattigheter.se/en/human-rights/what-rights-are-there/right-to-life-the-death-penalty>

42 Ibid

43 Commonwealth of Australia, Parliamentary Joint Committee on Human Rights, *Guidance Note 1: Drafting Statements of Compatibility*, December 2014, available at <http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Guidance_Notes_and_Resources> accessed 16 January 2015, see also previous *Practice Note 1* which was replaced by the Guidance Note, available at <<https://www.humanrights.gov.au/parliamentary-joint-committee-human-rights>>, accessed 16 January 2015.

44 The Hon. John von Doussa QC, President, Human Rights and Equal Opportunity Commission (HREOC), *The Death Penalty - a matter of principle*, 22 October 2006, Speech given to United Nations Association of Australia, Adelaide - available at: <https://www.humanrights.gov.au/news/speeches/death-penalty-matter-principle> accessed 18 September 2015

The United Nations Human Rights Committee has held that where countries have abolished the death penalty, they have an obligation not to expose a person to the real risk of its application.⁴⁵

Given this obligation, **ALHR calls on the Australian Government to ensure our mutual assistance and agency assistance arrangements very clearly reflect Australia's commitment to abolishing the death penalty.**

Had it not been for inconsistencies between the safeguards applicable to mutual assistance and agency assistance, Andrew Chan and Myuran Sukumaran may not have been exposed to a sentence of death. There are currently no Australian laws that prevent a repeat of the circumstances that saw the Bali 9 sentenced to death and executed.

It is ALHR's view that our domestic laws and directives as well as bilateral arrangements presently still risk exposing Australians to the death penalty in foreign countries. We consider this to be inconsistent with Australia's obligations under the 2nd *Optional Protocol*. Moreover, it undermines Australia's principled opposition to the death penalty.

ALHR calls for the Australian Government to ensure AFP assistance to foreign law enforcement agencies is limited by a provision similar to that applying in the Extradition Act 1988. If this were the case, the AFP could only provide information to international authorities when it has a guarantee that the information will not be used to pursue capital charges.⁴⁶ There is a pressing need for a requirement of Ministerial oversight to be introduced into the AFP guidelines concerning the sharing of information that could lead to the death penalty when Australian law enforcement agencies are providing assistance before arrest, charge, or conviction.

ALHR submits that the Federal Parliament should amend the *Mutual Assistance in Criminal Matters Act 1987* (Cth) (the 'Mutual Assistance Act') and the *Australian Federal Police Act 1979* (Cth) (the AFP Act):

- to provide for the mandatory refusal of a request for mutual assistance in relation to an investigation which may expose a person to the risk of the death penalty, as set out in more detail in the *2012 Human Rights and Equal Opportunity Commission Submission to the Attorney-General's Department Mutual Assistance Review*⁴⁷; and
- to prohibit police sharing information which could lead to the death penalty for Australian citizens or persons otherwise under Australian jurisdiction.

ALHR also calls on the Australian Government to be more transparent in respect of the approach taken to the death penalty in bilateral treaties⁴⁸ where there is a risk of exposing persons to the death penalty in a foreign country.

We note that making these relatively small but highly significant changes to the policy framework within which the AFP operates would not prevent Australia from providing valuable assistance in matters involving offences for which the death penalty is maintained, it simply means that Australia's assistance and cooperation will always be conditional on an absolute guarantee from the requesting country that they will not impose or carry out the death penalty.⁴⁹

7. Conclusion

ALHR considers that the belief that we should respect the inherent dignity and value of human life is the foundation of all human rights law. Any imposition of the death penalty is inconsistent with developing international human rights standards and a seriously retrograde step at a time when there is a trend towards abolition of the death penalty in many regions of the world. The

45 In *Judge v. Canada*, United Nations Human Rights Committee Communication No. 829/1998, U.N. Doc. CCPR/C/78/D/829/1998 (2003).

46 This is one of the recommendations in Amnesty International et al, n 1, and is strongly endorsed by ALHR.

47 <<https://www.humanrights.gov.au/mutual-assistance-review>> accessed 18 September 2015

48 Such as the *'Mutual Assistance in Criminal Matters (Republic of Indonesia)' Treaty* and the *Memorandum of Understanding Between the Government of the Republic of Indonesia and the Government of Australia on Combating Transnational Crime and Developing Police Cooperation*.

49 von Doussa, op cit.

Australian Government should be taking a consistently stronger and more public stand against the death penalty in all countries, under any circumstances, and for all peoples regardless of their nationality. It is not sufficient to limit our advocacy efforts to cases where Australian citizens are subject to capital charges, and even there the situation can be improved by changes to domestic law and policy.

8. Recommendations

As mentioned, ALHR strongly endorses in its entirety the blueprint for action *Australian Government and the Death Penalty: A Way Forward* developed by Amnesty International et al. ALHR urges the Australian government to develop and fund its own national action plan, including measures to:

- 8.1 **Consult and Advocate Internationally:** consult widely with other leaders in this area of advocacy such as the United Kingdom and join forces with other nations - through the United Nations and other multilateral and regional bodies - to push for universal adoption of a global moratorium on the death penalty
- 8.2 **Develop and fund our Strategy:** develop and fund Australia's own comprehensive global strategy against the death penalty, particularly a new Department of Foreign Affairs and Trade strategy;
- 8.3 **Lead within the Asia- Pacific region:** engage with advocacy groups in countries retaining the death penalty, particularly those from ASEAN and Pacific Island countries and use our aid programme to support civil society organisations campaigning for abolition in retentionist countries;
- 8.4 **Amend our own legislation and policy:** amend Australian domestic legislation and policy to address the abovementioned failings in the framework for the provision of assistance to foreign law enforcement agencies.

Yours faithfully,

Nathan Kennedy
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