

Introduction and background

Context of the inquiry

- 1.1 The inquiry of the Joint Standing Committee on Foreign Affairs, Defence and Trade into Australia's Advocacy for the Abolition of the Death Penalty arose at a critical juncture in the history of capital punishment and Australia's engagement with the issue.
- 1.2 While the trend over the last few decades has seen a reduction in executions and an increase in the number of countries which do not execute,¹ 2015 saw a significant rise in executions worldwide, driven largely by Iran, Pakistan and Saudi Arabia.²
- 1.3 On 17 December 2014, as a response to terrorism, Pakistan lifted a moratorium on executions that had stood since 2008,³ and Indonesia executed 14 convicted drug traffickers in 2015, after having executed no one from 2009 to 2012, and no one in 2014.⁴
- 1.4 The year 2015 also saw the executions of Australian citizens Andrew Chan and Myuran Sukumaran, who were sentenced to death in Bali, Indonesia for smuggling heroin in 2005, and were eventually executed on 29 April

1 Amnesty International, *Death Sentences and Executions in 2015*, pp. 33-34, at <www.amnesty.org/en/latest/research/2016/04/death-sentences-executions-2015/> viewed 12 April 2016.

2 Note: China is likely to have executed more individuals than these countries, but figures are not available for China, as the number of executions is a state secret. Amnesty International, *Death Sentences and Executions 2015*, pp. 5-6.

3 Human Rights Watch, *Submission 23*, p. [5].

4 Amnesty International, *Death Sentences and Executions 2015*, p.6.

2015, despite strong and impassioned pleas by numerous Australians, including this Committee, and many friends in Indonesia.⁵

- 1.5 In 2016 Australia is mounting a campaign for a seat on the United Nations Human Rights Council (HRC) for the period 2018-2020. If elected, Australia intends to make advocacy for abolition of the death penalty a priority for its term on the HRC.⁶
- 1.6 Australia holds a politically bipartisan position against the death penalty and continues to support campaigns for worldwide abolition. This report offers an analysis of Australia's recent efforts and provides concrete steps Australia can take to invigorate its advocacy at this critical time.

Conduct of the inquiry

- 1.7 The inquiry was referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) on 21 July 2015 by the Minister for Foreign Affairs, the Honourable Julie Bishop MP. The JSCFADT then referred the inquiry to its Human Rights Sub-Committee on 12 August 2015.
- 1.8 The Committee received 62 submissions and an additional number of supplementary submissions and responses to questions on notice. A list of all submissions, exhibits and answers to questions on notice are listed at Appendices A, B and C respectively and are available on the Committee's website.
- 1.9 A number of Governments were invited to respond to the inquiry terms of reference and submissions or other information were received from:
- the UK Foreign and Commonwealth Office;
 - the Iraqi High Commission for Human Rights;
 - the European Commission;
 - the Turkish Embassy to Australia;
 - the Irish Republic Minister for Foreign Affairs and Trade; and
 - the Norwegian Embassy to Australia.
- The Committee is grateful for these contributions to the inquiry.
- 1.10 Public hearings were conducted in Melbourne, Sydney and Canberra. Some witnesses gave evidence remotely from overseas locations. Details of

5 Amnesty International, *Death Sentences and Executions 2015*, p. 32.

6 Department of Foreign Affairs and Trade (DFAT), *Submission 35*, p. 6.

the hearings and the names of witnesses who appeared before the Committee are at Appendix D.

- 1.11 The Committee has not sought to examine or debate in any detail the arguments in favour or against the death penalty. Rather, the Committee has focussed the inquiry on considering how Australia's advocacy efforts may be improved.
- 1.12 The terms 'capital punishment' and 'the death penalty' are used interchangeably throughout the report.

Structure of the report

- 1.13 This chapter outlines the context for the inquiry and how the inquiry was conducted, as well as briefly noting perspectives from the evidence highlighting the reasons why the death penalty should be abolished.
- 1.14 Chapter two contains information regarding execution trends and the position of international law on the death penalty.
- 1.15 Chapter three lays out Australia's domestic position in relation to the death penalty, including looking at extradition, mutual assistance, and Australia's international obligations.
- 1.16 Chapter four reviews the role of law enforcement in capital punishment, including the Australian Federal Police's information sharing practices in preventing international crime. It also looks at the issue of drug crime and the death penalty.
- 1.17 Chapter five outlines Australia's recent international engagement on capital punishment, government support for Australian's facing the death penalty overseas, and methods and approaches to advocating for an end to capital punishment.
- 1.18 Chapter six discusses further steps Australia can take to invigorate its advocacy, including through the development of a formal whole-of-government strategy.

Views on the death penalty

- 1.19 The Committee received a range of evidence outlining how the death penalty breaches human rights and why it should be abolished. A selection of these views is contained within this section.
- 1.20 In summary, the main objections raised in evidence were that the death penalty:
- violates the fundamental right to life and other recognised human rights;
 - has no unique deterrent effect;
 - is irreversible and admits no possibility of redemption or rehabilitation;
 - the death penalty and executions are cruel, torturous and degrading;
 - may be applied following miscarriages of justice; and
 - impedes a country's ability to advocate for leniency for one's own citizens.

The Committee agrees with these views and believes the death penalty has no place in the modern world.

- 1.21 Amnesty International Australia submitted:

It is the ultimate cruel and inhuman punishment. It strips a person of their most fundamental right – the right to life – and must become a relic of the past.⁷

- 1.22 Mr Chris Hayes MP (Australian Parliamentarians Against the Death Penalty) repeated the words of the former Chief Justice of the South African Constitutional Court, Ismail Mahomed:

The death penalty sanctions the deliberate annihilation of life. It is the ultimate and the most incomparable extreme form of punishment. It is the last, most devastating and most irreversible course of criminal law involving, as it necessarily does, the planned and calculated termination of life, itself. The destruction of the greatest and most precious gift, which has been bestowed on all humankind.⁸

⁷ Amnesty International Australia, *Submission 34*, p. 3.

⁸ Mr Chris Hayes MP, Australian Parliamentarians Against the Death Penalty, *Committee Hansard*, Sydney, 20 November 2015, p. 26.

- 1.23 The Honourable Justice Lex Lasry argued that the death penalty is often used for reasons associated with a ‘perceived political benefit that flows to the government of the country concerned’.⁹
- 1.24 Ms Fiona McLeod (Treasurer, Law Council of Australia; President, Australian Bar Association) said:
- Capital punishment is a barbaric affront to the fundamental right to life. It carries an unacceptable and irreversible risk that an innocent person or a person suffering a cognitive or mental impairment may be executed. The death penalty has been observed to serve political agendas and judicial campaigns for re-election in some countries. There is no proof that it is a substantial deterrent to criminal offending... The cost of detention of death row prisoners and the execution process, including exhausting all available legal and executive appeal processes, is high. Put frankly, there is no humane way to execute a human being.¹⁰
- 1.25 The United Kingdom Foreign and Commonwealth Office submitted:
- Application of the death penalty is prone to error, yet irreversible. Since 1967, more than a hundred people have been convicted of murder in the UK, but later exonerated. Those people might have been hanged had we not introduced a moratorium.¹¹
- 1.26 Professor Andrew Byrnes (Diplomacy Training Program, University of NSW) said:
- I think we all know the grounds for objection to the death penalty: moral or religious commitment to not violating the sanctity of human life; political morality of intentional killing by the state brutalises and demeans the political collective; the fact that the death penalty has not been clearly shown to have any unique deterrent effect by any reputable social science studies; the fallibility of criminal justice systems and the irreversibility of death sentences; its discriminatory impact – racially and socially; and, finally, international legal obligations.¹²

9 The Honourable Justice Lex Lasry AM QC (Private capacity), *Committee Hansard*, Melbourne, 17 November 2015, p. 3.

10 Ms Fiona McLeod, Treasurer, Law Council of Australia; President, Australian Bar Association, *Committee Hansard*, Melbourne, 17 November 2015, p. 49.

11 UK Foreign and Commonwealth Office, *Submission 15*, p. 1.

12 Professor Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 11.

- 1.27 Some witnesses and submissions noted that the death penalty is contrary to Christian values, particularly in relation to the sanctity of life.¹³ The Holy See submitted:
- The Holy See ... has long taken a very strong position against the death penalty and has advocated for its abolition, at regional and international forums.¹⁴
- 1.28 When addressing the United States Congress in September 2015, Pope Francis said he would 'advocate at different levels for the global abolition of the death penalty' and said that 'since every life is sacred ... society can only benefit from the rehabilitation of those convicted of crimes.'¹⁵
- 1.29 Mr Jeremy Stuparich (Public Policy Director, Australian Catholic Bishop's Conference) said that Pope Francis' views were the 'strongest ever rejection of the death penalty' from the Catholic Church's leadership.¹⁶
- 1.30 DFAT's submission confirmed Australia's view:
- Australia's opposition to the death penalty is based on the view that the death penalty is an inhumane form of punishment that violates the inherent human right to life.¹⁷

13 See for instance: Mr Melville Miranda, *Submission 43*, p. 1; UnitingJustice Australia, *Submission 25*, p. 1; Professor Gregory Joseph Craven, Vice-Chancellor, Australian Catholic University, *Committee Hansard*, Sydney, 9 December 2015, p. 18.

14 Secretary for the Holy See's Relations with States, *Submission 57*, p. 1.

15 Australian Catholic Bishops Conference, *Submission 20*, pp. 1-2; see also w2.vatican.va/content/francesco/en/speeches/2015/september/documents/papa-francesco_20150924_usa-us-congress.html viewed 14 April 2016.

16 Mr Jeremy Stuparich, Public Policy Director, Australian Catholic Bishops Conference, *Committee Hansard*, Canberra, 27 November 2015, p. 18.

17 DFAT, *Submission 35*, p. 5.