

## Improving Australia's advocacy

- 6.1 Abolishing the death penalty worldwide will take time and a sustained effort by nations and the international community. Mr Phil Robertson (Deputy Director, Asia Division, Human Rights Watch) submitted:

Abolishing the death penalty is a long-term effort which is more like a marathon than a sprint, where progress will be seen over years rather than months. When running a marathon, one has to have persistence, training and focus. To succeed, one needs to plan on how to run the race, commit resources and overcome obstacles.<sup>1</sup>

- 6.2 This chapter reviews the many suggestions made by witnesses during the course of the inquiry for strengthening Australia's advocacy for abolition of the death penalty, as well as increasing its efficacy.
- 6.3 Specifically, the chapter examines:
- proposals for a whole-of-government strategy for international advocacy against the death penalty, including multilateral and bilateral engagement, engagement with civil society organisations, and support for research in the field;
  - suggestions for Australia's parliamentarians and the group Australian Parliamentarians Against the Death Penalty; and
  - the potential role of the private sector in advocating against the death penalty and executions.
- 6.4 The chapter concludes with the Committee's commentary on these issues, and a number of recommendations for actions Australia can take to strengthen and increase its advocacy for abolition of the death penalty.

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<sup>1</sup> Mr Phil Robertson, Deputy Director, Asia Division, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 24.

## An Australian death penalty strategy

- 6.5 There was broad support among witnesses for the development of an Australian strategy for abolition.<sup>2</sup> Reprieve stated:
- As has been done in the United Kingdom, Reprieve recommends that Australia establish a principled and consistent whole-of-government strategy which articulates Australia's commitment to global abolition.<sup>3</sup>
- 6.6 The Australian Lawyers for Human Rights (ALHR) submitted:
- 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.<sup>4</sup>
- 6.7 Human Rights Watch provided specific detail about what should be in the strategy, suggesting the government:
- ... ask DFAT to issue a public strategy document on stopping the death penalty worldwide with clear and specific goals on each country that still retains the death penalty, and make this a priority item for action by Australian diplomats in those countries.<sup>5</sup>
- 6.8 The Law Council of Australia and the Australian Bar Association (LCA and ABA) suggested the strategy should contain the following elements:
- An Australian strategy should explain Australia's vision, policy and basis of its opposition to the death penalty. ...
  - A strategy should also set out Australia's goals and mechanisms to achieve those goals. ...
  - The strategy should also identify the importance of a presenting a unified effort, and nominate one independent body or government agency to direct such efforts. Further, the strategy should identify who will be responsible for delivering key messages, for example ambassadors or the Minister for Foreign Affairs and Trade.<sup>6</sup>

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2 See especially: Amnesty International, Human Rights Watch, Human Rights Law Centre, Reprieve, Australians Detained Abroad, NSW Council for Civil Liberties, Civil Liberties Australia, *Submission 21*, p. [1].

3 Ms Ursula Noye, Board member, Reprieve Australia, *Committee Hansard*, Melbourne, 17 November 2015, p. 12.

4 Australian Lawyers for Human Rights (ALHR), *Submission 18*, p. 7.

5 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 24.

6 Law Council of Australia and the Australian Bar Association (LCA and ABA), *Submission 24*, p. 9.

- 6.9 Dr Bharat Malkani (University of Birmingham) proposed that Australia could look to the United Kingdom's work in this area:
- Australia can learn a great deal from the United Kingdom, which implemented an official 'Strategy for Abolition of the Death Penalty' from 2010-2015. The Strategy identified priority countries to target, and various channels through which to promote abolition. The Foreign and Commonwealth Office of the UK Government achieved some success through the Strategy. For example, Parliamentarians from the UK travelled to Suriname to encourage abolition, and the Government of Suriname abolished the death penalty on 3rd March 2015.<sup>7</sup>
- 6.10 DFAT confirmed that an Australian strategy to advocate for abolition of the death penalty is in development, and that the Department is awaiting the findings of this inquiry:
- It has been very much our intent from the beginning of the year to do such a strategy, but we thought we would hold fire until the committee had its hearings and came up with its recommendations. We want to be very responsive to what the committee comes up with.<sup>8</sup>
- 6.11 DFAT also confirmed that it is reviewing the strategies of other countries, including Norway and the UK.<sup>9</sup> These strategies are discussed in Chapter 2 of this report.
- 6.12 Describing the planned Australian strategy, DFAT explained that it:
- ... will be a tangible manifestation of our in principle commitment to opposing the death penalty in all instances. We see that strategy as performing several simultaneous functions. Firstly, it has an internal implication for our own staff, to help them do this work more effectively. Secondly, we see it as something that reaches out very much to civil society, both in Australia and overseas. Thirdly, we see it as something that reaches out to other governments. In that way, it reinforces the claims that we are making in getting onto the Human Rights Council.<sup>10</sup>
- 6.13 Some witnesses suggested that the strategy could be read as a national statement against the death penalty. Mr Chris Hayes MP argued that 'we

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7 Dr Bharat Malkani, University of Birmingham, *Submission 4*, p. 1.

8 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 5

9 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 5.

10 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 6.

probably do need a national mission statement in that regard, whether from DFAT or from other agencies that deal internationally'.<sup>11</sup>

6.14 Amnesty proposed the following set of key performance indicators be adopted for evaluating the success of an Australian strategy:

#### **Multilateral**

- Increase in the number of 'yes' votes in the UNGA death penalty moratorium and movement from 'no' votes to 'abstentions'.
- Increased number of countries recommending abolition of death penalty in UPR.
- Increased numbers of countries supporting HRC resolutions against death penalty.

#### **Regional**

- Transition of abolitionist in practice countries in Pacific towards abolitionist in law (therefore achieving goal that Pacific is first death penalty free region by 2018).
- Establishment of Asia-Pacific bloc opposed to the death penalty (including Philippines, Timor-Leste, Cambodia, Nepal, Bhutan + Pacific states).

#### **Priority countries**

- Reduction of public support for death penalty in priority countries.
- Reduction of support for death penalty amongst judicial officials, legal professionals, Parliamentarians etc in priority countries.
- Increase in reporting of death penalty and transparency relating to conditions and procedures.
- Improvements to conditions for people on death row.
- Reduction of crimes carrying the death penalty.
- Ending mandatory death sentences.
- Commitments to put in place moratoriums (at national and sub-national level).
- Increased abolitionist countries in law/signatories of ICCPR Optional protocol.
- Increased sub-national moratoriums.<sup>12</sup>

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

12 Amnesty International, *Supplementary Submission 34.1*, p. 12.

## Resourcing

- 6.15 Witnesses including Barrister Stephen Keim and the LCA and ABA suggested there is a need to put further resources towards Australia's advocacy for abolition of the death penalty.<sup>13</sup>
- 6.16 Civil Liberties Australia (CLA) argued:
- One of the key issues we think that is necessary is to elevate the importance of human rights within DFAT. Over the years, I would suggest to you that the status of the human rights branch in DFAT has been seriously eroded.<sup>14</sup>
- 6.17 CLA recommended the provision within DFAT of 'more staffing, more research, more power to implement whatever comes out of this process that the committee recommends'.<sup>15</sup>
- 6.18 DFAT remarked that resourcing issues limit what the Department can do in relation to the death penalty. Dr Lachlan Strahan (First Assistant Secretary, Multilateral Policy Division, DFAT) said:
- Frankly, we do not have the kind of resources that the British, French and Americans have. They have much, much larger foreign services. ... [One DFAT staff member] works for part of his time on the death penalty but he also covers many other human rights issues, including the recent HRC sessions.<sup>16</sup>
- 6.19 The DFAT submission also acknowledged a lack of funding for civil society projects:
- An avenue for stepping up our advocacy efforts could be the provision of modest financial support to a small group of civil society organisations that complement DFAT's death penalty abolition work. This is under consideration. DFAT does not have existing resources to support this stream of work.<sup>17</sup>
- 6.20 Amnesty International suggested Australia 'make a specific budget allocation of at least \$2 million within the Department of Foreign Affairs to support civil society efforts to abolish the death penalty.'<sup>18</sup>
- 6.21 Amnesty recommended this funding be used to:

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13 Mr Stephen Keim SC, *Submission 17*, p. 5; Law Council of Australia (LCA) and the Australian Bar Association (ABA), *Submission 24*, p. 8.

14 Mr William Murray Rowlings, Chief Executive Officer, Civil Liberties Australia *Committee Hansard*, Canberra, 27 November 2015, p. 8.

15 Mr Rowlings, Civil Liberties Australia, *Committee Hansard*, Canberra, 27 November 2015, p. 8.

16 Dr Lachlan Strahan, First Assistant Secretary, Multilateral Policy Division, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 9.

17 DFAT, *Submission 35*, p. 12.

18 Amnesty International, *Submission 34*, p. 4.

- Campaign publicly for change of laws and adoption of political commitments;
  - Conduct research (including public perception surveys etc which could help inform policy makers and change the debate);
  - Build regional/ global consensus against the death penalty, advocate for regional agreements or 'yet' votes for moratorium;
  - Run cases that help to highlight injustice of death penalty.<sup>19</sup>
- 6.22 As a comparison, the UK Government has, in recent years, allocated between GBP £500 000 and GBP £800 000 per annum to this cause.<sup>20</sup>
- 6.23 The following is a response to a question on notice asked in the UK Parliament:
- In the four financial years 2011-2015, the Foreign and Commonwealth Office funded 42 abolition of death penalty projects with a total expenditure of £2,382,237. The breakdown of expenditure by year was:
- 2011-12 £516,679
  - 2012-13 £760,803
  - 2013-14 £581,945
  - 2014-15 £522,809
- In the current financial year, we expect to spend around £600,000 on this topic. We will be announcing an ambitious strategy for further human rights programming shortly. This strategy will offer future opportunities for abolition of death penalty projects. The amount we allocate to projects in this area will depend on the quality of bids received.<sup>21</sup>
- 6.24 Human Rights Watch offered that the strategy should include annual reporting on progress made in countries that retain the death penalty.<sup>22</sup>
- 6.25 DFAT submitted that it intends to provide 'public updates, such as through DFAT's Human Rights NGO Forums' on the progress of the strategy.<sup>23</sup>
- 6.26 Regarding the form and structure of the proposed strategy, DFAT's Dr Strahan remarked:

19 Amnesty International, *Supplementary Submission 34.1*, p. 12.

20 Mr David Lidington, 'Answer to Question on Notice: Capital Punishment: Written question – 21767', by Mr Patrick Grady, answered 14 January 2016, *Parliament.UK*, at <[www.parliament.uk/written-questions-answers-statements/written-question/commons/2016-01-11/21767](http://www.parliament.uk/written-questions-answers-statements/written-question/commons/2016-01-11/21767)> viewed 8 April 2016.

21 Mr David Lidington, 'Answer to Question on Notice: Capital Punishment: Written question – 21767', by Mr Patrick Grady, answered 14 January 2016, *Parliament.UK*.

22 Human Rights Watch, *Submission 23*, p. [2].

23 DFAT, *Submission 35*, p. 11.

We would very much believe that you have to have a multilayered strategy, which will encompass everything from discrete bilateral contacts, just as we have done with Saudi Arabia, for instance, through to what we do in the multilateral space.<sup>24</sup>

6.27 Dr Strahan further revealed that discussion and research are taking place to inform the Australian strategy. He commented:

... we are already talking to other governments about how they have put together their work. When I was in London for the Commonwealth's Committee of the Whole I again met with the Foreign Office's human rights team and had a further conversation with them about how they are doing their death penalty work, including under their reconfigured human rights policy.<sup>25</sup>

### Whole-of-department and whole-of-government approach

6.28 Professor Donald Rothwell remarked that any Australian strategy needed to be a whole-of-government strategy with 'a consistent whole-of-government approach'. He added:

Such an approach must extend from the highest levels of government, involving the Prime Minister, the foreign minister, the Attorney-General and other relevant ministers, to government officials such as ambassadors and departmental secretaries, especially those who also exercise a diplomatic function, such as the secretary of the Department of Foreign Affairs and Trade, and to relevant government departments and agencies, including not only DFAT but also the Australian Defence Force and the Australian Federal Police.<sup>26</sup>

6.29 Amnesty International also highlighted the importance of a whole-of-government approach to the death penalty.<sup>27</sup>

6.30 Responding to these proposals, Dr Strahan confirmed:

... the strategy will be very much a whole-of-department strategy, so it will bring together all the different arms of what we do in DFAT. Thirdly, it very much has to be a whole-of-government strategy, so we will be working very closely with and will consult regularly with the AGD, the AFP and all the other stakeholders. So

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24 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 5.

25 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 9.

26 Professor Donald Robert Rothwell, Private capacity, *Committee Hansard*, Canberra, 27 November 2015, p. 26.

27 Amnesty International, *Submission 34*, p. 3.

you can be assured that it will be a document that will come out to represent our combined activities and efforts across government.<sup>28</sup>

## Multilateral strategies

6.31 Dr Daniel Pascoe drew on social science research to recommend that Australia see the 'big picture' in relation to why some countries retain capital punishment. He suggested that the Australian Government work to 'eliminate the conditions which allow the death penalty to flourish', and:

... devote more of its soft-power resources to promoting pro-democracy reforms, regional human rights institutions, treaty compliance, minimising corruption and maximising the economic development of Australia's neighbours, all in order to indirectly promote moves away from capital punishment.<sup>29</sup>

6.32 Dr Pascoe added that Australia should:

... promote democracy where it is absent in retentionist states, by providing logistical, moral and financial support for pro-democracy initiatives – such as development of civil society, independent media, freedom of information, judicial and legal reform, police and military training, and election monitoring.<sup>30</sup>

6.33 Witnesses, including lawyers McMahan, Wilson, Haccou, O'Connell and Morrissey (Mr McMahan and his colleagues) encouraged Australia to 'take a leadership role' in advocating globally against capital punishment. They suggested:

An example of such leadership would be to work extensively to encourage more countries to vote for the now regular moratorium vote at the UN, first passed in 2007.<sup>31</sup>

6.34 Amnesty International, Human Rights Watch, Human Rights Law Centre, Reprieve, Australians Detained Abroad, NSW Council for Civil Liberties, and Civil Liberties Australia, who made a joint submission to the inquiry, proposed the Australian Government:

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.<sup>32</sup>

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28 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 9.

29 Dr Daniel Pascoe, *Submission 19*, p. [2].

30 Dr Daniel Charles Pascoe, Private capacity, *Committee Hansard*, Canberra, 27 November 2015, pp. 47-48.

31 McMahan, Wilson, Haccou, O'Connell and Morrissey, *Submission 12*, p. 1.

- 6.35 Amnesty also proposed Australia 'lead the campaign to increase "yes" votes on the United Nations General Assembly's death penalty moratorium resolution in 2016'.<sup>33</sup>
- 6.36 Mr McMahon and his colleagues proposed 'striving to achieve a similar resolution at CHOGM' (Commonwealth Heads of Government Meeting).<sup>34</sup> This suggestion was echoed by the LCA and ABA<sup>35</sup> and also supported by Amnesty,<sup>36</sup> who confirmed that CHOGM 'has not been [formally] utilised as an effective forum for pursuing death penalty abolition discussions to date'.<sup>37</sup>
- 6.37 The UK Foreign and Commonwealth Office (FCO) submitted that Australia could play a stronger role in the biennial moratorium vote on the death penalty as well as promoting ratification of the second optional protocol.<sup>38</sup>
- 6.38 The FCO highlighted the relative efficacy of multilateral approaches:
- When commenting publicly, or taking diplomatic action, we favour multilateral approaches, such as statements or demarches carried out by all EU member states.<sup>39</sup>
- 6.39 Mr Robertson advocated working to reduce crimes that attract the death penalty, including drug crimes:
- ... Canberra should recognise that a 'whittling down' strategy to reduce the number of crimes punishable by death is also important. At the top of this list for action should be crimes that do not involve violence, like drug crimes, LGBT same-sex relations, adultery; so-called religious crimes like blasphemy in Pakistan or insulting the prophet in some Islamic states; or economic crimes and corruption in China or Vietnam.<sup>40</sup>
- 6.40 The ALC and ABA offered ideas for how Australia could increase its role in relation to UN-based activity, specifically:

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32 Amnesty International, Human Rights Watch, Human Rights Law Centre, Reprieve, Australians Detained Abroad, NSW Council for Civil Liberties, Civil Liberties Australia, *Submission 21*, p. [1].

33 Amnesty International, *Submission 34*, p. 4. Ms Howie, from the Human Rights Law Centre, expressed a similar view. Ms Howie, Human Rights Law Centre, *Committee Hansard*, Melbourne, 17 November 2015, p. 13.

34 McMahon et al, *Submission 12*, p. 1.

35 LCA and ABA, *Submission 24*, p. 13.

36 Amnesty International, *Submission 34*, p. 14.

37 Amnesty International, *Supplementary Submission 34.1*, p. 8.

38 UK Foreign and Commonwealth Office, *Submission 15*, p. [2].

39 UK Foreign and Commonwealth Office, *Submission 15*, p. [2].

40 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 25.

- Make recommendations to specific countries through the Universal Periodic Review process, and follow up on recommendations which have been accepted, for example through funded projects or lobbying activities.
- Follow up on recommendations made by the UN Human Rights Committee and voice objection to capital punishment at the UN Human Rights Council.
- Support the UN Rapporteur on extrajudicial, summary or arbitrary executions – act on the basis of his reports, and use them as a tool to assist.<sup>41</sup>

6.41 Civil Liberties Australia proposed focussing on nations Australia plays in international sport:

There are some countries we play cricket against that really should be influenced – and football, soccer, netball and hockey. ... Many of these events are internationally televised, and the government could spend a little bit of money advertising our human rights position while some of these international sporting events are going on, which would get the message to a whole new group of people who do not normally think about such things.<sup>42</sup>

### A regional coalition

6.42 The World Coalition Against the Death Penalty (WCADP) clarified that of 41 countries in Asia and the Pacific, 13 are retentionist, 10 are ‘abolitionist in practice’, 18 countries (and two Special Administrative Regions of China) are ‘abolitionist for all crimes’, adding:

In total, 28 countries have abolished the death penalty in law and/or practice. However, the 13 retentionist countries (Afghanistan, Bangladesh, China, India, Indonesia, Japan, North Korea, Malaysia, Pakistan, Singapore, Taiwan, Thailand, Viet Nam) are among those who execute most people in the world and who are the most vocal in favour of the death penalty at the international level.<sup>43</sup>

6.43 Witnesses including the ALC and ABA<sup>44</sup>, and Human Rights Watch supported the idea of a regional coalition. Human Rights Watch suggested partnering with other abolitionist countries:

... including Cambodia, New Zealand, Philippines, and Timor Leste, targeting countries that continue to execute people – for

41 LCA and ABA, *Submission 24*, p. 13.

42 Mr Rowlings, Civil Liberties Australia, *Committee Hansard*, Canberra, 27 November 2015, p. 12.

43 WCADP, *Submission 36*, p. 1.

44 LCA and ABA, *Submission 24*, p. 12.

instance, China, India, Indonesia, Malaysia, Pakistan, and Vietnam – as well as countries such as Papua New Guinea and Brunei that have had moratoriums in place, but which are taking steps to reintroduce the death penalty. Australia should also not shy away from raising these issues with countries that frequently carry out executions, notably the United States, Iran, and Saudi Arabia.<sup>45</sup>

- 6.44 Dr Pascoe argued that the Australian government ‘should not act alone’, but should leverage other abolitionist states in the Asia-Pacific region, who can ‘influence their geographical and cultural neighbours’.<sup>46</sup>
- 6.45 The United Nations Office of the High Commissioner for Human Rights (OHCHR) suggested Australia also partner with key stakeholders, such as the OHCHR, the Asia-Pacific Forum on National Human Rights Institutions, the Secretariat of the Pacific Community/Regional Rights Resources Team, and ‘Commonwealth mechanisms’.<sup>47</sup>
- 6.46 Dr Malkani observed that, while the EU has played a critical role in its region, ‘there is no equivalent in the Pacific region’. He further commented:
- Australia has the opportunity to build and develop a regional coalition of abolitionist states, taking on board the experiences of the European Union.<sup>48</sup>
- 6.47 Professor Rothwell proposed that Australia advocate in the Indo-Pacific for ‘a policy or practice of not carrying out executions’, including states such as Japan and Singapore.<sup>49</sup>
- 6.48 The WCADP suggested that Australia:
- ... provide assistance to Pacific island small states, many of which are abolitionists, to help with the ratification process of ICCPR and OP2- ICCPR,<sup>50</sup> as many of them claim that they do not have the capacity to ratify these treaties.<sup>51</sup>
- 6.49 Amnesty concluded that ‘Australia should use its position as a member of the Pacific Islands Forum to pursue a regional commitment for the Pacific to be completely death penalty free by 2018’.<sup>52</sup>

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45 Human Rights Watch, *Submission 23*, pp. [1-2].

46 Dr Pascoe, *Committee Hansard*, Canberra, 27 November 2015, p. 48.

47 United Nations Office of the High Commissioner for Human Rights (OHCHR), *Submission 49*, p. [10].

48 Dr Malkani, *Submission 4*, p. 2.

49 Professor Rothwell, *Committee Hansard*, Canberra, 27 November 2015, p. 26.

50 Second Optional Protocol of the International Covenant on Civil and Political Rights.

51 WCADP, *Submission 36*, p. 3.

52 Amnesty International, *Submission 34*, p. 4.

- 6.50 Professor Rothwell suggested Australia focus on ‘abolitionist-in-practice states with whom Australia has a close bilateral relationship’, including Nauru and South Korea.<sup>53</sup>
- 6.51 This view was echoed by Mr Humphries, who proposed:
- ... working with those nations, offering legislative drafting assistance and other assistance, might make them more inclined to consider formally abolishing the death penalty as well as doing so de facto.<sup>54</sup>
- 6.52 Witnesses suggested that challenging capital punishment in South East Asia would mean challenging the notion of the ‘deterrent effect’. Mr Robertson clarified:
- ... in many South-East Asian countries the core argument boils down to the efficacy of the death penalty, which these governments and much public opinion still believe deters crime. So far ... we are losing that argument in these countries. So there is an education imperative to change the minds of people, with the possibility that, as opinions change, the positions of government can shift towards reform and abolition. We think Australia should step up efforts on this.<sup>55</sup>
- 6.53 Human Rights Watch proposed that ‘Australia could assist in educating the region’s populations on how the death penalty has failed to deter crime and been unjustly applied’.<sup>56</sup>
- 6.54 Adding to this suggestion, Dr Malkani observed that:
- Many states retain the death penalty primarily because they are afraid of the consequences of abolition. In particular, they are worried about losing popular support, they are afraid of rising crime rates, and they do not want to look ‘soft’ on crime. Through bilateral discussions, Australia can use its own experiences of abolition in order to show these countries that they need not be worried about these issues.<sup>57</sup>
- 6.55 Dr David Donat Cattin (Secretary-General, Parliamentarians for Global Action), cautioned that support for the death penalty in the Indo-Pacific was related to inadequate justice systems, which must be addressed. He asserted:

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53 Professor Rothwell, *Committee Hansard*, Canberra, 27 November 2015, p. 27.

54 Mr Gary Humphries, Private capacity, *Committee Hansard*, Canberra, 27 November 2015, p. 44.

55 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 25.

56 Human Rights Watch, *Submission 23*, p. [1].

57 Dr Malkani, *Submission 4*, p. 2.

One of the preconditions of development is to upgrade and to modernise the justice system so that trials are fair to the accused and, of course, to the victims, who should have access to justice, and so that the impunity rate for serious crime is not so high. There is enormous frustration in the general public that out of 10 cases of drug trafficking or murder that are denounced maybe one or two are brought to justice, and then the perpetrators are tried.<sup>58</sup>

6.56 Dr Pascoe listed the following countries as 'Australia's abolitionist partners in the Asia-Pacific region':

... Cambodia (abolished the death penalty for all crimes in 1989); New Zealand (1989); Hong Kong and Macau (1993 and 1976 respectively); Samoa (2004); the Philippines (2006); Mongolia (2012); and Fiji (2015).<sup>59</sup>

6.57 Dr Pascoe concluded that countries sharing 'similar cultural and religious characteristics, are best placed to exert their foreign policy influence in one way or another'. As examples, he listed:

... Samoa and New Zealand towards Tonga; Hong Kong and Macau towards Taiwan and Singapore; Cambodia towards Laos; Philippines towards South Korea; Fiji towards Papua New Guinea, and so forth.<sup>60</sup>

6.58 Suggesting countries for regional engagement, Mr Hayes commented:

I would think that the Philippines are a key neighbour that we should be doing that with as well. They have a strong view against the death penalty, but they are also now a partner in the Trans-Pacific Partnership.<sup>61</sup>

6.59 DFAT saw merit in the concept of a regional coalition, suggesting:

Annual events such as World Day Against the Death Penalty (10 October) could form the backdrop for targeted advocacy in conjunction with other likeminded governments and abolitionist organisations. In the multilateral system, side-events held in the margins of formal meetings, such as HRC sessions, offer valuable opportunities to mobilise support and apply pressure.<sup>62</sup>

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58 Dr David Donat Cattin, Secretary-General, Parliamentarians for Global Action, *Committee Hansard*, Canberra, 25 February 2016, p. 4.

59 Dr Pascoe, *Submission 19*, p. [10].

60 Dr Pascoe, *Submission 19*, p. [11].

61 Mr Hayes MP, Australian Parliamentarians Against the Death Penalty, *Committee Hansard*, Sydney, 20 November 2015, p. 27.

62 DFAT, *Submission 35*, p. 12.

6.60 However, DFAT also cautioned that a coalition approach may not be beneficial in all circumstances:

Sometimes we will conclude that bilateral representations are preferable, especially where joint representations might have a negative impact, including by creating the impression that a group of countries is 'ganging up' against another.<sup>63</sup>

## Bilateral strategies

6.61 The LCA and ABA suggested that where countries retain the death penalty, Australian diplomats and Ministers can and should:

- urge states to restrict usage of the death penalty;
- urge transparency regarding execution statistics;
- argue for a moratorium;
- highlight practical issues with executions;
- argue against the misconception that the death penalty acts as a deterrent;
- propose credible alternatives that are suitable for the national context;
- ensure safeguards to protect vulnerable groups, such as 'children, pregnant women, persons with mental or intellectual disabilities, and the elderly';
- work towards removing mandatory death sentences;
- rebut arguments such as: 'national sovereignty, state's prerogatives and against western neo-imperialism; country specific arguments, including for reasons of national security; religious reasons; and democratic support for the death penalty'.<sup>64</sup>

6.62 Dr Malkani and Amnesty International Australia proposed country-specific approaches.<sup>65</sup> This view was supported by DFAT.<sup>66</sup>

6.63 Dr Strahan clarified that DFAT takes a 'case-by-case judgement about what is going to be most effective in relation to a particular country'. He commented:

Sometimes we take a very public stand and will do that often in the context of the Human Rights Council or in the UN General Assembly where Australia's position is totally public and we are

63 DFAT, *Submission 35*, p. 12.

64 LCA and ABA, *Submission 24*, pp. 10-11.

65 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 2; and Amnesty International, *Submission 34*, p. 9.

66 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 5.

very clear about where we stand. On other occasions, clearly the private road is the best road to go. It is also a matter of time – at what point are you in a particular case or situation? As you move through a case, you may shift gears from a private to a public means of getting your message across and that is what happened with Chan and Sukumaran.<sup>67</sup>

- 6.64 The LCA and ABA suggested DFAT should incorporate anti-death penalty strategies into their country plans to ‘proactively drive forward’ the campaign.<sup>68</sup>
- 6.65 Mr Robertson argued that it is ‘not enough’ for Australian diplomats to raise concerns about the death penalty in private meetings and at the UN:
- We think that Australia needs to get much more vocal, and that its ambassadors should be directed to find opportunities to advocate regularly and publicly on death penalty issues involving both Australian and non-Australian citizens. Publicly enunciating Australian values on the death penalty should be the rule rather than the exception.<sup>69</sup>
- 6.66 Amnesty International Australia suggested the Australian Government institute a process whereby civil society organisations could propose ‘particularly concerning individual death row cases on which to advocate’.<sup>70</sup>
- 6.67 The Honourable Justice Lex Lasry AM QC (private capacity) talked about the possibility of the Australian Government supporting ‘eminent people’ to advocate bilaterally:
- What I had in [mind] was that people who are internationally respected would come together and travel to Indonesia or Singapore, or wherever it was, with a view to putting a detailed and persuasive submission to the government and to other people in those countries with some influence.<sup>71</sup>
- 6.68 This suggestion was also supported by the ALC and ABA.<sup>72</sup>
- 6.69 DFAT’s Dr Strahan responded:
- The suggestion that we might create a panel of non-governmental experts who would support our efforts has pros and cons. ... It is

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67 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 10.

68 LCA and ABA, *Submission 24*, p. 12.

69 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 25.

70 Amnesty International, *Submission 34*, pp. 3-4.

71 The Honourable Justice Lex Lasry AM QC, Private capacity, *Committee Hansard*, Melbourne, 17 November 2015, p. 2.

72 LCA and ABA, *Submission 24*, p. 12.

important for retentionist countries to know that there is a broad consensus of opinion in Australian society, as represented by religious leaders, political leaders et cetera who will also speak up against the death penalty. I do wonder if, at times, having a government-appointed panel might lessen the impact of some of those voices, because they would be perhaps seen as another manifestation of government policy and government opinion.<sup>73</sup>

- 6.70 CLA suggested that DFAT ‘reinvigorate’ its human rights resource materials, including presentations and social media and television engagement, on human rights issues, including the death penalty.<sup>74</sup>
- 6.71 The OHCHR encouraged Australian diplomats to advocate for governments to ‘grant amnesty, pardon or commutation of the sentence of death in all cases’. It argued that ‘clemency, pardons and commutations are critical steps towards the abolition of the death penalty’.<sup>75</sup>
- 6.72 Human Rights Watch also suggested Australia needed to respond strongly when countries regress:
- React immediately and forcefully when countries move to lift official or unofficial death penalty moratoriums. For instance, Pakistan lifted a moratorium on executions on December 17, 2014, following an attack on a public school in Peshawar, and many executions rapidly followed.<sup>76</sup>
- 6.73 The WCADP proposed Australia:
- Take part in the World Day against the Death Penalty on 10 October every year and encourage all embassies to collaborate with local NGOs to organize events, especially in retentionist countries.<sup>77</sup>

### Consistency of messaging

- 6.74 Many witnesses to the inquiry observed that consistency was an issue impacting the efficacy of Australia’s advocacy.<sup>78</sup> Mr McMahon and his colleagues submitted:

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73 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 4.

74 Mr Rowlings, Civil Liberties Australia, *Committee Hansard*, Canberra, 27 November 2015, p. 8.

75 OHCHR, *Submission 49*, p. [9].

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

77 WCADP, *Submission 36*, p. 4.

78 See for instance: Mr Stephen Keim SC, *Submission 17*, p. 1; Ms Heather Wright, *Submission 47*, p. 2; Ms Heather Land, *Submission 44*, p. [1].

To be effective, Australia must speak consistently at all levels of government in a principled manner. Its opposition must be without qualification.<sup>79</sup>

6.75 Aussies Against Capital Punishment asserted:

Our government should speak out against the death penalty not just for our citizens, but for citizens of other countries. The government must be seen to be taking a consistent approach to give legitimacy to its arguments.<sup>80</sup>

6.76 This view was echoed by Mr Piovesan<sup>81</sup> and others including Mr Hayes, who declared:

I stress that when we seek the abolition of the death penalty we seek it universally, not just [when] Australians are the subject of a sentence. I took the same view, and I know the chair did too, in respect of the execution of the Bali bombers. ... I could see no benefit in their execution – making them martyrs and a pinnacle to a cause they espoused. I thought it would have been far better to have seen them rot away in a prison as mere mortals.<sup>82</sup>

6.77 Mr John van de Meene submitted:

If Australia is to engage more closely with countries to advocate for the abolition of the death penalty, we should be consistent in our message and understanding.<sup>83</sup>

6.78 Dr Malkani expressed the view that Australia should make no exceptions for its opposition to the death penalty:

After all, the death penalty is not imposed in Australia for terrorism, homicide, or other violent offences, and so it makes little sense to suggest that it is permissible for Australia to be complicit in the imposition of the death penalty in such cases. In order to effectively advocate for abolition elsewhere, Australia must be seen to oppose the death penalty in all circumstances.<sup>84</sup>

6.79 Professor Rothwell was unequivocal, saying:

There must be no exception to this form of advocacy, irrespective of how heinous a crime may have been committed by a particular

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79 McMahon et al, *Submission 12*, p. 1.

80 Aussies Against Capital Punishment, *Submission 13*, p. [1].

81 Mr Piovesan, *Submission 6*, p. 1.

82 Mr Hayes MP, Australian Parliamentarians Against the Death Penalty, *Committee Hansard*, Sydney, 20 November 2015, p. 25.

83 John van de Meene, *Submission 2*, p. [1]. See also: Mr James King, *Submission 29*, p. [1].

84 Dr Bharat Malkani, University of Birmingham, *Submission 4*, p. 3.

individual, including war crimes, crimes against humanity, acts of genocide and terrorist acts.<sup>85</sup>

- 6.80 The Castan Centre observed that a lack of consistency was evident in 2003 when the Australian Government ‘conspicuously failed to object to the imposition of the death penalty on the Bali bombers’. The Centre continued:

While that failure may have seemed politically justified given the level of domestic resentment for the bombers, it clearly did not assist in the diligent (and at times even passionate) efforts of senior Government representatives in the subsequent cases involving Australian citizens.<sup>86</sup>

- 6.81 According to Amnesty International Australia, in 2007 then Opposition Leader Kevin Rudd said on the ABC’s ‘World Today’ program:

...when it comes to the question of the death penalty, no diplomatic intervention will ever be made by any government that I lead in support of any individual terrorist’s life. We have only indicated in the past, and will maintain a policy in the future, of intervening diplomatically in support of Australian nationals who face capital sentences abroad.<sup>87</sup>

- 6.82 Amnesty International Australia further stated that:

When he became Prime Minister Kevin Rudd continued this line of reasoning, stating in 2008 that the Bali bombers deserved the ‘justice’ they had coming.<sup>88</sup>

- 6.83 The Lowy Institute reported these statements by politicians:

... Howard said that if the perpetrators of the 2002 Bali bombing, which killed 202 people including 88 Australians, were sentenced to death there ‘won’t be any protest from Australia’. The following month the Prime Minister told America’s Fox 9 News Channel that he would welcome the execution of Osama Bin Laden. In August 2003, the then Labor frontbencher Mark Latham rejoiced in the sentencing of Bali bomber Amrozi to death by firing squad: ‘I think it’s a day where all political parties should be celebrating, thankful for the fact that one of the bastards has been got and he’s

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85 Professor Rothwell, *Committee Hansard*, Canberra, 27 November 2015, p. 26.

86 Castan Centre, *Submission 9*, p. 7.

87 Amnesty International, *Supplementary Submission 34.1*, p. 7. The original transcript is available at <[www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/worldtoday/content/2007/s2054597.htm](http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/worldtoday/content/2007/s2054597.htm)> viewed 14 April 2016.

88 Amnesty International, *Supplementary Submission 34.1*, p. 7.

going to face the full weight of the law in the jurisdiction where this act of evil was committed.'<sup>89</sup>

6.84 At the time Labor backbencher Mr Duncan Kerr MP criticised the reticence shown by certain MPs on the issue of Bali Bomber Amrozi's execution, saying '[p]rincipled opposition to the death penalty cannot be switched off and on'.<sup>90</sup>

6.85 As well as being inconsistent with Australia's absolute opposition to the death penalty, UnitingJustice Australia argued that such messages 'have the potential to erode general community support [for] an abolitionist stance'.<sup>91</sup>

6.86 Mr Piovesan concluded that:

... whether the condemned prisoner is a terrorist or drug runner in Indonesia or Iraq, a murderer in Texas, or a white collar criminal in China, Australia's condemnation of capital punishment must be no less vocal.<sup>92</sup>

6.87 Mr McMahon and his colleagues argued that maintaining consistency would benefit Australia:

By being seen as a nation which approaches this debate in a consistent, principled fashion, we also remove ourselves from a criticism currently levelled at us, that we only care about this issue when it involves Australians.<sup>93</sup>

6.88 Witnesses argued that consistency relates to Australia's effort level, as well as its messaging. The Hon Justice Lasry AM QC highlighted the need for ongoing engagement on the death penalty:

Within a week or two of the Chan-Sukumaran case concluding and them being executed the story disappeared altogether. ... I felt the frustration because I had the same feeling in 2005 after Van Nguyen was executed, after having led the effort to try to save his life and failing. I did think that we had public momentum with us, but that just vanished as well.<sup>94</sup>

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89 Dr Michael Fullilove, 'Capital Punishment and Australian Foreign Policy', *Lowy Institute Policy Brief*, August 2006, p. 8. At <[www.lowyinstitute.org/publications/capital-punishment-and-australian-foreign-policy](http://www.lowyinstitute.org/publications/capital-punishment-and-australian-foreign-policy)> Viewed 4 March 2016.

90 Amnesty International, *Submission 34*, p. 8. Original comments available on the *Sydney Morning Herald website*, at <[www.smh.com.au/articles/2003/08/08/1060145849454.html](http://www.smh.com.au/articles/2003/08/08/1060145849454.html)> viewed 14 April 2016.

91 UnitingJustice Australia, *Submission 25*, p. 6.

92 Mr Piovesan, *Submission 6*, p. 1.

93 McMahon et al, *Submission 12*, p. 4.

94 The Hon Justice Lasry AM QC, *Committee Hansard*, Melbourne, 17 November 2015, p. 4.

6.89 The LCA and ABA proposed that Australia needs a communications strategy to guide public and private advocacy against the death penalty.<sup>95</sup>

6.90 Human Rights Watch wrote:

In addition to ‘quiet’ diplomacy, the government needs a principled, consistent, and more vocal opposition to the death penalty, whether or not the lives at stake are Australian.<sup>96</sup>

### Focussing Australia’s advocacy

6.91 During the inquiry witnesses were questioned about which countries they believed should be the focus of Australia’s bilateral efforts.

6.92 Dr Malkani commented:

We have to be strategic. We have to remember that most countries – pretty much all countries – abolish the death penalty incrementally. Countries with a mandatory death penalty are certainly a priority, because if you get it to discretionary death sentences you then see a huge reduction in the number of death sentences handed down. You are immediately in the business of saving lives there. If you are in a position to do that, you absolutely should.<sup>97</sup>

6.93 Regarding countries with active moratoriums, Dr Malkani added that ‘public education is key to making sure that people do not support the death penalty. Then leaders feel enabled to take the moratorium a step forward.’<sup>98</sup>

6.94 Mr Bernard Piovesan proposed Australia focus on:

Bilateral discussions with regional neighbours, in particular Indonesia, Malaysia, and Singapore, advocating for alternative forms of punishment, and moratoriums on the use of the death penalty, starting with crimes not involving the death of a victim.<sup>99</sup>

6.95 Dr Pascoe supported the view that Australia should focus on the Asia-Pacific region. He wrote:

... the Asia-Pacific nations that now form the most promising candidates for full abolition consist of Brunei, Laos, Maldives, Myanmar, Nauru, Papua New Guinea, Sri Lanka, South Korea,

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95 LCA and ABA, *Submission 24*, p. 13.

96 Human Rights Watch, *Submission 23*, p. [1].

97 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 4.

98 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 4.

99 Mr Bernard Piovesan, *Submission 6*, p. 2.

- and Tonga, due to their abolitionist de facto status, not having conducted a judicial execution for more than 10 years.<sup>100</sup>
- 6.96 Some witnesses argued that China should be the number one focus. For instance, Falun Dafa argued that '[e]ffective change worldwide means effectively engaging China'.<sup>101</sup>
- 6.97 Falun Dafa pointed to recent changes to the death penalty system in China, 'labelled "kill fewer, kill carefully" laws'. Falun Dafa added:
- In seeking popular legitimacy the [Communist Party] has toned down the Mao-era legacy of blatant killing to enforce social control, and responded to internal calls for greater accountability in applying the death penalty.<sup>102</sup>
- 6.98 Falun Dafa also proposed that:
- Helping to change China's attitude to killing its people will help human rights in all aspects in China and also have a positive impact on how the rest of the world, including Australia is impacted by a future China.<sup>103</sup>
- 6.99 However, most witnesses saw China as a particularly challenging country with which to advocate, with Dr Malkani describing China as 'the long-term game'.<sup>104</sup>
- 6.100 Mr McMahon and his colleagues recommend that Australia should make a point of recognising the positive steps taken by countries in the region:
- We should also acknowledge our friends, such as Singapore and Malaysia, who have in recent years done so few executions compared to some previous years. Steps in the right direction should be welcomed and encouraged, as steps towards total abolition. In Singapore, welcome changes to the mandatory death penalty laws have greatly reduced the number of executions. These countries should now be encouraged to take the next, final step.<sup>105</sup>
- 6.101 Similarly, Mr Robertson remarked that South-East Asian governments 'are not necessarily as hard-headed' as governments like Saudi Arabia, Iran or China. He claimed that these governments:

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100 Dr Pascoe, *Submission 19*, p. [10].

101 Falun Dafa Association of Australia, *Submission 14*, p. 3.

102 Falun Dafa Association of Australia, *Submission 14*, p. 4.

103 Falun Dafa Association of Australia, *Submission 14*, p. 4.

104 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 2.

105 McMahon et al, *Submission 12*, p. 3.

... are susceptible to public campaign and international pressure, even if they try to maintain that they are not. For instance, we found that the intense pressure on Singapore from the international community – in particular, its neighbour Malaysia – in the case of drug mule Yong Vui Kong two years ago helped push forward the sentencing reforms that have done away with mandatory death sentences for low-level drug couriers who prosecutors certify as being cooperative in helping to solve crime.<sup>106</sup>

- 6.102 Ms Maia Trujillo, Campaign Manager for the PGA Global Parliamentary Platform for the Abolition of the Death Penalty, suggested Australia should also consider if it has a role to play in advocating with African countries.<sup>107</sup>
- 6.103 DFAT explained that its ‘modest diplomatic profile in Africa (with only five missions across Sub-Saharan Africa)’ means the Department has ‘less capacity to actively make representations across the continent’.<sup>108</sup>
- 6.104 There was support for the view that Australia should not shy away from advocating with the United States and other allies. Mr McMahon and his colleagues contended:
- ... we must regularly speak truth to our friends both powerful and less powerful on this matter. The realities which must be confronted include:
- The numerous serious criticisms of the American death penalty regimes including procedural and outcome issues relating to poverty, race, methods of execution, botched and brutally cruel executions etc.
  - The extraordinarily large number of executions in China, a figure kept secret from the rest of the world. Estimates in the last decade range between 1 and 8000 executions per year.
  - The unacceptable conditions of incarceration for prisoners on death row in Japan.<sup>109</sup>
- 6.105 Amnesty International Australia proposed the Australian strategy should focus on South East Asia and the USA, specifically by:
- promoting transparency in China and Vietnam;
  - reducing crimes that attract the death penalty in China, Vietnam, Thailand, Taiwan and India;

106 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 26.

107 Ms Maia Trujillo, Campaign Manager, PGA Global Parliamentary Platform for the Abolition of the Death Penalty, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 3.

108 Department of Foreign Affairs and Trade (DFAT), *Submission 35*, p. 8.

109 McMahon et al, *Submission 12*, p. 3.

- improving death row conditions in Japan;
  - working to end mandatory sentencing in Malaysia and Singapore;
  - advocating for Pakistan and Indonesia to resume their moratoria;
  - assisting Papua New Guinea, Nauru, Tonga, South Korea and Myanmar to 'move from abolitionist in practice to abolitionist in law'; and
  - promoting state-level moratoria in the United States.<sup>110</sup>
- 6.106 DFAT listed the likely aims of the strategy, which align well with Amnesty's proposal:
- first, to increase transparency and safeguards governing the application of the death penalty, including excluding its use on pregnant women, children, and people with mental or intellectual disabilities;
  - second, to reduce the number of crimes that attract the death penalty and its mandatory application by encouraging alternative criminal justice penalties;
  - third, to introduce a formal moratorium on the death penalty's use; and
  - finally, to accede to the ICCPR Second Optional Protocol, aiming at the abolition of the death penalty and ensuring countries that have signed or ratified the Protocol remove all references to the death penalty from their legislation.<sup>111</sup>

### The United States of America

6.107 Witnesses believed that advocating to reduce and ultimately eliminate capital punishment in the United States was a critical part of advocating for worldwide abolition.

6.108 Mr McMahan and his colleagues expressed the view that 'the USA is central to the future of this debate in most countries'.<sup>112</sup> Dr Malkani agreed:

I think once America does become an abolitionist country, then the whole landscape, worldwide, would change in terms of other states abolishing the death penalty.<sup>113</sup>

6.109 Dr Malkani argued that there is 'movement in the United States at the moment towards abolition' and proposed 'identifying which states in America are close to abolition and ... focusing efforts in there.'<sup>114</sup>

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110 Amnesty International, *Supplementary Submission 34.1*, pp. 10-11.

111 DFAT, *Submission 35*, p. 11.

112 McMahan et al, *Submission 12*, p. 3.

113 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 2.

114 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 2.

6.110 Mr Bourke reasoned that:

...the United States occupies a unique role in the international community as a death penalty nation. It is essentially isolated among western developed nations but, because of its role in advancing human rights throughout the globe, its choice to continue to adhere to the death penalty in its federal, military and several civilian jurisdictions hampers international abolition efforts. So the United States, whilst not the most executing country in the world, remains perhaps the most important of the countries that continue to favour the death penalty.<sup>115</sup>

6.111 There were other witnesses to the inquiry that proposed a focus on the USA. For example Emeritus Professor Desmond O'Connor,<sup>116</sup> Mr Anthony Robinson,<sup>117</sup> and Human Rights Watch.<sup>118</sup>

6.112 According to Amnesty, states that retain the death penalty are:

Alabama; Arizona; Arkansas; California; Colorado\*; Delaware; Florida; Georgia; Idaho; Indiana; Kansas; Kentucky; Louisiana; Mississippi; Missouri; Montana; Nevada; New Hampshire; North Carolina; Ohio; Oklahoma; Oregon\*; Pennsylvania\*; South Carolina; South Dakota; Tennessee; Texas; Utah; Virginia; Washington\*; Wyoming. (States marked with \* have moratoriums in place currently).<sup>119</sup>

6.113 Many of these witnesses argued for targeting the individual states, but some thought the target should be the Federal Government.<sup>120</sup>

6.114 The US Death Penalty Information Centre proposed that Australia has the ability to influence the United States:

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.<sup>121</sup>

6.115 Mr Bourke agreed that Australia has a 'special place' in the hearts and minds of Americans, adding:

115 Mr Richard Bourke, Director, Louisiana Capital Assistance Center, *Committee Hansard*, Melbourne, 17 November 2015, p. 9.

116 Emeritus Professor Desmond O'Connor, *Submission 10*, p. [1].

117 Mr Anthony Robinson, *Submission 11*, p. [1].

118 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 28.

119 Amnesty International, *Supplementary Submission 34.1*, p. 6.

120 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 27.

121 Death Penalty Information Centre, *Submission 8*, p. [2].

Australia ... has a unique relationship and a unique opportunity to intervene with the United States. We, of course, are a nation that has a shared legal background and we have a recognisable and shared community between our nations.<sup>122</sup>

6.116 Dr Malkani echoed this view:

I know from having worked briefly in Louisiana that there are a lot of connections between American principles and Australian principles. I know the Americans hold Australia in very high regard.<sup>123</sup>

6.117 Amnesty International Australia talked about its work in the USA and offered some suggestions for Australian engagement:

In Amnesty's experience it is vital this work is closely coordinated with others in the grassroots abolition movement in the USA. For example, Amnesty worked closely with Nebraskans for Alternatives to the Death Penalty (NADP), Equal Justice USA (EJUSA) and American Civil Liberties Union (ACLU) to educate policy makers and constituents in Nebraska about the death penalty. This contributed to Nebraska becoming the nineteenth US State to abolish the death penalty in May 2015.<sup>124</sup>

6.118 Mr Bourke proposed coupling the issue of the death penalty to other human rights abuses, including 'unfairness to the poor, the failure to meet minimum standards of legal representation and the very vulnerable groups, including especially the mentally ill'. He contended:

By approaching the death penalty abolition cause through this lens, we were able to have a very direct effect on death penalty practice, and as a result death penalty policy, while standing firmly on inarguable moral high ground.<sup>125</sup>

6.119 Representatives from DFAT saw merit in the idea of focussing more on the United States. They clarified:

We do, and have done, state based representations to the United States. ... Where you have a system of government where the death penalty is being carried out not at the federal level but at the

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122 Mr Bourke, Louisiana Capital Assistance Center, *Committee Hansard*, Melbourne, 17 November 2015, p. 9.

123 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 2.

124 Amnesty International, *Supplementary Submission 34.1*, p. 5.

125 Mr Richard Bourke, Director, Louisiana Capital Assistance Center, *Committee Hansard*, Melbourne, 17 November 2015, p. 8.

state level indicates that a lot of our advocacy has to be at the state level.<sup>126</sup>

- 6.120 However, DFAT's submission indicated that such representations have been fairly limited:

In the United States, our post has not undertaken any bilateral representations to the federal government in the review period. However, our Ambassador wrote to two state governors on behalf of individuals in two specific cases on human rights grounds.<sup>127</sup>

- 6.121 Amnesty International Australia proposed an increased focus on states where there's a strong public debate around capital punishment, such as California, where Amnesty's current campaign is focussed:

California is a key state for the abolitionist movement in the United States, given there currently 745 people on death row. The California regulation itself would introduce a new protocol for the use of the lethal injection – including which drugs are used, and how California chooses and trains the lethal injection team.<sup>128</sup>

- 6.122 Mr Bourke reasoned that the United States was amenable to arguments that seek to 'isolate America on the world stage as one of the sole western developed purveyors of the death penalty'. He proposed reminding the US of 'the company it keeps – with countries such as China, Iraq and, at one time, Syria, as leading proponents of the death penalty. It is not a list the United States is accustomed to seeing itself on.'<sup>129</sup>

### Bilateral treaties

- 6.123 Some witnesses proposed that trade and other bilateral treaties should be used as a means of pressuring retentionist countries to take steps towards abolition.
- 6.124 The Castan Centre recommended that 'Australia make potential imposition of the death penalty a mandatory ground of refusal in future bilateral treaties on mutual assistance in criminal matters'.<sup>130</sup>
- 6.125 Professor Rothwell saw merit in this idea.<sup>131</sup>
- 6.126 The ALHR called on the Australian Government to 'be more transparent' in terms of its bilateral treaties relating to law enforcement, extradition, or

126 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 7.

127 DFAT, *Submission 35*, p. 8.

128 Amnesty International, *Supplementary Submission 34.1*, p. 5.

129 Mr Bourke, Louisiana Capital Assistance Center, *Committee Hansard*, Melbourne, 17 November 2015, p. 9.

130 Castan Centre, *Submission 9*, p. 7.

131 Professor Rothwell, *Committee Hansard*, Canberra, 27 November 2015, p. 28.

any area 'where there is a risk of exposing persons to the death penalty in a foreign country'.<sup>132</sup>

6.127 Mr Hayes supported the idea that bilateral treaties could be a useful tool:

We should be using everything in our armoury, including issues of trade and things of that nature, to further our objectives in this regard – as we do with human rights generally.<sup>133</sup>

6.128 Human Rights Watch suggested Australia incorporate 'death penalty issues in briefings on human rights for trade delegations and other groups traveling abroad for official visits'.<sup>134</sup>

6.129 Ms Sarah Gill stated:

There is cogent evidence to suggest that adoption of human rights safeguards in treaties and legislation will legitimize 'international norms', and gradually coerce 'retentionist' nations to move towards abolition; a phenomenon known as indirect abolition.<sup>135</sup>

6.130 However, some witnesses did not support using trade or treaties to further Australia's advocacy. For example Emeritus Professor Desmond O'Connor<sup>136</sup>, and Dr Daniel Pascoe, who warned:

... that minimising trade, investment and aid to retentionist nations does not encourage the economic conditions that lead to abolition in the long term. Compromising the economic development of Australia's neighbours may instead prove counterproductive, as these retentionist nations a) solidify in their policy standpoints when they are threatened or criticised, and b) turn their backs on economic ties with socially liberal nations such as Australia to instead court authoritarian regimes (China being an obvious example).<sup>137</sup>

6.131 Mr Richard Galloway proposed a 'carrot and stick' approach, where Australia institutes 'a 'two tier' relationship with other nations', where abolitionist nations can be dealt with freely in trade arrangements, but limitations are placed upon trade deals with retentionist states.<sup>138</sup>

6.132 PGA's Dr Cattin advocated 'the carrot', rather than 'the stick', describing the European system, where:

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132 ALHR, *Submission 18*, p. 9.

133 Mr Hayes MP, *Australian Parliamentarians Against the Death Penalty, Committee Hansard*, Sydney, 20 November 2015, pp. 27-28.

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

135 Ms Sarah Gill, *Submission 37*, p. [1].

136 Desmond O'Connor, *Submission 10*, p. [1].

137 Dr Daniel Pascoe, *Submission 19*, p. [9].

138 Mr Richard Galloway, *Submission 32*, p. [2].

... you have an incentive to ratify and respect a number of treaties, which I believe also includes the second optional protocol to the ICCPR on the abolition of the death penalty. If you as a state from these developing countries ratify, implement or otherwise abide to all these treaties then you can become a favourite-plus partner of the EU for trade. ... In other words, it is a system of positive incentive rather than negative conditionality.<sup>139</sup>

- 6.133 Regardless of the approach, Dr Cattin was of the view that bilateral treaties and trade agreements should be considered as an avenue to promote abolition. He remarked:

To be honest, this debate should probably be reopened. It was one that was very alive some 15 or 20 years ago. I believe that there should be some reflection again. In some cases, an approach that would be a bit more aggressive on conditionality could be useful, because, in some cases, it could be really justified and it could have an impact.<sup>140</sup>

## Civil society engagement

- 6.134 Witnesses asserted that Australia would be well-served by increasing support to civil society advocacy groups in Australia and in retentionist countries. Reprieve submitted:

Non-government organisations in retentionist countries do the bulk of the capital defence work. They do so in opposition to the State and on shoestring budgets. While they are fearless and impressive advocates, their impact is limited by available resources.<sup>141</sup>

- 6.135 Amnesty International argued that civil society groups have been effective in advocating for political change, as well as advocating in individual death penalty cases, such as the case of Moses Aktugba in Nigeria, who was pardoned in 2015 after a ten year campaign by Amnesty and others.<sup>142</sup>
- 6.136 Dr Malkani promoted the role of Reprieve Australia, the NSW Council for Civil Liberties, and others, which he argued 'have proven adept at helping those on death row abroad, and in advocating for the abolition of capital punishment'. Dr Malkani further contended:

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139 Dr David Donat Cattin, Secretary-General, Parliamentarians for Global Action, *Committee Hansard*, Canberra, 25 February 2016, p. 3.

140 Dr Cattin, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 3.

141 Reprieve Australia, *Submission 41*, p. 7.

142 Amnesty International, *Submission 34*, p. 11.

The Government should continue to fund such specialist organisations. The Government can also provide financial and other support to organisations in retentionist countries.<sup>143</sup>

- 6.137 Ms Helen Wiseman proposed that the Australian Government provide 'sustainable' funding to Reprieve Australia to assist them in their advocacy.<sup>144</sup>
- 6.138 The ALHR called on the Australian Government 'to provide strategic assistance to ASEAN civil society groups in their advocacy efforts towards the abolition of the death penalty.'<sup>145</sup>
- 6.139 Similarly, Mr McMahon and his colleagues suggested providing 'well targeted assistance' to local and regional organisations struggling against the death penalty in the Asia-Pacific region.<sup>146</sup>
- 6.140 Witnesses suggested the Australian Government could be advised by NGOs such as Reprieve and Amnesty International, who devote significant resources to understanding the prevalence and nature of capital punishment.<sup>147</sup>
- 6.141 The WCADP advised Australia to prioritise getting 'in touch' with local NGOs in Asian countries to 'help in identifying the best approach to have a significant impact in that given country'.<sup>148</sup>
- 6.142 Australians Against Capital Punishment encouraged the Australian Government to provide funding to the Anti-Death Penalty Asia Network (ADPAN). Ms Birgin explained:
- ADPAN have been quite active over the last couple of years. However, their funding – I think they had a bit of funding from Amnesty International – has dried up. But they conducted, for example, a regional level conference or congress earlier this year, inviting speakers from retentionist countries and government officials, hoping for more pressure to question or rethink the death penalty.<sup>149</sup>
- 6.143 Ms Birgin suggested now would be an 'opportune time' to fund ADPAN:
- ... given current ASEAN chairmanship and its position of influence within ASEAN, along with recent statements by the

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143 Dr Malkani, *Submission 4*, p. 2.

144 Ms Helen Wiseman, *Submission 33*, p. [1].

145 Australian Lawyers for Human Rights (ALHR), *Submission 18*, p. 5.

146 McMahon et al, *Submission 12*, p. 2.

147 Ms Heather Land, *Submission 44*, p. [1].

148 WCADP, *Submission 36*, p. 4.

149 Ms Birgin, Australians Against Capital Punishment, *Committee Hansard*, Canberra, 27 November 2015, pp. 23-24.

Malaysian de facto minister of law regarding the abolition of the mandatory death penalty and the return to the discretion of the judiciary.<sup>150</sup>

6.144 Ms Mary Farrow (private capacity) proposed that Australia also work with 'supportive media such as the Jakarta Globe and Jakarta Post and associations and festivals such as ASEAN Literary Festival in Indonesia'.<sup>151</sup>

6.145 The FCO promoted the practice of conducting project work through funding civil society organisations, providing as an example the Death Penalty Project, which provides 'pro bono support in death penalty cases worldwide and pursues litigation which might restrict the application of the death penalty'. The FCO remarked:

We have found this approach, albeit incremental and behind-the-scenes, more effective in some countries where the number of executions has dropped sharply over the last decade, than lobbying in individual cases.<sup>152</sup>

6.146 Pointing to a similar program in the European Union, UnitingJustice suggested Australia start a 'small grants program' to provide funding to civil society organisations.<sup>153</sup>

6.147 Civil Liberties Australia highlighted the role that civil society groups, such as NGOs, can play in international discussions, pointing to the DFAT-AG-NGO consultations, in which they participate. The President, Dr Kris Klugman provided this example:

I will draw your attention to a meeting that was held in 2012 when in fact there was a small group of us talking with a high-level Chinese delegation. I asked a question about the death penalty and congratulated the Chinese on reducing the number of offences for which the death penalty was applied. I was told then that they had a firm intention to reduce the death penalty overall. I think that is a very positive outcome for such consultations.<sup>154</sup>

6.148 Encouraging Australia to fund legal aid groups, Ms Birgin remarked:

In Indonesia there is Lembaga Bantuan Hukum Masyarakat. There is KontraS and a number of other large NGOs with human rights backgrounds that have been working very hard to increase the

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150 Ms Ruth Birgin, *Australians Against Capital Punishment, Committee Hansard*, Canberra, 27 November 2015, p. 22.

151 Ms Farrow, *Submission 38*, p. [1].

152 UK Foreign and Commonwealth Office, *Submission 15*, p. [2].

153 UnitingJustice Australia, *Submission 25*, p. 7.

154 Dr Kristine Kay Klugman, President, Civil Liberties Australia, *Committee Hansard*, Canberra, 27 November 2015, p. 8.

domestic response within Indonesia. Another prominent and very interesting NGO in the Indonesian context is PKNI, which is the drug user organisation of Indonesia, which is getting increasing media support both domestically and on the international stage.<sup>155</sup>

- 6.149 Reprieve, and others including Human Rights Watch,<sup>156</sup> suggested that funding could support bodies providing legal representation and advocacy to persons on death row, citing the example of the Mexican-Government-funded 'Mexican Capital Legal Assistance Program', which:
- ... monitors defense counsel's performance, prepares legal memoranda and briefs for them, assists counsel in court, anticipates and coordinates appellate legal strategies, and, when necessary, provides funds for experts, attorneys, and investigators.  
... There is strong evidence that this program is highly effective.<sup>157</sup>
- 6.150 Reprieve pointed out that, in Indonesia 'there are few private lawyers who will provide pro bono assistance to capital defendants', resulting in a 'gap' for defendants.<sup>158</sup>
- 6.151 DFAT's submission acknowledged the importance of working closely with civil society organisations:
- Our strategy will be informed by our ongoing engagement with civil society organisations in Australia and overseas, including those with deep expertise and strong track records on death penalty abolition ... The Australian Human Rights Commission will be an important partner.<sup>159</sup>

### The 6<sup>th</sup> World Congress Against the Death Penalty

- 6.152 A number of witnesses encouraged Australia to become more involved with the 6<sup>th</sup> World Congress Against the Death Penalty, to be hosted by Norway in June 2016. Australia is a co-sponsor of the 2016 Congress.<sup>160</sup>
- 6.153 WCADP informed the Committee that:
- [WCADP] comprises over 150 members: human rights organizations, professional associations and local authorities on the five continents who have united to campaign for the universal

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155 Ms Birgin, *Australians Against Capital Punishment, Committee Hansard, Canberra, 27 November 2015*, p. 24.

156 Mr Robertson, *Human Rights Watch, Committee Hansard, Sydney, 9 December 2015*, p. 25.

157 Reprieve Australia, *Submission 41*, p. 8.

158 Reprieve Australia, *Submission 41*, p. 9.

159 DFAT, *Submission 35*, p. 11.

160 Australian Parliamentarians Against the Death Penalty joint press release, 'Highest Number of Executions in 25 Years', 6 April 2016.

abolition of the death penalty. It was founded in 2002 in Rome. Its actions include the World Day against the Death Penalty, a ratification campaign of the United Nations Protocol aiming at the abolition of the death penalty, and a campaign for the implementation of the UNGA moratorium resolution.<sup>161</sup>

- 6.154 Mr McMahon and his colleagues highlighted the Asian Regional Congress on the death penalty, which was held in June 2015 as part of the preparation for the World Congress. They observed that:

The Norwegians sponsored the conference, organised by Ensemble contre la peine de mort (ECPM), and Anti Death Penalty Asia Network (ADPAN). Partners and supporters on the brochures included The Human Rights Commission of Malaysia (Suhakam), the Bar Council Malaysia, The Delegation of the European Union to Malaysia, and the Australian Government through DFAT.<sup>162</sup>

- 6.155 Mr McMahon and his colleagues encouraged Australia to fund attendees to participate in the World Congress:

There will be dozens of NGOs, journalists, health professionals, perhaps lawyers, in the region who would greatly benefit from attending the World Congress in June 2016. For a small sum, Australia could work through easily accessible networks and offer sponsorship to multiple organisations in the region, for say two people from many such organisations to attend the World Congress. If we funded, say, 100 people taken from numerous fields - activists, journalists, health and law workers - and perhaps from about 10 countries, the likely flow on effect may be invaluable, with a huge return in regional knowledge, linkage and capacity for a tiny investment.<sup>163</sup>

- 6.156 Amnesty International Australia recommended that:

... Australia have an active presence at the World Congress - including both DFAT and Parliamentary representatives. The World Congress will be an opportunity to actively engage with state and non-state actors in strategically developing Australia's role as a leader in the campaign to abolish the death penalty globally.<sup>164</sup>

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161 WCADP, *Submission 36*, p. 1.

162 McMahon et al, *Submission 12*, p. 2.

163 McMahon et al, *Submission 12*, p. 2.

164 Amnesty International, *Supplementary Submission 34.1*, p. 8.

- 6.157 Mr Mark Pritchard MP (UK All-Party Parliamentary Group for the Abolition of the Death Penalty) indicated the UK Parliamentary group 'will be sending a representative or two people' to the Congress.<sup>165</sup>

### Education and exchange

- 6.158 Some witnesses highlighted a role for university exchanges, scholarships and other educational programs in changing attitudes towards the death penalty in the region.
- 6.159 Civil Liberties Australia proposed Australia support education campaigns, such as a 'school-to-school interaction from country to country', which could link with teenagers via the internet.<sup>166</sup>
- 6.160 Professor Gregory Craven (Vice Chancellor, Australian Catholic University), promoted the role of scholarship and student exchange, saying:

... I think there is an enormous amount to be said for having people from other countries where the death penalty is in place coming to Australia, particularly perhaps into courses like law or criminology, but I can think of others that would be just as relevant, to give them an opportunity to reflect on whether that is or is not an appropriate position for their own country to take.<sup>167</sup>

- 6.161 Professor Craven also suggested international students enrolled in teaching degrees may be good candidates for spreading a message about capital punishment in their home countries.<sup>168</sup>
- 6.162 Describing the university's 'Mercy Scholarships', developed in wake of the executions of Mr Chan and Mr Sukumaran, Professor Craven explained:

So the idea was that we face the fact that two people have lost their lives. Instead of responding to that with abuse or criticism, the idea was to give two scholarships to people in countries where lives are taken in the same way. As part of that, let people freely apply for them. Ask them to give a piece of writing – an essay, which is how you often award scholarships – on the topic of the general area of the sanctity of life. It was not necessarily to be against the death penalty, but it would be highly likely that that would happen. We advertised those scholarships and we have

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165 Mr Mark Pritchard MP, Chair, UK All-Party Parliamentary Group for the Abolition of the Death Penalty, *Committee Hansard*, Canberra, 15 March 2016, p. 3.

166 Mr Rowlings, Civil Liberties Australia *Committee Hansard*, Canberra, 27 November 2015, p. 9.

167 Professor Gregory Joseph Craven, Vice-Chancellor, Australian Catholic University (ACU), *Committee Hansard*, Sydney, 9 December 2015, p. 22.

168 Professor Craven, ACU, *Committee Hansard*, Sydney, 9 December 2015, p. 22.

received applications for the scholarships. We will award two of those scholarships for next year.<sup>169</sup>

- 6.163 Professor Craven commented that the scholarships represent a positive approach to advocacy:

I do think that one of the challenges is to try to think: in international advocacy, what have we got to offer other than approval, opposition or advice? Are there material things that we can connect to our advocacy against the death penalty that would make people think we are sincere and serious? That is not an easy thing to do. It is easy enough for me to offer two scholarships. It is much harder as a matter of national policy. But I do think that is a real problem. When one is coming from a moral position, if all one has is a moral position that says, 'Your moral position isn't as good as mine,' it is not the most attractive position to be adopting.<sup>170</sup>

- 6.164 Professor Andrew Byrnes (Diplomacy Training Program) agreed that Australia's advocacy could be further invigorated by:

... provid[ing] support for civil society advocates through human rights training programs and development assistance programs; and to support national and regional organisations, such as [National Human Rights Institutions], in carrying out this work.<sup>171</sup>

- 6.165 Ms Mary Farrow highlighted the role of community workers and educators in rehabilitating prisoners. She wrote:

Prisons should be used as educational/vocational facilities and production environments to benefit the community while teaching skills, empathy, respect and giving people with long sentences (instead of killing them) a job to perform under the prison management. Imagine sentencing someone to a lifetime of academic achievement and contribution to the community (which includes the internal prison community).<sup>172</sup>

## The judiciary

- 6.166 Some witnesses highlighted a role for international judiciary in forging connections and advocating for an end to the death penalty. The Hon Justice Lasry AM QC observed:

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169 Professor Gregory Joseph Craven, Vice-Chancellor, Australian Catholic University (ACU), *Committee Hansard*, Sydney, 9 December 2015, p. 20.

170 Professor Craven, ACU, *Committee Hansard*, Sydney, 9 December 2015, p. 22.

171 Professor Andrew Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 13.

172 Ms Mary Farrow, *Submission 38*, p. [1].

I think the lawyers' job in the advocacy is to endeavour to explain, by the use of evidence, that, if you think the death penalty is a deterrent to the commission of a crime, you are wrong, because the contrary is documented. Therefore, to the extent that we, as lawyers, are interested in solving the problems of criminal activity, and we are told over and over again how important general deterrence is, the death penalty does not have the effect.<sup>173</sup>

6.167 Commenting on possible roles for international judiciary, the Hon Justice Lasry AM QC confirmed 'if the opportunities arose to deal with judges from death penalty countries, we would grab them'.<sup>174</sup>

6.168 Mr Ronald Keith Heinrich, from the Commonwealth Lawyers Association referred to the American Bar Association as a 'very powerful and influential body' that could be utilised in advocacy with the United States.<sup>175</sup>

6.169 The American Bar Association has a number of policies on the death penalty, mostly covering its 'responsible use'. For instance, a 'Mental Illness Resolution', adopted in 2006, which:

... without taking a position supporting or opposing the death penalty, calls upon each jurisdiction that imposes capital punishment to implement policies and procedures with respect to capital defendants and prisoners with intellectual disability or mental impairment or illness.<sup>176</sup>

6.170 Professor Byrnes suggested Australia needs to:

... build on existing links with judiciaries and to include death penalty and related issues as part of judicial training and exchange programs; to support associations of lawyers here and abroad to engage in advocacy on the issue ...<sup>177</sup>

6.171 The WCADP suggested that:

In Asian countries that still have the death penalty, Australia could engage in joint bilateral programs to share experience and build capacity of judges, lawyers, parliamentarians, and university

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173 The Hon Justice Lasry AM QC, *Committee Hansard*, Melbourne, 17 November 2015, p. 5.

174 The Hon Justice Lasry AM QC, *Committee Hansard*, Melbourne, 17 November 2015, p. 4.

175 Mr Ronald Keith Heinrich, Executive Committee Member, Commonwealth Lawyers Association, *Committee Hansard*, Sydney, 20 November 2015, p. 22.

176 'ABA Death Penalty Policy', *American Bar Association website*, at <[www.americanbar.org/groups/committees/death\\_penalty\\_representation/resources/dp-policy.html](http://www.americanbar.org/groups/committees/death_penalty_representation/resources/dp-policy.html)> viewed 5 April 2016.

177 Professor Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 13.

scholars on the issue of fair trial, access to justice and the death penalty.<sup>178</sup>

## Supporting research and building capacity

6.172 The Committee heard evidence that there is a significant role for Australia in supporting research into the continued use of the death penalty, particularly in the Indo-Pacific region.<sup>179</sup>

6.173 Witnesses also argued that Australia's strategy for advocacy should include working to build capacity among academics, NGOs, legal services and others, to help them in advocating against the death penalty in the region.<sup>180</sup>

6.174 While proponents of the death penalty argue that it has a unique deterrent effect, the majority of scholarly research seeking to prove or disprove this claim has found no evidence to support a deterrent effect over and above that of life imprisonment.<sup>181</sup>

6.175 Witnesses reminded the Committee of this lack of evidence regularly. For instance, Dr Amy Maguire commented:

There is no settled evidence to show a deterrent value for capital punishment that is any greater than life imprisonment. It is obviously quite difficult to measure but the statistics in the US are very strong on this.<sup>182</sup>

6.176 Mr Mark Prichard MP (UK All-Party Parliamentary Group against the death penalty) observed:

Within the framework of a national justice system, it has been observed that it is not the severity of the penalty but the relative certainty and predictability in applying any proportionate penalty that renders a functioning criminal justice system a deterrence factor.<sup>183</sup>

178 WCADP, *Submission 36*, p. 4.

179 See for instance: Professor Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 13.

180 See for instance: Ms Heather Wright, *Submission 47*, p. 3; and Professor Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 13.

181 Amnesty International, *Submission 34*, p. 6.

182 Dr Maguire, University of Newcastle, *Committee Hansard*, Canberra, 27 November 2015, p. 16.

183 Mr. Mark Pritchard MP, Deputy Convenor, Parliamentarians for Global Action (PGA) International Law and Human Rights Programme, PGA Board Chair, PGA UK National Group Vice-Chair, and UK All-Party Parliamentary Group for the Abolition of the Death Penalty, *Address to Regional Conference on the Abolition and/or Moratorium on Execution of the Death Penalty*, Freetown 13-14 January 2014, p. 2.

At <[www.pgaction.org/pdf/activity/2014-01-13-14-Mark-Pritchard-address.pdf](http://www.pgaction.org/pdf/activity/2014-01-13-14-Mark-Pritchard-address.pdf)> Viewed 8 March 2016.

- 6.177 However, Dr Malkani concluded that support for the death penalty remains, and 'is built on myths of deterrence and retribution – the idea that it would bring closure to victims' families'. He argued that advocates must focus on 'countering those myths and getting hard empirical data'.<sup>184</sup>
- 6.178 With the benefit of 'empirical studies of homicide rates, of drug-trafficking rates and so on', Dr Malkani suggested advocates could 'utilise the media' to challenge the myth of deterrence.<sup>185</sup>
- 6.179 Professor Byrnes lamented the paucity of good quality Asian research and data in relation to the use of death penalty:
- Firstly, in the context of the Indonesian constitutional challenge ... the question of the unique deterrent effect of the death penalty came up. Nearly all of the credible social scientific material that was available in that case related to the use of the death penalty in the United States. There was little or nothing of value in the literature relating to Asian jurisdictions. There is a clear need for supporting research through linkages or in some other way.<sup>186</sup>
- 6.180 In 2016, the Asia Pacific Forum is seeking to at least in part rectify this gap in the research through reviewing and updating its 1999 study into the death penalty in the Asia-Pacific region.<sup>187</sup>
- 6.181 PGA's Dr Cattin highlighted the powerful role that research can play:
- ... let me tell you that the most powerful tool that we in PGA have been using, even abroad, to promote the idea worldwide of abolition is the study that was carried out at the beginning of 2014 by a number of scholars that was shared at the UN by Professor William Schabas from Canada. This study revealed that in the United States, in the states that had abolished the death penalty the crime rate went down vis-a-vis when the death penalty was in force, while in some of the states that retained the death penalty the crime rate went up. So, in other words, this statistical analysis, this study, highlights how the death penalty does not serve the purpose of deterrence or prevention.<sup>188</sup>

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184 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 2.

185 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 2.

186 Professor Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 13.

187 'APF to update landmark study on the death penalty', *Asia Pacific Forum website*, at <<http://www.asiapacificforum.net/news/apf-update-landmark-study-death-penalty/>> viewed 5 April 2016.

188 Dr Cattin, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 6.

6.182 Dr Maguire argued that the threat of death can even act as an incentive in the case of terrorism offences. For instance, in the example of ‘Bali bomber, Amrozi, and his colleagues’, who:

... publicly welcomed their executions as necessary for their martyrdom because they had not been killed in the course of the attacks. ... If countries apprehend terrorist suspects, try them and find them guilty then surely denying them what it is that they seek – that being a death at the hands of the state and martyrdom, in their view – is a powerful message that Australia and the allies that it tries to persuade in this regard are willing to rise above the urge to kill.<sup>189</sup>

6.183 Dr Maguire et al suggested that Australia could ‘leverage research in this area to build persuasive arguments against capital punishment globally’.<sup>190</sup>

6.184 Witnesses proposed that Australia work to increase the amount of available research evidence around the death penalty. Professor Byrnes offered:

... it may be worthwhile to explore, as part of any strategy, the possibility of conducting an audit of research and academic relationships in the region of those engaged in work in this area, with a view to stimulating such further research and building on existing relationships.<sup>191</sup>

6.185 Mr Robertson added:

We think that that kind of independent research is absolutely critical, and we would encourage both academics and donors to support that kind of independent research that then could be widely disseminated.<sup>192</sup>

6.186 Human Rights Watch particularly saw a role for this research in persuading Asian countries:

[In] South-East Asia, we have a major persuasive challenge in front of us. We have countries and places where, if you look at polling – for instance, in Thailand, Malaysia, Vietnam or Singapore – it still shows that the majority of people favour the death penalty. ... So we need to have that kind of research and have it translated into

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189 Dr Maguire, University of Newcastle, *Committee Hansard*, Canberra, 27 November 2015, p. 16.

190 Dr Maguire, Ms Fitzsimmons and Mr Richards, *Submission 40*, p. 7.

191 Professor Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 14.

192 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 28.

the languages of the region so that the counterargument can be made ...<sup>193</sup>

6.187 Ms Farrow proposed working with community organisations, 'such as the Asia Pacific Restorative Justice Forum' to fund academic research 'to identify suitable sentencing alternatives'.<sup>194</sup>

6.188 Ms Farrow advised that the Australian Government should fund scholarships to encourage more research on capital punishment and sentencing alternatives,<sup>195</sup> as well as to help 'challenge "voodoo polls" that purport to represent the entire country's opinion on the death penalty'.<sup>196</sup>

6.189 Witnesses commented on the need to build capacity within civil society, particularly in Asia. Mr McMahon and his colleagues wrote:

Our recent experience in Indonesia has emphasized the importance for us of capacity building. Although in some quality media there was well informed and strong debate, overall there was a serious shortage of informed commentators, journalists, lawyers, health professionals, criminologists or other likely voices with the knowledge or willingness to enter the debate. ... There are many and complex reasons for this, but a significant part of the solution is capacity building – encouraging and enabling better, more informed and critical journalism, legal commentary, health commentary, political analysis and so on.<sup>197</sup>

6.190 Professor Byrnes echoed the need to build capacity and create a sustainable movement for abolition:

In my view, it is important to build capacity and to encourage informed reflections among those who are now, or may in the future become, influential in the development of human rights or criminal justice policy in retentionist countries. ... the groups with which engagement might be further developed include legal scholars, criminologists, those involved in law enforcement and policymakers developing responses to drug trafficking and other forms of serious crime.<sup>198</sup>

6.191 Ms Ursula Noye (board member, Reprieve Australia) argued that Australia has a significant role to play in providing 'accurate and up-to-

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193 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 28.

194 Ms Mary Farrow, *Submission 38*, p. [1].

195 Ms Farrow, *Submission 38*, p. [1].

196 Ms Farrow, *Submission 38*, p. [3].

197 McMahon et al, *Submission 12*, p. 4.

198 Professor Byrnes, Diplomacy Training Program, *Committee Hansard*, Sydney, 9 December 2015, p. 13.

date information on the use of the death penalty' for media and civil society groups in the region.<sup>199</sup>

- 6.192 DFAT responded to these suggestions commenting that there might be a place for more research; however, Dr Strahan said there is a 'somewhat slim budget in this area.'<sup>200</sup>

## The role of Parliamentarians

- 6.193 The inquiry received evidence from a number of parliamentary groups that advocate for abolition of the death penalty, including:

- Parliamentarians for Global Action (PGA);
- Australian Parliamentarians Against the Death Penalty; and
- the UK All-Party Parliamentary Group Against the Death Penalty (the UK All-Party Group).

These groups offered a number of suggestions to guide the work of Australia's parliamentarians and Australia's strategy for abolition.

- 6.194 PGA's Dr Cattin emphasised that MPs can make a 'big difference' in the campaign. He observed:

... when you talk to friends and to your peers, you have an authority that is much stronger and more direct and better heard from the other side than if it was an initiative that was identified as stemming from an NGO – as authoritative and as good as it can be.<sup>201</sup>

- 6.195 PGA further suggested that parliamentarians can make a significant impact as individuals, as well as through organised campaigns:

It is really the dialogue with other colleagues that sometimes opens the minds of domestic legislators and brings them to the decision, 'We need to do this'. So do not underestimate the role that a few can individually and collectively play.<sup>202</sup>

- 6.196 Lord Jeremy Purvis (Member, All-Party Parliamentary Group for the Abolition of the Death Penalty) expressed a similar view:

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199 Ms Ursula Noye, Board member, Reprieve Australia, *Committee Hansard*, Melbourne, 17 November 2015, p. 13.

200 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 8.

201 Dr Cattin, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 2.

202 Mr Robertson, Human Rights Watch, *Committee Hansard*, Sydney, 9 December 2015, p. 26.

202 Dr Cattin, PGA, *Committee Hansard*, Canberra, 25 February 2016, pp. 5-6.

I have been on two away visits... I think the benefit that we had as parliamentarians speaking to other parliamentarians on a cross-party basis, an all-party basis, was that we could in some way detach it from formal government to government, and we were able to actually make more progress.<sup>203</sup>

6.197 Lord Purvis also highlighted the benefits of having the activities of the Parliamentarians linked with and informed by the Government's strategy.<sup>204</sup>

6.198 Amnesty International Australia suggested the Australian Government would benefit from formalising its engagement with the bipartisan Parliamentarians Against the Death Penalty group, to allow for a more coordinated and strategic approach to the advocacy of parliamentarians.<sup>205</sup>

6.199 Mr Bourke suggested Australian parliamentarians could engage with officials in the USA at the state level:

Reform at a legislative level needs to come in at a state-by-state level. So to the extent that Australian parliamentarians are reaching out to their colleagues, ordinarily Commonwealth parliamentarians will reach out to the federal government of the United States, but I would urge Australian parliamentarians not to hesitate to reach out and create those relationships on a state-by-state basis with legislators in America.<sup>206</sup>

6.200 Dr Cattin explained that PGA actively engages with state legislators in the USA,<sup>207</sup> and meets with retentionist members of parliament in various countries, stating:

It is very important for us to underscore that the PGA platform is not a place where only the abolitionists meet and exchange views and opinions, but the idea is to be able to open our doors to anyone who is interested in justice and the rule of law. In good faith they support the death penalty. We want them to be engaged and understand the reasons from our side with the view to making them open their minds and probably change their positions.<sup>208</sup>

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203 Lord Jeremy Purvis, Member, UK All-Party Parliamentary Group for the Abolition of the Death Penalty, *Committee Hansard*, Canberra, 15 March 2016, p. 5.

204 Lord Purvis, UK All-Party Parliamentary Group, *Committee Hansard*, Canberra, 15 March 2016, p. 5.

205 Amnesty International, *Submission 34*, p. 4.

206 Mr Bourke, Louisiana Capital Assistance Center, *Committee Hansard*, Melbourne, 17 November 2015, p. 8.

207 Dr Cattin, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 2.

208 Dr Cattin, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 2.

- 6.201 According to Dr Cattin, PGA sometimes meets with parliamentarians in difficult circumstances:

We are today and we were yesterday in Indonesia, where the climate is very, very difficult. There is not willingness to go on the record. Even those among the parliamentarians here who are critical of the death penalty do not want to take the issue on the public [record].<sup>209</sup>

- 6.202 Mr Pritchard made these comments about approaches for discussing capital punishment in various countries:

There are Chinese politicians I speak to and say, 'Of course, you know the United States is moving slowly but surely towards moratorium or abolition across its states,' and they are very interested to hear that. When I am in the United States, perhaps mischievously, Chair, I say, 'You know, China is moving towards fewer and fewer deaths.' Whatever it takes, as long as it is lawful and proper and right, we should use all the diplomatic devices we can.<sup>210</sup>

- 6.203 Acknowledging the sometimes sensitive contexts in which MPs communicate with each other, Mr Humphries suggested:

We should also make the point to delegates in those circumstances that we are not necessarily there to push an advocacy agenda but there may be opportunities to raise these issues in conversations, perhaps in casual conversations after the official business, or over the delegation dinner or whatever it might be, in a way that acknowledges the sensitivities of the hosts.<sup>211</sup>

- 6.204 DFAT stated that the Department is:

... very open, if parliament needs it, to you coming to us and seeking advice about particular countries, particular situations, particular partners and asking for our judgement about what the best way forward is. I think we would have a shared desire to make sure that we avoid doing things which are inadvertently counterproductive.<sup>212</sup>

- 6.205 Mr Frank Warburton (All-Party Parliamentary Group for the Abolition of the Death Penalty) offered this explanation of the way in which the UK All-Party Group functions:
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209 Dr Cattin, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 2.

210 Mr Pritchard, UK All-Party Parliamentary Group, *Committee Hansard*, Canberra, 15 March 2016, p. 4.

211 Mr Humphries, *Committee Hansard*, Canberra, 27 November 2015, p. 45.

212 Dr Strahan, DFAT, *Committee Hansard*, Sydney, 9 December 2015, p. 5.

It applies annually to the Foreign and Commonwealth Office for funding to carry out a program of visits – usually four visits – to retentionist countries throughout the world which are identified in terms of whether there is a particular opportunity for engagement. That might be identified by the local UK embassy or the members of the group might identify opportunities themselves. Most members of the group are heavily engaged in networking internationally anyway. They are active in the Inter-parliamentary Union, the Commonwealth Parliamentary Association and so on. Opportunities might be identified by the members or it might be by third parties, like organisations such as Reprieve, Amnesty International or Parliamentarians for Global Action. A visit is carried out. Usually there is assistance from the UK embassy in terms of organising programs and delivering introductions to key stakeholders locally. Those are generally the mechanics of carrying out a visit.<sup>213</sup>

6.206 While complementary of the work of Australian Parliamentarians Against the Death Penalty, Amnesty International made the following suggestions:

- [A]ssistance should be provided to the parliamentary group to engage with likeminded parliamentary groups around the world – for example the United Kingdom All-Parliamentary Group Against the Death Penalty – but also to build relationships with friendly parliamentarians in nations which still practice the death penalty. ...
- Properly resourcing and enabling the Australian parliamentary group – and incorporating their work into an official Government anti-death penalty strategy – is one way to ensure Australian efforts leave no stone unturned, and are constantly engaging at the political level....
- Before embarking on an official overseas visit, Members of Parliament and Senators, whether part of the Parliamentary Group Against the Death Penalty or not, should be briefed on the death penalty situation in any country they are visiting. This should include a briefing on individual death row cases of concern.<sup>214</sup>

6.207 Amnesty also proposed:

The cross-party Parliamentarians Against the Death Penalty could establish a process for receiving individual case information from civil society. For example, the Swiss Parliament Death Penalty

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213 Mr Frank Warburton, Consultant, All-Party Parliamentary Group for the Abolition of the Death Penalty, *Committee Hansard*, Canberra, 15 March 2016, p. 4.

214 Amnesty International, *Submission 34*, p. 12.

Group receives Amnesty International Urgent Actions and makes regular interventions with country's political representatives based on these.<sup>215</sup>

## The role of the private sector

6.208 The potential role of the private sector in advocacy for abolition of the death penalty was an area of interest for witnesses and the Committee during the inquiry.

6.209 Witnesses including Mr Bourke outlined the role played by tightened regulations and export bans on pharmaceuticals in reducing the number of recent executions:

One of the critical issues there has been the US supply of drugs used to administer lethal injection – first sodium thiopental and then other drugs. US states are attempting to import drugs illegally in violation of federal [Free Trade Agreement] regulations in the market. A number of countries through Europe that house drug-manufacturing companies have expressed their dissatisfaction and have taken steps to make it either harder or impossible for death-dealing drugs to be imported into the United States when they will be used in executions.<sup>216</sup>

6.210 Ms Noye outlined the actions of Reprieve UK who 'have engaged with multinationals who are supplying the drugs that are used to kill'. She commented:

I know they have had some great success in approaching organisations at that level and asking, 'Do you want to see your product used for this purpose?' The answer is invariably no. That is creating all sorts of problems in the US with their execution drugs.<sup>217</sup>

6.211 Praising the campaign by Reprieve, Dr Malkani remarked:

Those pharmaceutical companies have come out saying, 'We make drugs to save lives. We do not want them to be used for taking away lives.' That has the practical effect of slowing down rates of executions, but it has also had a normative effect of getting the

215 Amnesty International, *Supplementary Submission 34.1*, p. 11.

216 Mr Bourke, Louisiana Capital Assistance Center, *Committee Hansard*, Melbourne, 17 November 2015, p. 10.

217 Ms Ursula Noye, Board member, Reprieve Australia, *Committee Hansard*, Melbourne, 17 November 2015, p. 16.

message across that these companies do not want to be involved in the taking of life.<sup>218</sup>

6.212 PGA's Ms Trujillio described the European trade bans:

They have a new regulation forbidding pharmaceutical companies from exporting drugs that could be used abroad to carry out death sentences, and when I talk with many EU officials on this issue it is mainly directed to the US, to be honest. ... In the United States this posed an important issue last year and the year before because they had a shortage of drugs to carry it out, especially lethal injections.<sup>219</sup>

6.213 Following the EU ban on the sale of compounds for execution, Mr Mark Pritchard MP (UK All-Party Parliamentary Group for the Abolition of the Death Penalty) suggested that some US States may be attempting to import such compounds 'allegedly' from India.<sup>220</sup> He added:

So anything you can do in your part of the world to ensure that your neighbouring countries are not tempted to sell these death compounds into US states would be particularly helpful as well, because not being able to access them is certainly slowing down the number of executions.<sup>221</sup>

6.214 Witnesses including UnitingJusticeAustralia<sup>222</sup> and Human Rights Watch suggested Australia '[c]onsider measures to ensure no Australian products are used in administering the death penalty abroad'.<sup>223</sup>

6.215 The OHCHR proposed that Australia:

... review its trade policies, laws and regulations to ensure full prohibition of trade in goods which have no practical use other than for the purpose of capital punishment or for torture and ill-treatment, as well as the supply of technical assistance related to such goods.<sup>224</sup>

6.216 Asked if there was a role for Australia in this area, Mr Bourke stated:

I am not currently aware of any medical drug manufacturer in Australia that could be used as a vehicle for lethal injections or as a

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218 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 3.

219 Ms Trujillo, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 5.

220 Mr Pritchard, UK All-Party Parliamentary Group, *Committee Hansard*, Canberra, 15 March 2016, p. 2.

221 Mr Pritchard, UK All-Party Parliamentary Group, *Committee Hansard*, Canberra, 15 March 2016, p. 2.

222 UnitingJustice Australia, *Submission 25*, p. 8.

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

224 OHCHR, *Submission 49*, p. [9].

source. ... But again, we do not need to wait for that to happen. That is an area where the Australian government can say, 'We will not permit the export of the devices of execution, whether in the form of lethal drugs or whatever other mechanisms countries choose to take up.'<sup>225</sup>

6.217 Ms Trujillio suggested that the European Union may be able to provide Australian authorities with 'a list of those drugs' used in executions.<sup>226</sup>

6.218 Witnesses were also interested in the role private sector companies play in promoting human rights causes. Ms Howie contended:

We have seen, at least in Australia, the contribution that corporations have made to, for example, the marriage equality debate. I think that has been a real game changer. We would support corporations being involved in those kinds of discussions, particularly where they are working in jurisdictions that, for example, have the death penalty or have rule of law issues. These are issues that not only affect business confidence but are human rights issues on the ground.<sup>227</sup>

6.219 Dr Malkani provided some examples from the private sector, including companies such as Benetton, Lush and Virgin:

... Benetton tried to do this a few years ago when they had an ad campaign using images of people on death row, which did not go down particularly well, but maybe that was the wrong time. ... Whether a company like that could now be persuaded to do these sort of things, yes, I think there is an opportunity there. I do not know if you know of Lush, the cosmetics company. ... They did a lot of work with Reprieve speaking out against Guantanamo Bay. Richard Branson of Virgin does a lot of against the death penalty. He speaks out quite strongly and very frequently against the death penalty.<sup>228</sup>

6.220 In Dr Malkani's view, there 'is scope' for companies and CEOs play a stronger role in the campaign against the death penalty worldwide.<sup>229</sup>

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225 Mr Bourke, Louisiana Capital Assistance Center, *Committee Hansard*, Melbourne, 17 November 2015, p. 10.

226 Ms Trujillo, PGA, *Committee Hansard*, Canberra, 25 February 2016, p. 5.

227 Ms Emily Howie, Director of Advocacy and Research, Human Rights Law Centre, *Committee Hansard*, Melbourne, 17 November 2015, p. 16.

228 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 3.

229 Dr Malkani, University of Birmingham, *Committee Hansard*, Canberra, 27 November 2015, p. 3.

## Committee comment

- 6.221 Australia has traditionally been a strong advocate for abolition of the death penalty. However, there is scope for further advocacy and better coordination of our efforts.
- 6.222 The Committee recommends the development of a whole-of-government strategy which will guide Australia's ongoing advocacy for abolition of the death penalty.
- 6.223 In light of evidence received, the Committee recommends the strategy be focussed on retentionist countries in the Indo-Pacific region, as well as the United States of America. Were the United States to move towards abolition this would most likely have a significant catalytic effect on other retentionist nations.
- 6.224 The strategy should include overarching goals, including working towards moratoria and a reduction in executions, and incorporate concrete aims for Australian advocacy in the short and medium term.
- 6.225 In light of Australia's candidacy for a seat on the United Nations Human Rights Council in 2018, and the declaration that advocating for abolition of the death penalty will be an important focus of Australia's campaign, it is timely and appropriate that the Australian Government devote more resources to this advocacy. The Committee also notes that Australia is co-sponsoring the 6<sup>th</sup> World Congress Against the Death Penalty being held in June 2016.
- 6.226 The Committee recommends that a modest amount of grant funding be made available to assist civil society and other groups for their advocacy efforts in retentionist countries, as well as for training and scholarships.
- 6.227 The Committee also believes that DFAT requires specific additional resources which can be dedicated to developing, rolling out, and evaluating the strategy.
- 6.228 As part of Australia's strategy, the Committee recommends that DFAT work to forge a regional coalition of likeminded countries in the Indo-Pacific to coordinate efforts to promote abolition.
- 6.229 The Committee recognises that to be effective, Australia's advocacy for abolition of the death penalty must be consistent and universal, and strongly encourages all members of parliament and officials of the Australian Government to present a consistent, principled objection to capital punishment. Australia should advocate for further restrictions on the use of the death penalty in retentionist countries, such as where an existing law or practice allows for the execution of juveniles, people with mental illnesses and pregnant women.

- 6.230 The Committee acknowledges that misinformation and myth about the supposed unique deterrent effect of the death penalty help to maintain it in many countries. The depth of available research can be limited; for example, analysis of the extent to which the death penalty deters drug offences among Asian jurisdictions. As such, the Committee sees an important role for further research and capacity building among scholars, lawyers, academics, journalists and advocates for abolition of the death penalty. This should be included among the measures employed within the whole-of-government death penalty advocacy strategy.
- 6.231 The Committee notes the work of parliamentarians, especially the Australian Parliamentarians Against the Death Penalty, in advocating against specific executions, and against capital punishment generally. Where this advocacy work would assist in achieving the aims of the Australian strategy, it should be formally incorporated as part of the strategy. The Committee's expectation is that, as occurs to good effect with the UK All-Party Parliamentary Group Against the Death Penalty, the work of Australian Parliamentarians Against the Death Penalty would be linked with and informed by the strategy.
- 6.232 While the Committee feels that there is scope for private sector companies, CEOs and high-profile individuals to play a stronger role in the campaign against the death penalty, it acknowledges that this is an area that requires more thought and exploration. Nevertheless, the Committee urges monitoring to ensure that no Australian companies manufacture and export products that could be used for executions.

## Recommendations

### Recommendation 8

The Committee recommends that the Department of Foreign Affairs and Trade coordinate the development of a whole-of-government Strategy for Abolition of the Death Penalty which has as its focus countries of the Indo-Pacific and the United States of America.

### Recommendation 9

The Committee recommends that the goals of the Strategy for Abolition of the Death Penalty include:

- an increase in the number of abolitionist countries;
- an increase in the number of countries with a moratorium on the use of the death penalty;
- a reduction in the number of executions;
- a reduction in the number of crimes that attract the death penalty;
- further restrictions on the use of the death penalty in retentionist countries of the Indo-Pacific region; and
- greater transparency of states' reporting the numbers of prisoners sentenced to death and executions carried out.

## **Recommendation 10**

The Committee recommends that the specific aims of the Strategy for Abolition of the Death Penalty include:

- acknowledging the positive steps taken by countries in the region, for example where countries reduce the number of crimes that attract the death penalty or remove mandatory death sentences;
- promoting greater transparency in the number of executions carried out in China, Vietnam, Syria, North Korea and Malaysia, the crimes for which death sentences were imposed and the number of people under sentence of death in each country;
- promoting a reduction in the number of crimes that attract the death penalty in China, Vietnam, Thailand, Taiwan and India;
- promoting an end to mandatory sentencing in death penalty cases in Malaysia and Singapore, especially in relation to drug crimes;
- advocating for Pakistan and Indonesia to resume their moratoria;
- advocating for an improvement in the conditions and treatment of prisoners on death row in Japan;
- encouraging Papua New Guinea not to reinstate capital punishment;
- assisting Nauru, Tonga, Republic of Korea and Myanmar to move from abolitionist in practice to abolitionist in law;
- promoting abolition of the death penalty at the federal level in the United States and encouraging state-level moratoria and eventual abolition; and
- forming a coalition of like-minded countries who can work in concert to promote abolition of the death penalty in the Indo-Pacific region.

## **Recommendation 11**

The Committee recommends that the following techniques, among others, be utilised to achieve the aims of the Strategy for Abolition of the Death Penalty:

- intervening to oppose death sentences and executions of foreign nationals, especially in cases where there are particular human rights concerns, such as unfair trials, or when juveniles or the mentally ill are exposed to the death penalty;
- commissioning research and analysis to inform the specific actions and advocacy approaches which may be most effective in each priority country;
- provision of modest annual grants funding to support projects which seek to advance the cause of abolition within the region, such as efforts to influence public opinion, promoting alternatives to the death penalty, engaging with the media, political representatives, religious leaders, the legal profession and policy makers;
- provision of funding to support the Anti-Death Penalty Asia Network and abolitionist civil society groups within the region, including to assist with advice and representation in individual cases;
- provision of training and networking opportunities in Australia and elsewhere for representatives of abolitionist civil society groups within the region;
- where their involvement would help achieve specific objectives under the Strategy, utilising the Australian Parliamentarians Against the Death Penalty group, Parliamentarians for Global Action, and experts such as Australian jurists;
- engaging with the private sector and supportive high-profile or influential individuals in priority countries, where this may be effective;
- supporting the continued participation by Australian delegations at the 6<sup>th</sup> World Congress Against the Death Penalty and subsequent congresses; and
- Australia to continue to co-sponsor resolutions on abolition of the death penalty at the United Nations.

**Recommendation 12**

The Committee recommends the Australian Government provide dedicated and appropriate funding to the Department of Foreign Affairs and Trade to fund grants to civil society organisations, scholarships, training, research and/or capacity building projects aimed at the abolition of the death penalty.

**Recommendation 13**

The Committee recommends that the Australian Government make available to the Department of Foreign Affairs and Trade ongoing operational funds to resource the preparation and implementation of the Strategy for Abolition of the Death Penalty, including a budget for adequate staffing.

The Hon Philip Ruddock MP  
Chair  
Human Rights Sub-Committee  
4 May 2016

The Hon Teresa Gambaro MP  
Chair  
Joint Standing Committee on  
Foreign Affairs, Defence and Trade  
4 May 2016