



AUSTRALIAN GOVERNMENT RESPONSE

CALL FOR SUBMISSIONS: REPORT ON STEPS TAKEN BY STATES TO COMBAT INTOLERANCE, NEGATIVE STEREOTYPING, STIGMATISATION, DISCRIMINATION, INCITEMENT TO VIOLENCE AND VIOLENCE AGAINST PERSONS, BASED ON RELIGION OR BELIEF.

Australia thanks the Office of the High Commissioner for Human Rights for their invitation to provide a submission to inform the Report on steps taken by States to combat intolerance, negative stereotyping, stigmatisation, discrimination, incitement to violence and violence against persons, based on religion or belief.

Australia's response

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 Australian Constitution also contains an implied guarantee of freedom of communication in relation to political matters, which the High Court has determined is essential to the proper functioning of Australia's system of democratic and representative government. 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 provoked by material promoting violence.

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.

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 changing the law 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 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.

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. 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 Violent Extremism

Australia is one of the most diverse and successful multicultural societies in the world. Our diversity has enriched our nation. Our identity is defined by an overriding commitment to our nation, its democratic values and respect for the rule of law. The Government is committed to keeping Australians safe from all forms of violent extremism.

The Australian Government, working with state and territory agencies, counters violent extremism through:

- Building the resilience of communities to help prevent violent extremism
- Supporting the diversion of those at risk of radicalising and becoming violent extremists
- Rehabilitating and reintegrating violent extremists
- Online initiatives, including reducing the volume and effectiveness of terrorist and violent extremist content.

Countering terrorist propaganda online

In 2019, Australia introduced tough new laws to prevent the spread of terrorist and violent extremist content online. These laws include the *Criminal Code Amendment (Sharing of Abhorrent Violent Material) Act 2019*, which introduced criminal offences related to abhorrent violent material in the Criminal Code. Further to this, in 2020, Australia developed an online safety protocol called the Online Content Incident Arrangement which outlines to various government agencies the procedures to follow and the roles required of them during an online crisis event to prevent the viral spread of terrorist and violent extremist content when it is livestreamed or uploaded.

In January 2022 the *Online Safety Act 2021* came into effect, providing Australia's eSafety Commissioner with new and strengthened powers to keep Australians safe online, including the ability to require industry to remove terrorist and extreme violent material within 24 hours of a notice being issued, and for ISPs and carriers to disable access to material depicting abhorrent violent conduct during an online crisis event. Australia is strongly advocating across multiple fronts to deepen international norms and develop common industry standards to prevent, detect, remove and deter terrorist and violent extremist content.