



Australian response to OHCHR Note Verbale pursuant to HRC resolution 52/38

Australia thanks the Office of the High Commissioner for Human Rights for their invitation to provide a submission to inform the follow-up report on the efforts and measures taken for the implementation of the action plan outlined in paragraphs 7 and 8 of resolution 52/38 “Combating intolerance, negative stereotyping, stigmatization, discrimination, incitement to violence and violence against persons, based on religion or belief”, and views on potential follow-up measures for further improvement of the implementation of that plan”.

September 2023

Australia recognises that freedom of religion or belief is a fundamental human right belonging to all individuals. As a party to the International Covenant on Civil and Political Rights, Australia has obligations to protect the right to freedom of thought, conscience and religion under Article 18.

Australian Constitution

The Australian Constitution, under section 116, prohibits the Australian Government from making any law establishing any religion, imposing any religious observance, or prohibiting the free exercise of any religion.

The High Court of Australia has also recognised an implied guarantee of freedom of communication in relation to political matters, arising from Australia's system of democratic and representative government for which the Australian Constitution provides. This freedom can be limited only by laws which are reasonably appropriate and adapted (or proportionate) to achieving a legitimate end or purpose, such as the protection of the community from dangers of seriously offensive postal communications.

Anti-discrimination laws

The Australian Government believes that every Australian should be able to live free from discrimination. Just as nobody should be treated unfairly because of their gender, disability, sexuality, age, or race, the Government does not believe anyone should experience discrimination because of their religious beliefs.

The anti-discrimination laws of most Australian states and territories prohibit discrimination on the basis of religion. However, there are currently no protections against discrimination on the basis of religious belief or activity in federal anti-discrimination law. Additionally, the civil protections against vilification provided by federal anti-discrimination law are limited to 'ethno-religious groups', leaving gaps in the protections afforded to other faith groups.

That is why the Government has announced that it will introduce legislative amendments to prevent faith-based discrimination and vilification during this term of Parliament. The Government is committed to introducing legislation to:

- prevent discrimination against people of faith, including anti-vilification protections
- protect all students from discrimination on any grounds, and
- protect teachers from discrimination at work, while maintaining the right of religious schools to preference people of their faith in the selection of staff.

On 4 November 2022, the Attorney-General asked the Australian Law Reform Commission (ALRC) to review exemptions for religious educational institutions in federal anti-discrimination law. The ALRC has been asked to consider what changes should be made to federal anti-discrimination laws to reflect the Government's commitments in a way that is consistent with Australia's international human rights obligations.

On 27 January 2023, the ALRC released a Consultation Paper outlining a number of draft proposals. The ALRC accepted submissions on the proposals, as well as confidential survey responses, until 24 February 2023.

This ALRC inquiry is a crucial first step towards implementing the Government's commitment to extending anti-discrimination protections to more Australians, including to people of faith and to staff and students in religious schools, while maintaining the right of religious schools to preference people of their faith in the selection of staff.

The Government will carefully consider the ALRC's final report when it is released before the end of 2023.

Review of Australia's National Human Rights Framework

On 15 March 2023, the Attorney-General asked the Parliamentary Joint Committee on Human Rights to conduct a review of Australia's Human Rights Framework, to report by 31 March 2024. The Committee will consider whether the Framework remains fit for purpose, or if improvements can be made. The Committee will also consider whether Parliament should enact a federal Human Rights Act, and if so, what elements it should include, including by reference to the proposed model set out in the Australian Human Rights Commission's '*A Human Rights Act for Australia*' Position Paper. The Commission's proposed Human Rights Act includes the right to freedom of thought, conscience, religion and belief.

Criminal law

At the federal level, the Commonwealth Criminal Code contains a range of offences that prohibit violence based on religion or belief. These include offences for urging violence on the basis of race, religion, nationality, national or ethnic origin, or political opinion, and offences for advocating terrorism or genocide. The Criminal Code also contains offences that prohibit online conduct intended to menace, harass or cause offence. At the state and territory level, there are also offences prohibiting violence, including violence based on religion or belief.

To strengthen the Commonwealth's criminal law framework, the Government has introduced the Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023 (the Prohibited Hate Symbols Bill). If passed, the Prohibited Hate Symbols Bill would introduce new criminal offences for publicly displaying prohibited Nazi hakenkreuz, Nazi double sig rune or Islamic State flag, and trading in items bearing these symbols. These symbols are used to promote hatred, incite violence and vilify members of the Australian community. The Prohibited Hate Symbols Bill would also create offences for using a carriage service to deal with violent extremist material, and strengthen the existing advocating terrorism offence to target the promotion and idealisation of extremist views which can inspire acts of terrorism and violent extremism.

Legislative measures to criminalize incitement to violence and violence against persons

Australia has strong criminal laws prohibiting inciting violence based on religion or belief in the Criminal Code. Sections 80.2A and 80.2B of the Criminal Code criminalise urging violence against groups and members of groups – a person commits an offence if the person urges another person, or a group, to use force or violence against a group, or against a person because they are a member of a group, distinguished by race, religion, nationality, national or ethnic origin or political opinion intending that force or violence will occur.

It is also a criminal offence to advocate terrorism if the person advocates the doing of a terrorist act or the commission of a terrorism offence and is reckless as to whether another person will engage in a terrorist act or commit a terrorism offence. If passed, the Prohibited Hate Symbols Bill would expand the advocating terrorism offence to include instructing on the doing of a terrorist act or praising of the doing of a terrorist act in circumstances where there is a substantial risk that praise might lead someone to engage in a terrorist act. In recognition that advocating terrorism is a serious act that can lead to violence against innocent Australians, the Prohibited Hate Symbols Bill would also increase the maximum penalty for the advocating terrorism offence from five to seven years' imprisonment.

In 2016, Australia criminalised the advocating of genocide which makes it an offence to advocate genocide in circumstances where an individual is reckless as to whether another person will engage in genocide. The maximum penalties for these offences range from five to seven years imprisonment, reflecting the seriousness of the conduct. For each of these offences there is a specific defence available where the person's conduct was done in good faith.

Countering cyber-abuse

The *Online Safety Act 2021* established a world-first cyber abuse take-down scheme for Australian adults which provides a pathway for those experiencing the most serious harmful online abuse to have this material removed from the internet. The eSafety Commissioner can consider hateful or dehumanising commentary and symbolism where it meets the Act's definition of 'adult cyber abuse'. Services that fail to remove abusive content following an eSafety removal notice can be met with significant financial penalty. The Australian government is considering what more can be done to address hate speech targeting groups of people online, while also protecting free speech.

The *Online Safety Act 2021* also establishes the Basic Online Safety Expectations (BOSE). These signal to industry what actions we expect them to take to keep Australians safe. These include our expectation that platforms enforce their own terms of service, which in most cases prohibit the posting of hate speech.

Steps to combat intolerance based on religion or belief by the Australian Federal Police

The Australian Federal Police (AFP) supports the UN action plan to combat intolerance based on religion or belief. Whilst the AFP does not have specific governance in relation to religious tolerance, diversity and inclusion is an operational priority that enables them to deliver maximum impact to the criminal environment. To be an effective police force, the AFP must be reflective of the community in which they serve, working across languages, cultures and transnational borders.

The AFP ensures that police recruits and operational members are equipped with the necessary knowledge, skills, and tools to respectfully and effectively engage with members of the community, with training programs focused on promoting understanding, scenario-based training, collaboration with experts and striving for continuous improvement.

One of the tools available to operational members is the Religious and Spiritual Diversity Guide for Operational Police, developed by the Australian New Zealand Policing Advisory Agency (ANZPAA) together with peak religious organisations and community groups. The Guide provides police with a greater understanding of religious and spiritual diversity and enhances services and interactions with the community, and builds on the commitment of Australian and New Zealand Police to meet the needs of the religious and spiritually diverse communities they serve.

Greater diversity and inclusion benefits everyone, not just those from diverse cohorts.

- Frontline and operational outcomes benefit by ensuring the AFP is composed of staff who reflect and understand the community they serve.
- Their people benefit by having their different perspectives, approaches and lived experience valued. It is the collective diversity and contribution which makes AFP a stronger organisation.
- The diversity networks and allies benefit with action taken to address barriers and unconscious bias.
- The community, in which AFP serve, is represented through their ideals, beliefs and diversity.
- The AFP's partners can feel confident they are engaging with people who operate with the highest levels of respect, integrity and accountability.