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***Chief Opposition Whip***

**Regional Parliamentary Seminar  
Standing Against the Death Penalty in Asia**

**Malaysia**

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It is a pleasure to be with you all today, as we come together, in our various capacities, whether it be parliamentarians, human rights institutions or representatives of civil society, to recommit to the ultimate pursuit of a world free of the death penalty.

I am grateful for the opportunity to be participating in this conference, given the significant dialogue that has come from various stakeholders in Malaysia with regards to the abolition of the death penalty.

I am very proud of the extensive work that has been put into making this a reality, with the Malaysian Government recently announcing that they will be completely abolishing the death penalty, as a sentence for all crimes.<sup>1</sup>

This is a true testament to the political leadership of Malaysia, the will of its people and the many voices that they have been vocal on this very pertinent issue.

These plans are very welcome and have been long awaited by the international community. It is my hope that this move will encourage other countries in the region to follow suit, reigniting debate about the relevance and the role of capital punishment in today's society.

As a member of the Parliament of Australia and as a co-chair of the Australian Parliamentarians Against the Death Penalty, I am wholeheartedly committed to strengthening international public advocacy for the right to life, with there being no place for the death penalty in our modern world.

I hold strong views against capital punishment. I oppose the death penalty wherever it occurs. To me, capital punishment is the most cruel and inhumane response to crime. It is inevitably associated with the miscarriage of justice, the inadvertent execution of innocents and the disproportionate execution of the poor and ethnic religious minorities.<sup>2</sup>

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<sup>1</sup> Tracy Shelton and Erwin Renaldi, <http://www.abc.net.au/news/2018-10-11/malaysia-to-abolish-the-death-penalty/10363948>.

<sup>2</sup> The Parliament of the Commonwealth of Australia, A world without the death penalty Australia's Advocacy for the Abolition of the Death Penalty Joint Standing Committee on Foreign Affairs, Defence and Trade, May 2016, Page vii, [file:///C:/Users/tgg080/Downloads/full\\_report%20\(1\).pdf](file:///C:/Users/tgg080/Downloads/full_report%20(1).pdf)

The death penalty is irreversible. All legal systems make mistakes and no legal system is free from error. As long as the death penalty exists, innocent people will be executed.

In 2016, Amnesty recorded 60 cases where prisoners that were sentenced to death were found not to be guilty of the crime.<sup>3</sup>

In China, Nie Shubin, who was executed in 1995, had his conviction overturned, 21 years after his execution.<sup>4</sup>

In Texas, Cameron Todd Willingham was executed in 2004 for allegedly setting a fire that killed his three daughters. Following his execution, further evidence revealed that Willingham did not set the fire that caused their deaths. However, this evidence came too late.<sup>5</sup>

In the USA, 151 people have been released from death row since 1973 due to evidence of their wrongful convictions.<sup>6</sup> Some of them had spent many years on death row and had come close to being executed.

These cases demonstrate the pressing nature of capital punishment. The death penalty represents the violation of the most fundamental and basic human rights of all, that is, the 'right to life' itself, enshrined under international human rights law.<sup>7</sup>

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<sup>3</sup> Amnesty International Global Report, Death Sentences and Executions 2016  
<https://www.amnesty.org/download/Documents/ACT5057402017ENGLISH.PDF>

<sup>4</sup> Ibid.

<sup>5</sup> <https://www.amnesty.org/download/Documents/92000/amr511822004en.pdf>, 2004.

<sup>6</sup> <https://www.amnestyusa.org/issues/death-penalty/death-penalty-facts/death-penalty-and-innocence/>.

Most credible research indicates that capital punishment does not deter crime. The death penalty offers no observable change to criminal activity and only serves to satisfy the urge for vengeance.

The fallacy that harsher punishments deter crime does not take into account that there are many complex social and economic factors that drive crime rates and that criminals do not often plan on getting caught or think through all the consequences of their actions.<sup>8</sup>

A 2009 survey conducted by Professor Michael Radelet and Traci Lacock of the University of Colorado, which remains the most credible study conducted on the issue of deterrence and the death penalty, found that 88 percent of the nation's leading criminologists did not believe the death penalty had any deterrent effect on crime.<sup>9</sup>

A previous study in 1996 had come to similar conclusions.<sup>10</sup>

Furthermore, these findings are borne out by the actual Canadian experience. Since Canada stopped executing in 1976, the murder rate has dropped by 44 percent, contrary to predictions of death penalty supporters, that the rate would skyrocket

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<sup>7</sup> Article 3 of the Universal Declaration of Human Rights; Article 6 of the International Covenant on Civil and Political Rights.

<sup>8</sup> Michael Hayworth, <https://www.news.com.au/world/amnesty-international-calls-for-end-to-the-death-penalty-worldwide/news-story/5befff9856dd1e5164e21cd9641ab04f>, 10 October 2013; <https://www.amnesty.org.au/5-reasons-some-people-think-the-world-needs-the-death-penalty/>, 8 August 2018.

<sup>9</sup> M. Radelet & T. Lacock, "Do Executions Lower Homicide Rates? The Views of Leading Criminologists," *99 Journal of Criminal Law & Criminology* 489, Northwestern University (2009).

<sup>10</sup> Michael L. Radelet & Ronald L. Akers, Deterrence and the Death Penalty: The Views of the Experts, *87 J. CRIM. L. & CRIMINOLOGY* 1, 10 (1996).

after abolition.<sup>11</sup> Since the abolition of the death penalty the murder rate has followed a general downwards trend, reaching a 50 year low in 2014 (1.45 per 100,000).<sup>12</sup>

What is clear from these examples is that the death penalty is a backward measure and most appropriately confined to history. In modern society, I believe we have adequate means to punish people for their crimes, but also, a process to assist them with rehabilitation.

The idea of 'an eye for an eye' is no longer compatible with our criminal justice system. There is no material benefit to the state of executing perpetrators of crime, a senseless act of deprivation of life, with no opportunity to reform.

Criminal justice systems around the world have had great success of reform without the threat of death and often due to programs that focus on offender rehabilitation.

The death penalty is simply wrong. I have fought against the death penalty throughout my political career. Coincidentally, I entered parliament in 2005, when the case of the Bali Nine began. I was involved in the case from the beginning. As a matter of fact, I met with Myuran Sukumaran and Andrew Chan when they were in Kerobokan Prison.

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<sup>11</sup> <https://www.amnesty.org.au/5-reasons-some-people-think-the-world-needs-the-death-penalty/>, 8 August 2018.

<sup>12</sup> Death Penalty Worldwide International Human Rights Clinic, Cornell Law School, Pathways to Abolition of the Death Penalty, June 2016, <https://www.deathpenaltyworldwide.org/pdf/Pathways%20to%20Abolition%20Death%20Penalty%20Worldwide%202016-06%20FINAL.pdf>.

I personally witnessed their successful rehabilitation in that prison. This was even attested to by prison officials, with one becoming an accomplished artist and teacher, and the other an ordained pastor and social worker. If anything, that should have been seen as an example of the success of Indonesia's correction system, proof that people can turn their lives around and make a positive contribution to society, even after going down such a dark path as they did.

My opposition to capital punishment is universal. It is not only when it involves Australians.

I took the same view in respect of the Bali bombers, notwithstanding that it was an attack primarily directed against Australian and claimed a total of 202 lives, of which 88 were Australian.

Over the years I have been greatly influenced by Mr Brian Deegan, an Adelaide based lawyer who lost his son Joshua in the Bali bombings. His son was 22 at the time and was in Bali with team mates following a successful football session.

In an article published in the *Catholic Social Justice* magazine, Mr Deegan wrote:

“The vision of my son’s murderer, seated uncomfortably on the harsh concrete floor in a room bare of the conveniences he had once taken for granted, evokes little sympathy”.<sup>13</sup>

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<sup>13</sup> Brian Deegan (2007), ‘Thinking About Joshua’, in Michael Costigan, Peter Norden SJ, Brian Deegan and Andrew Byrnes, *Confronting the Death Penalty: People, politics and principle*, Australian Catholic Social Justice Council, Sydney, p. 24.

He continues:

“But the prospect of him picking at grains of rice from his last meal is something I wish no part of. I do not wish for death of those convicted, for I oppose the death penalty under any circumstances”.<sup>14</sup>

For a father who lost a son in such tragic circumstances, I think those words are most telling.

The international community has come a long way towards abolishing the practice of capital punishment. Recent statistics from Amnesty International reveal that one hundred and forty two countries have now abolished the death penalty, that is, compared to only 16 in 1977.<sup>15</sup>

However, there is much more work to be done, with no room for complacency. Unfortunately, there remain 56 countries that actively retain the death penalty.<sup>16</sup>

Australia is an active advocate for the abolition of the death penalty worldwide. As a nation, I believe Australia can be proud of its long-standing and its principled opposition to capital punishment, and its support for the work of the United Nations on abolition.

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<sup>14</sup> Ibid.

<sup>15</sup> <http://www.abc.net.au/news/2015-02-26/fact-check3a-does-the-death-penalty-deter3f/6116030>

<sup>16</sup> The Parliament of the Commonwealth of Australia, A world without the death penalty Australia's Advocacy for the Abolition of the Death Penalty Joint Standing Committee on Foreign Affairs, Defence and Trade, May 2016, Page vii, [file:///C:/Users/tgg080/Downloads/full\\_report%20\(1\).pdf](file:///C:/Users/tgg080/Downloads/full_report%20(1).pdf)

The death penalty has been abolished in Australia since 1973, with the last execution occurring in 1967.

In 1990, Australia signed the Second Option Protocol to the International Covenant on Civil and Political Rights, which importantly commits Australia to the abolition of the death penalty.

Australia voted for the UN General Assembly's resolution calling for a global moratorium on the death penalty in 2007.

In 2010, Australia took its commitment further, passing legislation, which in practical and effective legal terms, implemented the Second Option Protocol to the International Covenant on Civil and Political Rights. This step ensured that the death penalty cannot be reinstated by any Australia State or Territory Government in the future.

Furthermore, every second year, Australia co-sponsors a resolution at the UN General Assembly, which calls for a global moratorium on the death penalty.<sup>17</sup>

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<sup>17</sup> Australian Government, Department of Foreign Affairs and Trade, Australia's Strategy for the abolition of the Death Penalty, <https://dfat.gov.au/international-relations/themes/human-rights/Documents/australias-strategy-for-abolition-of-the-death-penalty.pdf>.



In 2016, Australia joined the Inter-Regional Taskforce on the resolution, which initiates and negotiates the text. Australia undertakes lobbying in support of the resolution, particularly in the Indo-Pacific region, to secure strong and clear text and increased support for each successive resolution.<sup>18</sup>

In alternate years to the General Assembly resolution, Australia co-sponsors a resolution of the Human Rights Council which considers the question of the death penalty.<sup>19</sup>

Australia also makes recommendations regarding the death penalty at the Universal Periodic Review of each retentionist country.<sup>20</sup>

Most recently, as a member of the UN Human Rights Council for the 2018-20 term, Australia has pledged to continue its strong commitment to the global abolition of the death penalty.<sup>21</sup>

To this effect, I am pleased to say that I recently attended the release of the Australian Government's Strategy for the abolition of the death penalty.<sup>22</sup>

This is a whole-of-government strategy, which outlines Australia's overarching approach to pursuing the global abolition of the death penalty.

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

The Strategy implements one of the recommendations of the report compiled by the Joint Standing Committee on Foreign Affairs, Defence and Trade, entitled 'A world without the death penalty: Australia's advocacy for the abolition of the death penalty'.<sup>23</sup>

The findings of the report emphasise the importance for Australian to develop a whole-of-government strategy to guide Australia's ongoing advocacy for the abolition of the death penalty.

The Strategy focuses on the need for bilateral and multi-lateral advocacy, engagement with civil society organisations, support for research in the field, the need to strengthen the safeguards currently in place to prevent exposing people to the death penalty and the role that other government agencies, such as the Department of Foreign Affairs and Trade can play as part of this advocacy.<sup>24</sup>

I gave evidence to the Joint Standing Committee regarding the importance of active participation in this debate and being prepared to assert our values when engaging with foreign governments.<sup>25</sup>

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<sup>23</sup> The Parliament of the Commonwealth of Australia, A world without the death penalty Australia's Advocacy for the Abolition of the Death Penalty Joint Standing Committee on Foreign Affairs, Defence and Trade, May 2016, Page 163, [file:///C:/Users/tgg080/Downloads/full\\_report%20\(1\).pdf](file:///C:/Users/tgg080/Downloads/full_report%20(1).pdf).

<sup>24</sup> Australian Government, Department of Foreign Affairs and Trade, Australia's Strategy for the abolition of the Death Penalty, <https://dfat.gov.au/international-relations/themes/human-rights/Documents/australias-strategy-for-abolition-of-the-death-penalty.pdf>.

<sup>25</sup> The Parliament of the Commonwealth of Australia, A world without the death penalty Australia's Advocacy for the Abolition of the Death Penalty Joint Standing Committee on Foreign Affairs, Defence and Trade, May 2016, Page 88, [file:///C:/Users/tgg080/Downloads/full\\_report%20\(1\).pdf](file:///C:/Users/tgg080/Downloads/full_report%20(1).pdf).

The report makes several other recommendations which I fully support, including that Australia should allocate additional resources in support of worldwide abolition of the death penalty.<sup>26</sup>

I also agree with Amnesty International's view that Australia and particularly, those of us privileged enough to hold public office, should continue to build upon efforts to end the death penalty, particularly in our region.

As Phil Robertson, Deputy Director Asia Division of Human Rights Watch has stated:

“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>27</sup>

There is clearly no one size fits all approach to abolishing the death penalty. However, recent studies conducted by the Cornell Law School in Switzerland show that abolishing the death penalty is not a matter of political ideology, economic development or cultural traditions. Rather it stems from facts-based recognition that the death penalty has no proven use.<sup>28</sup>

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<sup>26</sup> Ibid, page 165-166.

<sup>27</sup> Ibid, Page 115.

<sup>28</sup> Death Penalty Worldwide International Human Rights Clinic, Cornell Law School, Pathways to Abolition of the Death Penalty, June 2016,

Abolition can be a major undertaking that requires a vast amount of litigation, judicial reforms and parliamentary procedures or it can be quick and straightforward, especially where there is a strong political will or favourable momentum marked by positive change and progress.<sup>29</sup> The recent decision of the Malaysian Government in this respect is indicative of a progressive approach, based on political leadership.

While it is the prerogative of each country to select and walk its own path to abolition, we must continue to use our various platforms to support, inspire and encourage other nations, to start or accomplish their journey towards abolition.

Whilst digressing from the main subject of today's discussions, we should also spare a thought for the people of the Philippines, where the rule of law has been set aside and the Government has provided impunity to police and vigilante groups, effectively giving them a 'a licence to kill', based on mere suspicion and without judicial oversight.

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<https://www.deathpenaltyworldwide.org/pdf/Pathways%20to%20Abolition%20Death%20Penalty%20Worldwide%202016-06%20FINAL.pdf>, Page 1.

<sup>29</sup> Ibid.

On this note, I conclude with the words of the former Chief Justice of the South African Constitutional Court, Ismail Mohamed, which have always resonated well with me:

“The death penalty sanctions the deliberate annihilation of life. It is the ultimate and the most incomparably extreme form of punishment. It is the last, the most devastating and the most irreversible recourse of the criminal law, involving as it necessarily does, the planned and calculated termination of life itself; the destruction of the greatest and most precious gift bestowed on all humankind”.<sup>30</sup>

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<sup>30</sup> Ismail Mahomed, former Chief Judge of the South African Constitutional Court.