

NSW Council for Civil Liberties  
Background Paper

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**The Death Penalty  
in Australia and Overseas**

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**Background Paper 2005/3**  
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<b>Prepared for:</b>	Federal Parliamentary Cross-Party Working Group Against the Death Penalty
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# 1. Death Penalty in Australia

## 1.1 historical background

1. The first recorded execution in Australia took place at Port Jackson (Sydney) on Wednesday 27 February 1788.<sup>1</sup> Thomas Barrett was hanged for stealing food from the public stores. Governor Phillip commuted the death sentences of two co-accused.<sup>2</sup> Prior to 1793, only one (unnamed) woman was executed.<sup>3</sup>
2. On 2 February 1967, in Melbourne, Ronald Ryan became the last person executed in Australia.<sup>4</sup> He was executed for shooting a prison guard during an escape attempt. As recently as March 2004, Ryan's defence counsel, Dr Philip Opas QC, maintained that Ryan was an innocent man.<sup>5</sup>
3. By 1985 the death penalty had been abolished for all crimes in all Australian jurisdictions.<sup>6</sup>

jurisdiction	abolished	last execution
Queensland	1922	1913
Tasmania	1968	1946
Commonwealth	1973	–
ACT	1973	–
NT	1973	1952
Victoria	1975	1967
South Australia	1976	1964
Western Australia	1984	1964
New South Wales <sup>7</sup>	1955/1985	1940

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<sup>1</sup> John White, *Journal of a Voyage to New South Wales* (1790), 27 February 1788; reproduced at <<http://gutenberg.net.au/ebooks03/0301531h.html>>. Also: R. Clark, Journal, safe 1/27, Mitchell Library (Sydney), 27 February 1788; reproduced at <<http://www.angelfire.com/country/AustralianHistory/lifeportjackson.htm>>. Note: Watkin Tench records the day as 28 February 1788: Watkin Tench, *A Narrative of the Expedition to Botany Bay* (1789), Chapter 10; reproduced in *Watkin Tench 1788* (1999) edited by Tim Flannery, Text Publishing Company (Melbourne) pp. 49-50.

<sup>2</sup> capital punishment was not unusual in the nascent colony of New South Wales. In March 1789, six marines were hanged by the public executioner for stealing food from the public stores: Watkin Tench, *A Complete Account of the Settlement at Port Jackson* (1793), Chapter 3; reproduced in *Watkin Tench 1788* (1999) edited by Tim Flannery, Text Publishing Company (Melbourne) p. 102.

<sup>3</sup> Watkin Tench (1793), Chapter 18; n 2 above, 268.

<sup>4</sup> there have been several television adaptations of the story, including: Crawford Productions, *The Last of the Ryans* (broadcast 23 April 1997, Nine Network); and a dramatised documentary, *The Last Man Hanged* (1992, directed by Bill Bennett, broadcast on ABC-TV 1993).

<sup>5</sup> Australian Coalition Against Death Penalty, Interview with Dr Philip Opas QC (1 March 2004), <<http://www.acadp.com>>.

<sup>6</sup> *Death Penalty Abolition Act 1973* (Cth); *Criminal Code Amendment Act 1922* (Qld); *Criminal Code Act 1968* (Tas); *Crimes (Capital Offences) Act 1975* (Vic); *Statutes Amendment (Capital Punishment Abolition) Act 1976* (SA); *Acts Amendment (Abolition of Capital Punishment) Act 1984* (WA); *Crimes (Amendment) Act 1955* (NSW), *Crimes (Death Penalty Abolition) Amendment Act 1985* (NSW), *Miscellaneous Acts (Death Penalty Abolition) Amendment Act 1985* (NSW).

<sup>7</sup> NSW abolished the death penalty for murder in 1955, but retained the death penalty for treason and piracy until 1985: *Crimes (Death Penalty Abolition) Amendment Act 1985* (NSW). See: Ivan Potas & John Walker, *Capital Punishment* (1987) Australian Institute of Criminology, <<http://www.aic.gov.au/publications/tandi/ti03.pdf>>.

4. The [Death Penalty Abolition Act 1973 \(Cth\)](#) abolished capital punishment for all federal crimes and in the Territories.<sup>8</sup> No one has ever been executed for an offence against federal law or in the Australia Capital Territory.<sup>9</sup> In the Northern Territory, three people were executed before abolition – one person in 1913 and two people in 1952.
5. On 2 October 1990, Australia acceded to the [Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty](#).<sup>10</sup> (The process of ‘accession’ involves the simultaneous signing and ratification of a treaty.) The Protocol entered into force in international law on 11 July 1991.
6. The *Second Optional Protocol* has not been formally adopted into Australian domestic law. Amending the *Death Penalty Abolition Act* to adopt explicitly the Protocol into Australian law would have the effect of binding the States (using the external affairs power). CCL has prepared a separate paper on this process, together with a draft Bill to implement it.<sup>11</sup>
7. Australia has also ratified other international treaties abolishing the death penalty, including the fourth [Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#),<sup>12</sup> the [Convention on the Rights of the Child](#)<sup>13</sup> and the [Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment](#).<sup>14</sup>

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<sup>8</sup> Commonwealth, *Parliamentary Debates*, Senate, 1 March 1973, 105 (Lionel Murphy, Attorney-General): second reading speech, Death Penalty Abolition Bill 1973.

<sup>9</sup> Commonwealth, *Parliamentary Debates*, Senate, 1 March 1973, 106 (Lionel Murphy, Attorney-General).

<sup>10</sup> Department of Foreign Affairs and Trade, *Australian Treaties Database*, (last updated 25/7/2002), <<http://www.info.dfat.gov.au/Info/Treaties/Treaties.nsf/AllDocIDs/C0AA7BFB17F9DE95CA256B4C000ACD6F>>. Text of Protocol: <<http://www.ohchr.org/english/law/ccpr-death.htm>>.

<sup>11</sup> NSW Council for Civil Liberties, *Second Optional Protocol to the ICCPR* (March 2005) BP 2005/4.

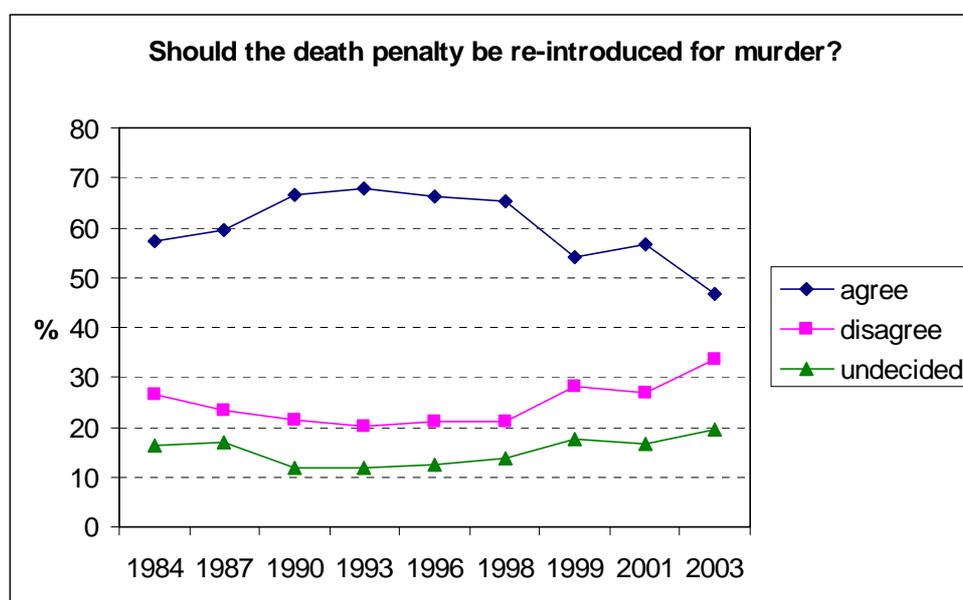
<sup>12</sup> [Geneva Convention Relative to the Protection of Civilian Persons in Time of War](#) (12 August 1949). Date of ratification: 14/12/1958; entry into force: 14/04/1959. An initial reservation (allowing the Australian military to execute people) was withdrawn on 21 February 1974. Available at: <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/21.html>>.

<sup>13</sup> see article 37 of [Convention on the Rights of the Child](#) (1989). Date of ratification: 17 December 1990; entry into force: 16 January 1991. Available at: <<http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html>>.

<sup>14</sup> [Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment](#) (1984). Date of ratification and entry into force: 8 August 1989. Available at: <<http://www.austlii.edu.au/au/other/dfat/treaties/1989/21.html>>.

## 1.2 support for the death penalty in Australia

8. It is difficult to gauge definitively the popular feeling about the death penalty in Australia. While some polls show a marked increase in support for the death penalty in the era of the ‘War on Terror’, the most authoritative survey of Australian social attitudes actually shows a marked *decrease* in support for the death penalty. What can be said is that popular support for the death penalty consistently outweighs opposition.
9. The Australian Election Survey series, compiled by the [ACSPRI Centre for Social Research](#) at the ANU, offers the most comprehensive survey of changing attitudes towards the death penalty over time. For almost two decades the survey has asked respondents the same question: should the death penalty be reintroduced for murder? The table and graph below summarise the responses from 1984 through to 2003.<sup>15</sup> According to the trend, support for the death penalty is decreasing and opposition to the death penalty is higher than at anytime in the last twenty years. The 2003 figures show a statistically significant 9.7% drop in support for the death penalty – *after* the Bali bombings.<sup>16</sup>



	1984	1987	1990	1993	1996	1998	1999	2001	2003
<b>agree</b>	57.2	59.4	66.5	67.9	66.3	65.2	54.2	56.5	46.8
<b>disagree</b>	26.6	23.5	21.6	20.1	21.0	21.0	28.2	26.8	33.6
<b>undecided</b>	16.3	17.1	11.9	12.0	12.6	13.8	17.5	16.7	19.6
<b>(sample)</b>	2991	1774	2015	3023	1779	1833	2311	1965	4211

source: [Australian Election Survey](#), ACSPRI Centre for Social Research, ANU

<sup>15</sup> *Australian National Social Science Survey 1984*, SSSA Study No. 423; *Australian Election Study 1987*, SSSA Study No. 445; *Australian Election Study 1990*, SSSA Study No. 570; *Australian Election Study 1993*, SSSA Study No. 763; *Australian Election Study 1996*, SSSA Study No. 943; *Australian Election Study 1998*, SSSA Study No. 1001; *Australian Constitutional Referendum Study 1999*, SSSA Study No. 1018; *Australian Election Study 2001*, SSSA Study No. 1048; *Australian Survey of Social Attitudes 2003*. All results are publicly available at: <<http://ssda224-100.anu.edu.au/nesstarlight/index.jsp>>. The figures quoted here are aggregate figures: the surveys break the responses down into ‘strongly agree’ and ‘agree’ (which are added together here as ‘agree’), and ‘strongly disagree’ and ‘disagree’ (which are added together here as ‘disagree’).

<sup>16</sup> results for this survey were largely collected in September and October 2003.

10. Gallup Polls published in the *Bulletin* magazine measured much lower support levels for the death penalty than the Australian Election Survey series: 51% of the Australian population in 1990 and 53% in 1995.<sup>17</sup>
11. Quantum Market Research recorded a marked change in Australian public opinion after the Bali bombings.<sup>18</sup> According to the Quantum Market Research polling, for the first time a clear majority of Australians support the death penalty:

SHOULD AUSTRALIA HAVE THE DEATH PENALTY?						
	1998	1999	2000	2001	2002	2003
<b>Yes</b>	37%	50%	45%	44%	43%	51%
<b>Not sure</b>	36%	21%	24%	22%	24%	18%
<b>No</b>	28%	29%	32%	35%	33%	31%

source: Australia SCAN, Quantum Market Research

12. A survey of 2000 Australians, conducted in August 2003 by NewsPoll for *The Australian* newspaper, found that 56% supported the reintroduction of the death penalty **in Australia** for major acts of terror (36% opposed).<sup>19</sup> In relation to the death penalty for the Bali bombers, the figures were very similar: 57% for; 33% against.

	total	sex		age			socio-economic status		political support	
		males	females	18-34	35-49	50+	white	blue	Coalition	ALP
	%	%	%	%	%	%	%	%	%	%
strongly in favour	38	43	33	35	40	39	29	48	44	35
somewhat in favour	18	17	20	19	17	19	19	18	20	22
<b>TOTAL IN FAVOUR</b>	<b>56</b>	<b>60</b>	<b>53</b>	<b>54</b>	<b>57</b>	<b>58</b>	<b>48</b>	<b>66</b>	<b>64</b>	<b>57</b>
somewhat against	13	13	12	15	16	10	15	10	14	10
strongly against	23	20	26	27	24	20	31	13	14	30
<b>TOTAL AGAINST</b>	<b>36</b>	<b>33</b>	<b>38</b>	<b>42</b>	<b>37</b>	<b>30</b>	<b>46</b>	<b>23</b>	<b>28</b>	<b>40</b>
uncommitted	8	7	9	4	6	12	6	11	8	3

Question: would you personally be in favour or against the introduction of the death penalty in Australia for those found guilty of committing major acts of terrorism?

source: Newspoll and *The Australian* (19 Aug 2003)

13. It is difficult to reconcile the 2003 results, which rate support for capital punishment in Australia at anywhere between 56% and 46.8%. While the media-published polls suggest that the War on Terror is increasing support, the Australian Election Survey suggests the opposite. The media polls were taken around the time of the trial of the Bali bomber Amrozi, dubbed ‘the smiling assassin’ by the popular press, and academics caution against reading too much into figures collected at such a highly emotional time.<sup>20</sup>
14. A similar phenomenon has been experienced in the United States, where there was a spike in support for capital punishment after 11 September 2001, but the trend of declining support has resumed.<sup>21</sup>

<sup>17</sup> Andrew Bolt, ‘Amrozi Taps Anger’, *Herald and Weekly Times* (Melbourne) 11 August 2003, 19.

<sup>18</sup> Andrew Webster, 10 August 2003, n 20.

<sup>19</sup> Newspoll and *The Australian* (Melbourne), 19 August 2003, <[http://newspoll.com.au/image\\_uploads/cgi-lib.28293.1.0803\\_Death\\_Penalty\\_poll.pdf](http://newspoll.com.au/image_uploads/cgi-lib.28293.1.0803_Death_Penalty_poll.pdf)>.

<sup>20</sup> Andrew Webster, ‘PM sparks death debate’, *The Sunday Age* (Melbourne), 10 August 2003, 5, <<http://www.theage.com.au/articles/2003/08/09/1060360550031.html>>.

<sup>21</sup> see [2.3] below.

### 1.3 extradition and the death penalty

15. A recent decision of the Federal Court concerning extradition and the death penalty confirms that the federal Attorney-General may lawfully authorise the extradition of an individual to a country that could very well execute that individual.<sup>22</sup>
16. Under the *Extradition Act 1988* (Cth) the federal Attorney-General has the final say on who will be extradited from Australia. The Attorney-General can only authorise the extradition of an individual for a capital offence if the extradition country undertakes that:<sup>23</sup>
  - the person will not be tried for the offence; [or]
  - if the person is tried for the offence, the death penalty will not be imposed on the person; [or]
  - if the death penalty is imposed on the person, it will not be carried out.
17. This discretion was examined in the Federal Court case of *McCrea v Minister for Customs & Justice*.<sup>24</sup> Mr McCrea was facing extradition to Singapore for the capital offence of murder. He unsuccessfully challenged the undertaking, given by the Singaporean government to the Australian government, not to execute him if he was found guilty.
18. North J concluded that Australian courts do not have the power to inquire into whether an extraditing country will honour such an undertaking.<sup>25</sup> The Act does not require that the undertaking “be effective to prevent the execution of the fugitive offender”, only that such an undertaking is made. So the role of the court is limited to determining whether such an undertaking has in fact been made and that it conforms to the provisions of the Act.<sup>26</sup>
19. Even more significantly, North J stressed that the Attorney-General has an overriding discretion to extradite.<sup>27</sup> This means that the Attorney-General, after having considered all relevant considerations, can still lawfully decide to surrender a fugitive for extradition.<sup>28</sup>
20. His Honour noted that Parliament has given the Attorney-General, and not the courts, the final say in extradition. To support his Honour’s conclusion that this is as it should be, North J gives two reasons of policy:<sup>29</sup>

The first is that extradition involves international relations because it requires cooperation between sovereign states for the purpose of arranging for the return of fugitive offenders to face justice. The second is that the conduct of international relations in Australia is a function undertaken by the executive arm of government. The constitutional separation of powers means that the judiciary has no direct function in the conduct of international relations.

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<sup>22</sup> for the purposes of this discussion, this paper uses the term ‘Attorney-General’ because that is the term used in the Act. In reality, the Attorney-General’s powers under the Act have been delegated to the Justice Minister since August 1997: Media Release, ‘Senator Chris Ellison’, Attorney-General (10 August 1997), [http://www.law.gov.au/agd/WWW/attorneygeneralHome.nsf/Page/Media\\_Releases\\_1997\\_August\\_1997\\_Senator\\_Chris\\_Ellison](http://www.law.gov.au/agd/WWW/attorneygeneralHome.nsf/Page/Media_Releases_1997_August_1997_Senator_Chris_Ellison).

<sup>23</sup> *Extradition Act 1988* (Cth) ss 22(3)(c) & 25(2)(b).

<sup>24</sup> *McCrea v Minister for Customs & Justice* [2004] FCA 1273 (North J), <[http://www.austlii.edu.au/au/cases/cth/federal\\_ct/2004/1273.html](http://www.austlii.edu.au/au/cases/cth/federal_ct/2004/1273.html)>.

<sup>25</sup> *McCrea v Minister for Customs & Justice* [2004] FCA 1273, [38]-[39].

<sup>26</sup> *McCrea v Minister for Customs & Justice* [2004] FCA 1273, [17].

<sup>27</sup> *Extradition Act 1988* (Cth) s 22(3)(f).

<sup>28</sup> *McCrea v Minister for Customs & Justice* [2004] FCA 1273, [21]-[22].

<sup>29</sup> *McCrea v Minister for Customs & Justice* [2004] FCA 1273, [18].

21. The decision in *McCrea* means that, while it might be relevant for the Attorney-General to consider whether the undertaking not to execute the extradited fugitive will be honoured, he or she may still lawfully decide to surrender the individual for extradition. All that is required of the Attorney-General is to obtain an undertaking, not an iron-clad guarantee that the undertaking is binding.
22. In Europe and Canada, where Bills of Rights forbid inhuman and degrading treatment or punishment, the courts can review an extradition request.<sup>30</sup> Courts have identified age, mental capacity and the 'death row phenomenon' (where people can wait for years in mental anguish awaiting their ultimate fate) as factors to be considered by the court during such a review.<sup>31</sup>
23. The [Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty](#)<sup>32</sup> is silent on the law of extradition. The protocol does not prohibit the extradition of a fugitive to a retentionist nation. There is no mention of extradition in the Special Rapporteur's report.<sup>33</sup> This suggests that the protocol does not affect the law of extradition. There is *obiter dicta* to this effect from the UN Human Rights Committee.<sup>34</sup>

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<sup>30</sup> Schabas, n 87, 268-79.

<sup>31</sup> e.g. *Soering v United Kingdom* (1989) 11 EHRR 439; also, *Minister of Justice v Burns & Rafay* [2001] 1 SCR 283. This caselaw is briefly reviewed in *McCrea v Minister for Customs & Justice* [2004] FCA 1273, [51]-[56].

<sup>32</sup> see n 10.

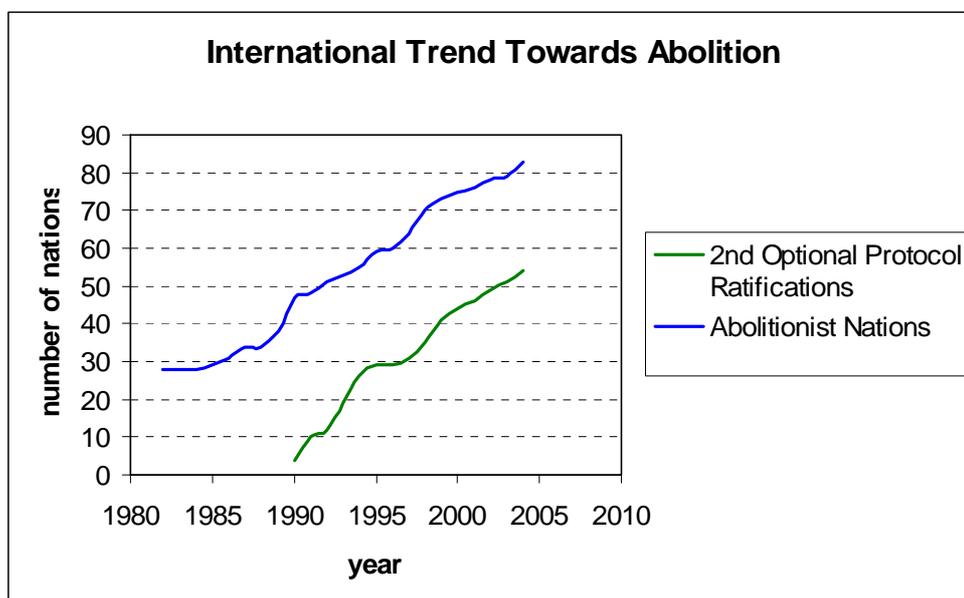
<sup>33</sup> Marc Bossuyt, *Analysis Concerning the Proposition to Elaborate a Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty* (29 June 1987) UN Doc. E/CN.4/Sub.2/1987/20.

<sup>34</sup> *Cox v Canada* (31 October 1994) UN Doc CCPR/C/52/D/539/1993 (concurring joint opinion of Herndl & Sadi). See also: NSW Council for Civil Liberties, *Second Optional Protocol to the ICCPR* (March 2005) BP 2005/4.

## 2. The Death Penalty Internationally

### 2.1 abolition

24. The international trend is undoubtedly towards total abolition. Abolitionist states now outnumber retentionist states.
25. Prior to the Second World War, only 8 nations had completely abolished the death penalty.<sup>35</sup> The first country to do so was Venezuela in 1863.<sup>36</sup>
26. According to Amnesty International, as at March 2005, 83 countries have abolished the death penalty.<sup>37</sup> A further 13 countries retain capital punishment only for exceptional crimes (such as war crimes), and another 22 nations are abolitionist *de facto* (having not executed anyone for over 10 years and having a policy not to execute). This totals to 118 states that are abolitionist in law or practice.



source data: UN High Commissioner for Human Rights & Amnesty International

27. The [Universal Declaration of Human Rights](#) (1948) does not mention the death penalty.<sup>38</sup> This was largely because there was no international consensus on the abolition of capital punishment at the time.<sup>39</sup>
28. By the time the [International Covenant on Civil and Political Rights](#) ('ICCPR')<sup>40</sup> was adopted by the UN General Assembly in 1966, the international abolitionist movement had matured.<sup>41</sup> The ICCPR restricts retentionist countries to using the death penalty only for the 'most serious crimes' (article 6(2)), to providing a process of commutation (article 6(4)) and prohibits the execution of pregnant women and juveniles below 18 years of age (article 6(5)). Article 6 is concerned with the

<sup>35</sup> Venezuela, San Marino, Costa Rica, Panama, Ecuador, Uruguay, Colombia & Iceland: UN Doc E/2003/3, n 46, Annex 1.

<sup>36</sup> Roger Hood, *The Death Penalty: A Worldwide Perspective* (2002, 3<sup>rd</sup> ed), 10.

<sup>37</sup> Amnesty International, *Facts & Figures on the Death Penalty*, <<http://web.amnesty.org/pages/deathpenalty-facts-eng>>, as at 9 March 2005. See also: UN Doc E/2003/3, n 46, Annex 1.

<sup>38</sup> *Universal Declaration of Human Rights* (1948), <<http://www.unhchr.ch/udhr/index.htm>>.

<sup>39</sup> William Schabas, *The Abolition of the Death Penalty in International Law* (2002, 3<sup>rd</sup> ed) 32-33.

<sup>40</sup> *International Covenant on Civil and Political Rights* (1966) <<http://www.ohchr.org/english/law/ccpr.htm>>.

<sup>41</sup> William Schabas, n 39, 46-77.

- ‘inherent right to life’ of every human being and reflects the underlying connection made between the right to life and capital punishment in the mid-twentieth century.
29. The [\*Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty\*](#) entered into force in international law on 11 July 1991.<sup>42</sup> Australia was one of the 31 sponsors of the Optional Protocol when it was presented to the UN General Assembly in 1989.<sup>43</sup> As at March 2005, 54 countries have ratified the Protocol, with a further 33 nations adding their signature to it.<sup>44</sup> (Signing a treaty is the first step in ratifying it, but does not bind the signing country.)
  30. Significantly, the recent adoption of the [\*Rome Statute of the International Criminal Court\*](#)<sup>45</sup> demonstrates that the international community no longer considers capital punishment acceptable. There is no penalty of death under the Statute. This has been recognised as an important development in international law.<sup>46</sup>
  31. There are also several regional treaties that abolish the death penalty. [\*Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty\*](#) entered into force on 1 March 1985.<sup>47</sup> Currently, 44 of the 46 member states of the European Union have ratified the protocol. The [\*Additional Protocol to the American Convention on Human Rights to Abolish the Death Penalty\*](#) was adopted by the Organization of American States on 8 June 1990.<sup>48</sup> In Africa the execution of children is prohibited under article 5(3) of the [\*African Charter of the Rights and Welfare of the Child\*](#)<sup>49</sup> and the execution of children of pregnant and nursing women will be prohibited under article 4(2)(j) of the [\*Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa\*](#).<sup>50</sup>
  32. Several other major international treaties seek to significantly reduce the use of the death penalty. The fourth [\*Geneva Convention Relative to the Protection of Civilian Persons in Time of War\*](#) restricts the use of capital punishment against civilians in wartime.<sup>51</sup> The [\*Convention on the Rights of the Child\*](#) prohibits the execution of children.<sup>52</sup> There is a

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<sup>42</sup> see: NSW Council for Civil Liberties, *Second Optional Protocol to the ICCPR* (March 2005) BP 2005/4.

<sup>43</sup> *Elaboration of a 2nd Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty: draft resolution* (10 November 1989) UN Doc A/C.3/44/L.42.

<sup>44</sup> UN High Commissioner for Human Rights, *Ratifications and Reservations*, <<http://www.ohchr.org/english/countries/ratification/12.htm>>.

<sup>45</sup> [\*Rome Statute of the International Criminal Court\*](#) (1998) date of ratification: 1 July 2002; entered into force: 1 September 2002, Available at: <<http://www.austlii.edu.au/au/other/dfat/treaties/2002/15.html>>.

<sup>46</sup> UN Secretary-General, *Capital Punishment and implementation of the safeguards guaranteeing protection of the rights of those facing the death penalty*, (24 July 2000) UN Doc. E/2003/3, [66]. Note: an updated version of this document (UN Doc E/2005/3) is due for release soon: see UN Doc E/CN.4/2005/94.

<<http://documents-dds-ny.un.org/doc/UNDOC/GEN/V00/527/15/pdf/V0052715.pdf>>. See also: ‘EU Memorandum on the Death Penalty’, EU Annual Report on Human Rights, 11317/00, 81.

<sup>47</sup> Council of Europe: <<http://conventions.coe.int/Treaty/en/Treaties/Html/114.htm>>.

<sup>48</sup> Organization of American States: <<http://www.oas.org/juridico/english/treaties/a-53.htm>>.

<sup>49</sup> entered into force on 29 November 1999: African Union, <[http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/A.%20C.%20ON%20THE%20ORIGHT%20AND%20WELF%20OF%20CHILD.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/A.%20C.%20ON%20THE%20ORIGHT%20AND%20WELF%20OF%20CHILD.pdf)>.

<sup>50</sup> the Protocol is yet to enter into force: African Union, <[http://www.africa-union.org/Official\\_documents/Treaties\\_%20Conventions\\_%20Protocols/Protocol%20on%20the%20Rights%20of%20Women.pdf](http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Protocol%20on%20the%20Rights%20of%20Women.pdf)>.

<sup>51</sup> [\*Geneva Convention Relative to the Protection of Civilian Persons in Time of War\*](#) (12 August 1949). <<http://www.austlii.edu.au/au/other/dfat/treaties/1958/21.html>>.

<sup>52</sup> see article 37 of [\*Convention on the Rights of the Child\*](#) (1989).

<<http://www.austlii.edu.au/au/other/dfat/treaties/1991/4.html>>.

growing international consensus that the [\*Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment\*](#) also prohibits the death penalty.<sup>53</sup>

## 2.2 retention

33. The UN Secretary-General reports that, as at 31 December 2003, only 66 countries retain the death penalty.<sup>54</sup> Amnesty International reports a slightly higher figure of 78 retentionist nations.<sup>55</sup>
34. Since 1985, only 4 countries have reintroduced the death penalty: Nepal (subsequently re-abolished); the Philippines (executions suspended); Gambia and Papua New Guinea (no executions carried out).
35. Amnesty International also reports that during 2003:

...at least 1,146 prisoners were executed in 28 countries and at least 2,756 people were sentenced to death in 63 countries. These figures include only cases known to Amnesty International; the true figures are certainly higher. In 2003, 84 per cent of all known executions took place in China, Iran, the USA and Viet Nam.
36. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has a mandate to monitor international developments with capital punishment. Professor Phillip Alston, an Australian, is the present office holder. In his first report to the UN, he focussed on the need for retentionist nations to abandon secrecy and mandatory death sentences, and to conduct regular reviews of their implementation of the death penalty.<sup>56</sup>
37. Some nations maintain a mandatory death penalty for certain crimes. This takes discretion away from the court and means that there is no case-by-case consideration of the issues. In July 2004, the Privy Council struck down a Jamaican law that mandated the death sentence for certain crimes,<sup>57</sup> confirming that such sentencing laws amount to inhuman punishment. In delivering their judgment, the Law Lords noted that:

To condemn a man to die without giving him the opportunity to persuade the court that this would in his case be disproportionate and inappropriate is to treat him in a way that no human being should be treated.<sup>58</sup>

## 2.3 United States of America

38. The only Western nation to retain capital punishment is the United States of America. The death penalty is a state issue: some states are abolitionist, others retentionist. In 1846, the State of Michigan was the first legal jurisdiction in modern times to abolish capital punishment for murder.<sup>59</sup> The ACLU reports that 13 states

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<sup>53</sup> [\*Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment\*](#) (1984). <<http://www.austlii.edu.au/au/other/dfat/treaties/1989/21.html>>.

<sup>54</sup> UN Secretary-General, *Question of the death penalty* (23 January 2004) UN Doc. E/CN.4/2004/86, 13.

<sup>55</sup> Amnesty International, n 37 (as at 9 March 2005).

<sup>56</sup> Phillip Alston, *Report of the Special Rapporteur* (22 December 2004) UN Doc E/CN.4/2005/7, [55]-[64].

<sup>57</sup> *Watson v The Queen* [2004] UKPC 34, <<http://www.bailii.org/uk/cases/UKPC/2004/34.html>>.

<sup>58</sup> *Watson v The Queen* [2004] UKPC 34, n 57, [33].

<sup>59</sup> Hood, n 33, 9.

are currently abolitionist.<sup>60</sup> Forty jurisdictions, including the federal government and the US military, retain capital punishment.

39. In 1972 the US Supreme Court ruled capital punishment unconstitutional as cruel and unusual punishment, commuting the sentences of all 629 death row inmates.<sup>61</sup> Executions resumed in 1976, after the Supreme Court upheld re-drafted state legislation.<sup>62</sup> The US Supreme Court has placed significant restrictions on the death penalty in recent years, ruling unconstitutional the execution of the intellectually disabled<sup>63</sup> and of juveniles<sup>64</sup> – both breaches of the Eighth Amendment ('cruel and unusual punishment').
40. Since the reintroduction of capital punishment in 1976, there have been 948 executions in the US. More than a third of those executions (338 in total) were carried out in Texas.
41. Research demonstrates a racial and socio-economic bias in death penalty cases.<sup>65</sup> Many defendants are too poor to hire competent lawyers. One infamous case involved a lawyer who slept through portions of his client's trial.<sup>66</sup> Several studies have also shown that people who kill white Americans are more likely to receive the death sentence than people who kill African-Americans.
42. There is also a significant financial cost associated with capital cost. According to the ACLU:<sup>67</sup>

The most comprehensive death penalty study in the country found that the death penalty costs North Carolina \$2.16 million more per execution than a non-death penalty murder case with a sentence of life imprisonment (Duke University, May 1993). In its review of death penalty expenses, the State of Kansas concluded that capital cases are 70% more expensive than comparable non-death penalty cases.

43. Support for the death penalty is also trending down in the US: from a high of 80% in 1994, down to 66% in 2000,<sup>68</sup> then a spike back up to 71% in 2002 (after September 11),<sup>69</sup> but back down to 66% in 2004.<sup>70</sup> Many NGOs, including the American Civil Liberties Union (ACLU), are working towards abolition in the United States.

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<sup>60</sup> Alaska, Hawaii, Iowa, Maine, Massachusetts, Michigan, Minnesota, North Dakota, Rhode Island, Vermont, West Virginia, Wisconsin & the District of Columbia: ACLU, n 94.

<sup>61</sup> *Furman v Georgia* 408 US 238 (1972). See: ACLU, 'The Anniversary of *Furman v. Georgia*; Three Decades Later: Why We Need a Temporary Halt on Executions' (27 June 2003) <<http://www.aclu.org/Files/getFile.cfm?id=13027>>.

<sup>62</sup> *Gregg v Georgia* 428 US 153 (1976). See: ACLU, n 61.

<sup>63</sup> *Atkins v Virginia*, 536 US 304 (2002), <<http://supct.law.cornell.edu/supct/html/00-8452.ZS.html>>.

<sup>64</sup> *Roper v Simmons* (03-633) (2005), <<http://supct.law.cornell.edu/supct/html/03-633.ZS.html>>.

<sup>65</sup> ACLU, n 94.

<sup>66</sup> ACLU, 'ACLU Praises Supreme Court Refusal of 'Sleeping Lawyer' Case As 'Acknowledgment and Reminder' of Death Penalty Problems', Media Release (3 June 2002) <<http://www.aclu.org/DeathPenalty/DeathPenalty.cfm?ID=10421&c=62>>.

<sup>67</sup> ACLU, n 94.

<sup>68</sup> Agnes Cusack, 'Support slides for death penalty in US', *The Word Today* (ABC Radio) 13 June 2000.

<sup>69</sup> Pro-Death Penalty.com, 'News & Polls', <<http://www.prodeathpenalty.com/news.htm>>.

<sup>70</sup> Maddie Hanna, 'Death Penalty Week continues', *The Observer Online* (Notre Dame University), 28 February 2005, <<http://www.ndsmcobserver.com/news/2005/02/28/News/Death.Penalty.Week.Continues-879582.shtml>>.

## 3. Death Penalty and Australians Overseas

### 3.1 general comments

44. Successive Australian governments have for decades condemned the death sentence being handed down against Australians convicted of crimes overseas. This continues to be the case. A recent example is the agreement with US authorities to ensure that Australians tried by military commissions at Guantanamo Bay will not be sentenced to death.<sup>71</sup>
45. One of the more infamous cases of Australians being executed overseas was the 1986 execution of Kevin Barlow and Brian Chambers in Malaysia. The Australian Prime Minister, Bob Hawke, described the use of the death penalty as 'barbaric'. In 1993, Malaysia also executed Australian Michael McAuliffe for drug trafficking.
46. Australians currently facing the possibility of the death penalty overseas include:

- **Tuong Van Nguyen** (convicted of importing 396g of heroin in Singapore). The PM made representations on Mr Nguyen's behalf in February 2005.<sup>72</sup>
- **Tran Van Thanh** (convicted of trafficking 682g of heroin in Vietnam). Mr Thanh lost his severity appeal in March 2005 and now relies on the Vietnamese President for clemency.<sup>73</sup>
- **Tran Thi Hong Loan** (charged with trying to smuggle 440g of heroin in Vietnam).
- **Mai Cong Thanh** and **Nguyen Manh Cong** (charged with trafficking 1.7kg of heroin in Vietnam).<sup>74</sup>
- **Schapelle Corby** (charged with trafficking 4kg cannabis in Bali).

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<sup>71</sup> Annabel Crabb, "Hicks to Escape the Death Penalty", *The Age* (Melbourne), 24 July 2003, 2, <<http://www.theage.com.au/articles/2003/07/23/1058853136048.html>>.

<sup>72</sup> Connie Levett, "PM appeals for life of Australian", *The Age* (Melbourne), 2 February 2005, 2.

<sup>73</sup> Kimina Lyall, "Australian loses death penalty appeal", *The Australian* (Sydney), 22 March 2005, 3.

<sup>74</sup> Kimina Lyall, "Spare my life, convicted Australian drug trafficker begs Vietnam", *The Australian* (Sydney), 27 December 2004, 6.

### 3.2 Australian Federal Police operations overseas

47. The Australian Federal Police pass on intelligence to foreign authorities that sometimes leads to the arrest of Australians in countries that retain the death penalty. Recent arrests in Vietnam, where Tran Van Thanh is on death row, are a case in point. According to *The Australian*:

Many of the [recent drug] arrests in Vietnam have occurred since Australian Federal Police commissioner Mick Keelty opened an office in Ho Chi Minh City last year.<sup>75</sup>

48. It could be argued that it is preferable for such Australian intelligence to be used to ensure that offenders are arrested in abolitionist countries, such as Australia. The offenders will still face justice – just not in a country where they will be subject to capital punishment.

49. The Australian Federal Police have also been actively involved in the case of Mr Tuong Van Nguyen. Mr Nguyen has been assisting the AFP with their inquiries into other matters. In return, the AFP has added its voice to calls for clemency for Mr Nguyen.<sup>76</sup>

50. While the AFP is to be commended for making representations on behalf of Mr Nguyen, such representations are presumably contingent on Mr Nguyen providing police with useful information. This leaves offenders who have no information to offer to police at a disadvantage – particularly those who are factually innocent.

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<sup>75</sup> Kimina Lyall, “Spare my life, convicted Australian drug trafficker begs Vietnam”, *The Australian* (Sydney), 27 December 2004, 6.

<sup>76</sup> ABC Radio, “Melbourne man facing execution in Singapore for drug trafficking may be spared”, *AM*, 17 March 2005, <<http://www.abc.net.au/am/content/2005/s1325534.htm>> at 21 March 2005.

## 4. Australia's principled opposition

### 4.1 recent comments by political leaders

51. While official Australian policy remains opposed to the death penalty in all circumstances, the Australian and international media have reported prominent Australian politicians refusing to condemn the death penalty for terrorists and dictators.
52. In March 2003 on US television, the Prime Minister stated that “everybody would” welcome the death penalty for Osama Bin Laden.<sup>77</sup> The Foreign Minister supported those comments.<sup>78</sup>
53. The Prime Minister has, on more than one occasion, said that Australia will not protest the death penalty under Indonesian law for the Bali bombers.<sup>79</sup> The then Leader of the Opposition, Simon Crean, concurred and said he “was not quibbling”.<sup>80</sup> In fact, many state and territory leaders support the death penalty for Bali bomber Amrozi.<sup>81</sup>
54. Both the PM and the then Leader of the Opposition, Mark Latham, said they would not protest the death penalty for Saddam Hussein.<sup>82</sup>

### 4.2 a double standard?

55. The refusal to protest the death penalty is often justified as a respect for the legal systems of other nations – even when it comes to the death penalty. Critiquing this stance, Dr Simon Longstaff notes:<sup>83</sup>

It is difficult to believe that Australia's political leadership has thought through the implications of what it [is] saying. Is it really to be part of Australian policy that we remain officially indifferent in the face of great evil visited upon people under the cloak of legality? If this is a serious proposition, then all that a vicious tyrant, in the mould of Saddam Hussein, would have to do is pass a few laws to cover his brutality – and Australia would remain silent.

56. The willingness of Australian political leaders to abandon Australia's long-standing principled opposition to the death penalty diminishes Australia's moral authority when calling for clemency for Australian citizens overseas. The danger is that others will see one rule for Australians and another for non-Australians.

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<sup>77</sup> FoxNews, “John Howard, Australian Prime Minister”, *Your World with Neil Cavuto*, 6 March 2003, <<http://www.foxnews.com/story/0,2933,80534,00.html>>.

<sup>78</sup> Ross Peake, “PM – bin Laden's death welcome”, *Canberra Times* (Canberra), 8 March 2003.

<sup>79</sup> e.g. ATV Channel 7, “Interview with John Howard (Part 2)”, *Sunday Sunrise*, 16 February 2003, <[http://seven.com.au/sundaysunrise/politics\\_030216\\_two](http://seven.com.au/sundaysunrise/politics_030216_two)>.

<sup>80</sup> Cynthia Bantham, “PM ignites death penalty furore”, *Sydney Morning Herald* (Sydney), 9 August 2003, 1.

<sup>81</sup> Roger Martin, “States back death penalty”, *The Australian* (Sydney), 12 August 2003, 6 (support from premiers of Victoria & Queensland; and opposition leaders of WA, SA, Victoria, Queensland, NSW, Tasmania and NT).

<sup>82</sup> Maria Hawthorne, “Saddam can die: Labor”, *AAP Bulletins*, 1 July 2004.

<sup>83</sup> Simon Longstaff, ‘Terrorism & Capital Punishment’ (2003) 53 *Living Ethics* 1.

### 4.3 the way forward

57. The appropriate Australian response to governments that continue to use capital punishment is to unequivocally express our opposition to the death penalty. Australia should also encourage retentionist governments to establish a moratorium on executions and consider abolishing the death penalty completely. Australia should be actively vocal in condemning the execution of juveniles, the intellectually disabled and pregnant and nursing women. This is no more than the strong and principled resolutions, which Australia has long sponsored at the UN Commission of Human Rights, call for. For example, the most recent resolution:<sup>84</sup>

*Urges* all States that still maintain the death penalty:

- (a) Not to impose it for crimes committed by persons below 18 years of age;
- (b) To exclude pregnant women and mothers with dependent infants from capital punishment;
- (c) Not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person;

...

*Calls upon* all States that still maintain the death penalty...[t]o abolish the death penalty completely and, in the meantime, to establish a moratorium on executions...

58. When it comes to the issue of the death penalty for terrorists, the principled response should be the same. The United Nations has consistently argued that human rights standards must be maintained in the fight against terrorism.<sup>85</sup> Most recently in Madrid, UN General-Secretary Kofi Annan outlined a proposal for a comprehensive anti-terrorism treaty that would preserve human rights standards and the rule of law.<sup>86</sup> Australia should support that call and, as a matter of principle, oppose any moves to execute terrorists anywhere in the world.

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<sup>84</sup> UN Commission on Human Rights, *Question of the Death Penalty*, UN Doc E/CN.4/2004/127 (21 April 2004), <[http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2004-67.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-67.doc)>.

<sup>85</sup> e.g. UN General Assembly, *Human Rights and Terrorism* (13 February 2002) A/RES/56/160.

<sup>86</sup> ABC radio, "Annan outlines anti-terrorism treaty", *World Today* (11 March 2005) <<http://www.abc.net.au/worldtoday/content/2005/s1321553.htm>>.

## 5. Arguments Against the Death Penalty

59. While abolitionists initially spoke of the death penalty as a right to life issue, by the 1980s and 1990s courts were interpreting it as inhuman punishment under the human rights aegis of torture and other forms of cruel, inhumane or degrading punishment or treatment.<sup>87</sup> Both characterisations are useful frameworks capable of rallying opposition to the death penalty in contemporary Australia.
60. In the second reading speech for the Bill that abolished the death penalty at the federal level and in the Territories, federal Attorney-General Lionel Murphy noted:

There is a world-wide trend against the death penalty. Although the death penalty is commonly considered to be a deterrent, the statistics show that the abolition of the death penalty is not followed by an increase in the murder rate. The argument that the death penalty is a deterrent therefore finds no statistical support. Moreover, many murders committed in circumstances here the offender does not calculate the consequences of his crime. We rightly place a high value on the sanctity of human life. For the State to take a life lowers regard for the sanctity of life and reduces its value in the public mind. The death penalty allows no room for the possibility of corrective action where a person has been mistakenly convicted. There are cases both in Australia and elsewhere where it has been found after the conviction of a man for murder that either the act was committed by someone else or that fresh evidence has become available which made the conviction unsafe.<sup>88</sup>

61. Many prominent Australians are passionately opposed to the death penalty and offer insights into why capital punishment is wrong. A sign of how united the legal profession is against the capital punishment can be seen by recent anti-death penalty speeches delivered by two High Court justices as different as Mr Justice Michael Kirby<sup>89</sup> and Mr Justice Ian Callinan.<sup>90</sup>

### 5.1 police and the courts can get it wrong

62. The police service and the courts are fallible human institutions. Judges and juries make mistakes – so do police officers, witnesses and lawyers. Recent miscarriages of justice fresh in the Australian public's mind include Lindy Chamberlain (NT) and John Button (WA).
63. In 1963 Mr John Button was tried and convicted for the manslaughter of his girlfriend. Ten of his twelve jurors wanted him to hang.<sup>91</sup> Mr Button spent five years in prison, but did not kill his girlfriend.<sup>92</sup> The cruelest twist in Mr Button's story is that the last man hanged in WA, Mr Eric Cooke, could have exonerated him – another reason why the death penalty is a bad idea (because the executed take with them evidence that could exonerate others).

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<sup>87</sup> William Schabas, *The Abolition of the Death Penalty in International Law* (2002, 3<sup>rd</sup> ed) 11-13, 38.

<sup>88</sup> Commonwealth, *Parliamentary Debates*, Senate, 1 March 1973, 106-7 (Lionel Murphy, Attorney-General). See also: Commonwealth, *Parliamentary Debates*, Senate, 29 April 1971, 1176 (Lionel Murphy).

<sup>89</sup> Michael Kirby, "The High Court and the death penalty : looking back, looking forward, looking around" (2003) 77 *Australian Law Journal* 811.

<sup>90</sup> Craig Johnstone, "Top jurists in region focus on law's hot topics", *Courier Mail* (Brisbane), 22 March 2005, 6 (reporting on Justice Callinan's anti-death penalty speech to LawAsia 2005).

<sup>91</sup> ABC Radio, 'Death Penalty Debate in WA', *PM* (16 March 2000)

<<http://www.abc.net.au/pm/stories/s111121.htm>>.

<sup>92</sup> Estelle Blackburn, *Broken Lives* (2001).

64. High Court Justice Callinan has pointed out that DNA technology has been used to show that convicted people are in fact innocent.<sup>93</sup> ACLU figures show that in the United States, as of September 2004, 115 death row prisoners have been released because they are innocent – and DNA has played a major role in exonerating many of them.<sup>94</sup>
65. An important lesson for the 21<sup>st</sup> century is that when pressure is placed on police to capture terrorists quickly, then mistakes will happen. The best examples of this are two sets of people convicted for murder in separate IRA attacks in Britain: the Birmingham Six (who served 16 years in prison) and the Guildford Four (who served 15 years in prison). Fortunately the ten innocent people were not charged with treason, which at the time attracted the mandatory death penalty.<sup>95</sup>

## 5.2 death penalty is not a deterrent

66. Academic research shows that the murder rate does not jump when the death penalty is abolished.<sup>96</sup> A recent survey of research in this area concluded that the death penalty is not an effective deterrent to homicide.<sup>97</sup> Consequently, murder rates would not decline if the death penalty was reintroduced.
67. Given that the majority of homicides in Australia are spontaneous rather than premeditated and are fuelled by alcohol and/or the proximity of a lethal weapon,<sup>98</sup> the likelihood of the thought of consequences crossing the mind of a murderer in the circumstances is unlikely.
68. In the context of terrorism, the death penalty is not an effective deterrent. Those who commit large-scale terrorist acts, like the 9/11 hijackers, killed themselves in the process. So do suicide bombers. The death penalty is meaningless in this context. For religious extremists death, even at the hands of the state, is something to glorify and guarantees their martyrdom. The death penalty cannot deter such people.

## 5.3 the State should not have the power of life and death over its citizens

69. It was the view of Sir Owen Dixon, Chief Justice of the High Court of Australia, that the State should not pay people to kill its own citizens.<sup>99</sup> The psychological impact on those who are charged with ordering, planning and carrying out the death penalty can be very high indeed. The trial judge at Ronald Ryan's murder trial and the governor of Pentridge prison were deeply distressed by the roles they had to play in the last execution in Australia.<sup>100</sup>
70. It makes little sense for the State to condemn the murder of a citizen by itself authorising the murder of a citizen. This is highlighted even more if the executed

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<sup>93</sup> see above n 90.

<sup>94</sup> American Civil Liberties Union, *National Death Penalty Fact Sheet* (16 February 2005), <<http://www.aclu.org/DeathPenalty/DeathPenalty.cfm?ID=16513&c=290>>.

<sup>95</sup> Wikipedia, "Guildford Four", <<http://www.answers.com/topic/guildford-four>>.

<sup>96</sup> Adam Graycar, *Crime in Twentieth Century Australia*, Yearbook Australia (2001) Australian Bureau of Statistics. Also: J. Mouzos, *Homicidal Encounters: A Study of Homicide in Australia 1989-1999* (2000) Research and Public Policy Series, No. 28, Australian Institute of Criminology (Canberra).

<sup>97</sup> Janet Chan & Deborah Oxley, "The deterrent effect of capital punishment: a review of the research evidence" (2004) 84 *Crime and Justice Bulletin* 1.

<sup>98</sup> David Brown, David Farrier, Sandra Egger, Luke McNamara, *Criminal Laws* (2001, 3<sup>rd</sup> ed) 494.

<sup>99</sup> Philip Ayres, *Owen Dixon* (2004), 48 (text of footnote 8).

<sup>100</sup> see *Last Man Hanged*, n 4.

prisoner is factually innocent, because all that has been achieved is that two innocent citizens have been killed. State-sponsored killing has the potential to create more victims.

## 5.4 reintroducing would violate Australia's international obligations

71. Australia has ratified the *Second Optional Protocol to the International Covenant on Civil and Political Rights*. Any attempt to reintroduce the death penalty would violate that Protocol. CCL has prepared a separate document on the Second Optional Protocol, which makes reference to the consequences of violating this Protocol.<sup>101</sup>
72. Australia has for decades consistently opposed the death penalty at the UN Human Rights Commission,<sup>102</sup> it would be hypocritical to reverse that position.
73. The international trend is towards *abolition*, not retention or re-introduction. It would make no sense to reintroduce a punishment that the rest of the world is abandoning.

## 5.5 it costs more to kill a prisoner than to imprison him for life

74. Experience in the US demonstrates that it costs more to administer the capital punishment than it does to imprison an offender for life. The extra expenses involved include increased legal costs for the running of criminal trials and appeals. According to the ACLU:<sup>103</sup>

The most comprehensive death penalty study in the country found that the death penalty costs North Carolina \$2.16 million more per execution than a non-death penalty murder case with a sentence of life imprisonment (Duke University, May 1993). In its review of death penalty expenses, the State of Kansas concluded that capital cases are 70% more expensive than comparable non-death penalty cases.

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<sup>101</sup> NSW Council for Civil Liberties, *Second Optional Protocol to the ICCPR* (March 2005) BP 2005/4.

<sup>102</sup> e.g. Commission on Human Rights, *Question of the death penalty* (21 April 2004), E/CN.4/2004/127, <[http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN\\_4-RES-2004-67.doc](http://ap.ohchr.org/documents/E/CHR/resolutions/E-CN_4-RES-2004-67.doc)>.

<sup>103</sup> ACLU, n 94.

## 6. Death Penalty Resources

### 6.1 Books

- Estelle Blackburn, *Broken Lives* (2003).
- Roger Hood, *The Death Penalty: a world-wide perspective* (2002, 3<sup>rd</sup> ed).
- William Schabas, *The Abolition of the Death Penalty in International Law* (2002, 3<sup>rd</sup> ed).
- William Schabas, *The Death Penalty as Cruel Treatment and Torture* (1996).

### 6.2 Internet Resources

#### 6.2.1 Australian NGOs against death penalty

- NSW Council for Civil Liberties: [www.nswccl.org.au/issues/death\\_penalty.php](http://www.nswccl.org.au/issues/death_penalty.php)
- Reprieve Australia: [www.reprieve.org.au/](http://www.reprieve.org.au/)
- Australian Coalition Against Death Penalty: [acadp.com/](http://acadp.com/)

#### 6.2.2 International NGOs against death penalty

- American Civil Liberties Union:  
[www.aclu.org/DeathPenalty/DeathPenaltyMain.cfm](http://www.aclu.org/DeathPenalty/DeathPenaltyMain.cfm)
- Amnesty International: [web.amnesty.org/pages/deathpenalty-index-eng](http://web.amnesty.org/pages/deathpenalty-index-eng)
- Death Penalty Information Centre: [www.deathpenaltyinfo.org/](http://www.deathpenaltyinfo.org/)
- Ensemble Contre le Peine de Mort: [www.abolition.fr/ecpm/index.php](http://www.abolition.fr/ecpm/index.php)
- Hands Off Cain: [www.handsoffcain.org/](http://www.handsoffcain.org/)
- Journey of Hope (murder victims' families against death penalty):  
[www.journeyofhope.org/pages/index.htm](http://www.journeyofhope.org/pages/index.htm)
- Penal Reform International: [www.penalreform.org/](http://www.penalreform.org/)