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DEATH PENALTY INFORMATION CENTER

September 24, 2015

Hon. Philip Ruddock, MP
Chair, Human Rights Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
Canberra ACT 2600
Australia

Re: Australia's Advocacy for the Abolition of the Death Penalty

Dear Mr. Ruddock:

This submission is made in response to the invitation we received from the Australian Embassy in the United States to comment on Australia's role in the international discussion of the death penalty.

The Death Penalty Information Center is a national non-profit organization serving the media and the public with analysis and information on issues concerning capital punishment in the United States. Founded in 1990, the Center promotes informed discussion of the death penalty by preparing in-depth reports, conducting briefings for journalists, and serving as a resource to those working on this issue. Among many resources, the Center maintains one of the most widely used websites on capital punishment and releases an annual report on the death penalty, highlighting significant developments and featuring the latest statistics. The Center does not take a moral or philosophical position on the death penalty, but it has pointed out problems in the way it is administered.

The role of the international community is a critical one in the ongoing debate about the death penalty in the U.S. and elsewhere. Although the U.S. is one of a minority of countries to retain capital punishment, its use is in sharp decline. The number of executions in 2014 was at a 20-year low, and the number of new death sentences was the fewest in 40 years. Public support for the death penalty has declined markedly, and many individual states have abolished it completely. Nevertheless, the death penalty remains in place in many states and on the federal level.

Our death penalty is subject to review under our constitution, which specifically forbids "cruel and unusual punishments." When our Supreme Court evaluates the constitutionality of a punishment like the death penalty, it considers the relative rarity of its use and the direction of change on the issue as measured by objective criteria. In this way, it determines whether a punishment has become outside of our standards of

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decency. The majority of the Court has consistently maintained that these standards evolve over time.

Although its use sometimes engenders controversy, our Supreme Court's case law instructs that U.S. courts are to consider the laws and practices of other nations in determining the contemporary values of American society. This is particularly so with regard to the opinions and practices of the world's Commonwealth nations, who share a significant legal heritage with the United States. Justice Stephen Breyer's recent dissenting opinion questioning the constitutionality of the U.S. death penalty relied, in part, on evidence of international practices. His recently published book (*The Court and the World: American Law and the New Global Realities* (Knopf 2015)), describes the debate within the court on this issue and indicates that some members of the Court seriously weigh international law and opinion when evaluating cases here that have international connections. Hence, it is likely that the use of the death penalty around the world and the statements of world leaders will be part of the discussion when the Court next examines the constitutionality of capital punishment.

Because of our long-standing friendship with Australia, our similar roots and language, and our sharing of common problems and solutions in many areas, your country's insights on the death penalty could carry particular weight here. No doubt, Australia's influence is also important in international forums such as the United Nations, where the death penalty is similarly under review.

We welcome Australia's active involvement on this issue because it raises the importance of the death penalty within the broader agenda of human rights. The experience of countries that have dealt with serious crime and terrorism, but have decided against using the death penalty, can be very instructive to other countries, especially those with similar beliefs and history.

The Death Penalty Information Center is at your disposal if you or your representatives wish to discuss the status of the death penalty in the U.S., or if we can provide any materials or information about this issue.

Yours truly,

/s

Robert Brett Dunham
Executive Director