

## CIFORB Country Profile – *Australia*

### Demographics

#### Key facts:

##### Population:

23,232,413 (July 2017 est.)

##### Ethnicity (Self-identified ancestry):

English 25.9%, Australian 25.4%, Irish 7.5%, Scottish 6.4%, Italian 3.3%, German 3.2%, Chinese 3.1%, Indian 1.4%, Greek 1.4%, Dutch 1.2%, other 15.8% (includes Australian aboriginal 0.5%), unspecified 5.4%<sup>1</sup> (2011 est.)

##### Languages:

English 76.8%, Mandarin 1.6%, Italian 1.4%, Arabic 1.3%, Greek 1.2%, Cantonese 1.2%, Vietnamese 1.1%, other 10.4%, unspecified 5% (2011 est.)

#### Religions

- Protestant 23.1% (Anglican 13.3%, Uniting Church 3.7%, Presbyterian and Reformed 2.3%, Baptist 1.5%, Pentecostal 1.1%, Lutheran .7%, other Protestant 0.5%)
- Roman Catholic 22.6%
- Other Christian 4.2%
- Muslim 2.6%
- Buddhist 2.4%
- Orthodox 2.3% (Eastern Orthodox 2.1%, Oriental Orthodox 0.2%)
- Hindu 1.9%
- Other 1.3%
- None 30.1%,
- Unspecified 9.6% (2016 est.)

#### Geography and political structure

- 89.7% of total population (2017) is considered urbanised. The major urban areas and their population are Sydney 4.505 million; Melbourne 4.203 million; Brisbane 2.202 million; Perth 1.861 million; Adelaide 1.256 million; Canberra (capital) 423,000 (2015 est)
- Australia is the world's largest net exporter of coal, accounting for 29% of global coal exports

#### Government & Political Structure:

- Australia is a (federal) parliamentary democracy under a constitutional monarchy; the head of state is Queen Elizabeth II. It is a current member state of the Commonwealth.
- The Australian federal structure comprises six states: New South Wales, South Australia, Tasmania, Victoria, and Western Australia, and two territories: Australian Capital Territory and Northern Territory.
- The country has a common law system based on the English model, and a constitution, effective 1 January 1901. This has been amended several times, last in 1977. However, a referendum to amend the constitution to reflect the Aboriginal and Torres Strait Islander Peoples Recognition Act 2013 was rejected in 2017.
- Citizenship is only awarded if at least one parent is a citizen or permanent resident of Australia (Birth alone does not grant a right to citizenship).

#### Political Structure:

- Chief of State: Queen of Australia Elizabeth II (since 6 February 1952); represented by Governor General Sir Peter Cosgrove (since 28 March 2014)
- Head of government: Prime Minister Malcolm Turnbull (since 15 September 2015)
- Following legislative elections, the leader of the majority party or majority coalition is sworn in as prime minister by the governor general. Cabinet is nominated by the prime minister from among members of Parliament and sworn in by the governor general. The Legislative branch is the bicameral Federal Parliament, which is made up of:

The Senate: holds 76 seats, with twelve seats allocated to members from each of the six states and two from the mainland territories. The members are directly elected in multi-seat constituencies, using the proportional representation electoral system, and then serve six-year terms, with one-half of state membership renewed every three years and territory membership renewed every three years.

The House of Representatives: holds 150 seats, with members directly elected in single-seat constituencies by majority preferential vote; members serve terms of up to three years.

Judicial branch: Each state and two territories and Norfolk Island has a Supreme Court, The High Court of Australia is the final appellate court beyond the state and territory supreme courts.

#### Religious Affairs

Australia is considered a secular state, as section 116 of the Australian Constitution provides:

*The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.*

However, there remains some interaction between state and religion in the public sphere. So while the federal government cannot establish a state church, the state does interact with religion when, for example, it funds schools run by religious organisations.<sup>2</sup> There is also a relationship between political parties and religious identity. Traditionally, the Labour party was considered primarily Catholic, and attracted those who were Catholic, working class, and of Irish descent. The Liberal party attracted those who were from the non-working class and were mainly of Anglican and Presbyterian backgrounds. In the years that followed the Second World War, many Catholics moved into the middle class and were more inclined to vote Labor and when the Democratic Labour party (a break away anti-communist faction of the Labour Party) lost momentum, Catholic Labour politicians soon started moving to the Liberal Party. This created a coalition that remained in power from 1996 through to 2007, gaining votes from both Catholic and Protestant church-goers. This coalition brought the traditional divide to an end, and also attracted newer non-denominational churches.

#### **International Affairs (including membership of international organisations, UPR/treaty committees coming up etc) treaty compliance**

##### Membership in international organisations:

- Member of the United Nations Human Rights Council (2018-2020)
- The Commonwealth of Nations
- The G20
- MIKTA – Mexico, Indonesia, The Republic of Korea, Turkey, Australia
- Multilateral Banks: Asian Infrastructure Investment Bank, World Bank Group, Asian Development Bank.
- The OECD
- The UN
- The WTO

##### Regional Organisations:

- Asia-Pacific Economic Cooperation (APEC)
- ASEAN Regional Forum (ARF)- Dialogue Partner
- East Asia Summit (EAS)
- Indian Ocean Rim Association (IORA)
- The Pacific Islands Forum (PIF) & The Pacific Community (Two of a number of Pacific Island Regional Organisations)

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<sup>2</sup> <https://theconversation.com/is-australia-a-secular-country-it-depends-what-you-mean-38222>

UPR Recommendations:

Last UPR: 09/11/2015, Next UPR: 11/2020

Key recommendations related to FoRB:

- Ratify/Consider ratifying the ILO Indigenous and Tribal Peoples Convention (ILO 196) (Accepted in part)
- Withdraw/consider withdrawing reservations (Accepted in part)
- Bring domestic law and practice into line with international obligations (Accepted)
- Incorporate human rights obligations into domestic law (Accepted in part)
- Introduce a Human Rights Act (Rejected)
- Provide adequate resources for the Australian resources for the Australian Human Rights Commission (Accepted)
- Follow up on implementation of recommendations by human rights mechanisms (Accepted)
- Adopt new National Human Rights Action Plan (Accepted)
- Nationwide enforcement and implementation of discrimination law (Accepted)
- Address all prohibited grounds of discrimination in consolidated law (Accepted)
- Monitor racially motivated violence (Accepted).
- Enhance human rights education in the school curriculum (Accepted)
- Enhance measures to prevent discrimination against minorities and promote multiculturalism and social inclusion. (Accepted)
- Amendment of Marriage Act to provide for and recognise same sex marriages. (Rejected)

**FORB (including legislation)**

## FoRB Protections:

- **Constitutional Law:**

While there is some protection given to religious freedom in the Australian Constitution, it is far from comprehensive.

Section 116 prohibits the Commonwealth Parliament from enacting legislation that would prohibit the free exercise of religion or establish a religion. However, this is limited in its scope, as it applies only to the Commonwealth parliament and does not extend to legislative or other action by the individual states. Moreover, it applies to legislation, or action taken under legislation, rather than all actions taken by the government. It also does not explicitly protect beliefs that are not religious. Although the High Court of Australia has interpreted this provision to extend to atheism and agnosticism, 'interpretation of s.116 by the High Court has in most respects been restrictive and limiting.'<sup>3</sup> Furthermore, though the court has more recently interpreted section 116 more widely as providing fundamental guarantees rather than merely imposing restrictions on the powers of the legislature, it is not a source of personal rights in the sense of providing individuals with an avenue for legal redress where their rights are violated.<sup>4</sup>
- **Statutory Protection:**
  - Calls for a Bill of Rights (which would contain Australia's obligations under the ICCPR), and for specific religious Freedom legislation (a proposal by the Human Rights Commission) have so far been dismissed. This means that there is no comprehensive Commonwealth legislation that protects religious freedom or prohibits discrimination on the basis of religion or belief.
  - There are Commonwealth laws prohibiting discrimination in a range of areas such as age, race, sex and sexual identity, these laws do not cover religion.<sup>5</sup> However, fresh calls for a Religious Freedom Act are currently situated within the politically fraught context of the legalization of same-sex marriage (see below).
- **Common Law:**
  - An established principle of statutory interpretation in Australian courts is that Parliament did not intend to limit fundamental rights but did intend to legislate consistently with Australia's international obligations including those under human rights treaties. The principle states that 'the Courts should not impute to the legislature an intention to interfere with fundamental rights. Such an intention must be clearly manifested by unmistakable and unambiguous language.'<sup>6</sup> This 'principle of legality' constitutes a substantial level of protection, and through case law, a common law bill of rights has been developed 'which overlaps with, but is not identical to, the list of human rights specified in international human rights instruments.'<sup>7</sup>
  - However, the difference is that Common law recognition of rights generally lacks the provisions contained in the human rights treaties for obligations on governments to take active measures to promote human rights.<sup>8</sup>

<sup>3</sup> <https://www.humanrights.gov.au/freedom-thought-conscience-and-religion-or-belief>

<sup>4</sup> P.12 report

<sup>5</sup> <https://theconversation.com/the-great-divide-where-religious-beliefs-and-the-law-meet-81180>

<sup>6</sup> In *Coco v The Queen* (1994) 179 CLR 427 at 437

<sup>7</sup> <https://www.humanrights.gov.au/common-law-rights-human-rights-scrutiny-and-rule-law>- Chief Justice Spigelman: *Constantine v Imperial Hotels Ltd* [1944] 1 KB 693 at 708).

<sup>8</sup> All above: <https://www.humanrights.gov.au/common-law-rights-human-rights-scrutiny-and-rule-law>

- Religious Freedom has been recognised as among the common law rights covered by the common law presumption. However, as stated, this right can be displaced by sufficiently clear words in legislation.
- International obligations
- Australia is a signatory to the ICCPR; Article 18 protects FoRB

There are some examples of official measures taken for religious accommodation, such as the Australian Cricket Board and advertisers agreeing that a cricketer of Islamic faith does not need to wear advertisement for alcohol, the exemption under electoral laws for people whose beliefs prevent them from voting on particular days or at all, and exemptions for religious bodies from discrimination laws to enable them to operate schools and ordain clergy in compliance with their own doctrines.<sup>9</sup>

### **FoRB issues:**

**FoRB issues in Australia can be summarised as the following:**

1. Societal Intolerance
2. Refugees (applicant process and detention)
3. Indigenous rights
4. Tensions between LGBT and religious groups

### **1. Societal intolerance: Discrimination and incitement to religious hatred:**

- While there is no state sponsored religion as a matter of law, a strongly held sentiment is that Australia is a Christian nation – historically and currently – whose values and culture are based on Christian teachings. These values lie in the Australian psyche and are reflected in public ethos and institutions, the legal system, and social and political structures.<sup>10</sup>
- The Human Rights Commission received submissions detailing experiences of discrimination and vilification on the basis of religion and belief which infringe the rights of individuals and groups.
- Among these concerns, Muslim groups reported discrimination in the workplace, particularly towards women who wear hijab, Jewish groups raised security concerns and the level of anti-Jewish sentiment on the Internet, Pagans complained about the lack of recognition of marriages and members of the Sikh community expressed concern at the difficulties they encounter in relation to their religious practices, such as prohibiting hair cutting, which has ramifications, particularly in schools and workplaces.<sup>11</sup>
- Concerns around Islam were specified because of the high profile of Islam and the negative portrayal in the media.<sup>12</sup> The National Human Rights Commission stated that there is a current of anti-Muslim discourse that suggests an entrenched hostility often related to overseas events.

<sup>9</sup> Michael Quinlan, Dean, School of Law Sydney, University of Notre Dame Australia-

<https://theconversation.com/the-great-divide-where-religious-beliefs-and-the-law-meet-81180>

<sup>10</sup> P.22 FoRB report, [https://www.humanrights.gov.au/sites/default/files/content/frb/Report\\_2011.pdf](https://www.humanrights.gov.au/sites/default/files/content/frb/Report_2011.pdf)

<sup>11</sup> P.70 FoRB report: [https://www.humanrights.gov.au/sites/default/files/content/frb/Report\\_2011.pdf](https://www.humanrights.gov.au/sites/default/files/content/frb/Report_2011.pdf)

<sup>12</sup> P.70 FoRB report: [https://www.humanrights.gov.au/sites/default/files/content/frb/Report\\_2011.pdf](https://www.humanrights.gov.au/sites/default/files/content/frb/Report_2011.pdf)

- Legal protections against religious discrimination are considered 'generally inadequate and lack consistency and uniformity' at the federal and state level, and therefore falls short of internationally recognised standards in the ICCPR and the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.<sup>13</sup>

## **2. Refugees:**

- An overview of Australia's policy towards both its immigration application and its use of detention centres suggests an inconsistency in its approach towards religious minorities. While it has given Christians and other religious minorities from the Middle East priority in its refugee intake, the same concern for religious minorities in detention centres does not appear as generous, with many who are confined there also fleeing religious persecution.

### **a) Immigration application**

- The Australian Government's approach to refugee intake has an overarching focus on persecuted minorities, women and children.
- 12,000-13,000 people are typically accepted every year. In 2015-16, Australia accepted 13,750 people through its humanitarian programme and committed to accepting a one-off additional 12,000 from Syria and Iraq.
- While the Labour Party argued against giving priority to refugees of any religious background, the government had said priority would be given to persecuted minorities.<sup>14</sup>
- NGOs have also engaged on this issue. For example, the Refugee Council of Australia spoke out against Australian immigration for prioritising persecuted minorities when the vast majority of Syria's five million refugees were Muslim.<sup>15</sup>

### **b) Detention centres**

- For the past three years, Australia has consistently maintained that it will never settle on Australian mainland asylum seekers who arrive by boat. This position has been popular with voters and is still supported by both main political parties.
- The use of detention centres has a FoRB dimension, as many of whom are in held these detention centres fled their countries of origin because of religious persecution.<sup>16</sup> In September 2017, it was reported that Rohingya refugees who were held in an Australian-run detention centre on Manus Island were pressured by officials to return to their home countries, despite the risk of religious persecution.<sup>17</sup> There are also reports that freedom to worship in the detention centres is restricted, with opportunities to leave a detention facility to visit a place of worship increasingly limited or observed by security personnel.<sup>18</sup>
- The UN has criticised Australia's approach with detention centres. For example, the UN Special Rapporteur on Torture found that various aspects of Australia's asylum seeker policies were incompatible with the Convention against Torture and Other Cruel, Inhuman

<sup>13</sup> 1998 Human Rights Commission Report

<sup>14</sup> <http://www.dailytelegraph.com.au/news/nsw/syrian-civil-war-turnbull-gives-priority-to-christian-refugees-over-muslims/news-story/88206e63a6245c3a690f64bfc9ab89e6>

<sup>15</sup> <http://www.abc.net.au/news/2016-03-31/australia-cherry-picking-syrian-refugees-says-refugee-council/7289918>

<sup>16</sup> <https://www.refugeecouncil.org.au/wp-content/uploads/2017/05/Submission-on-freedom-of-religion.pdf>

<sup>17</sup> <https://www.theguardian.com/world/2017/sep/19/australia-offers-pay-rohingya-refugees-return-myanmar>

<sup>18</sup> P.8 <https://www.refugeecouncil.org.au/wp-content/uploads/2017/05/Submission-on-freedom-of-religion.pdf>

or Degrading Treatment or Punishment.

- The UN has also stated that Australia has breached the obligation to fully cooperate with the UN Special Rapporteur and has criticised the Australian government for providing inadequate responses to the complaints made against it, particularly to the UN Human Rights Committee.<sup>19</sup>

### **3. Indigenous Beliefs**

- Indigenous religious traditions in Australia are often denied the same level of recognition, status and protection accorded to the majority of 'mainstream' religions.<sup>20</sup> For example, Indigenous believers are not included in the table of religions in Australia.
- The significance of sacred sites and land to the spiritual lives of Aboriginal and Torres Strait Islander peoples is often overlooked and undervalued by the general community and governments, as a secular legal system often struggles with recognising the fundamental spiritual significance of Aboriginal land.
- The Heritage Act was introduced in 1984 to enable the Commonwealth to protect significant Indigenous areas and sites from injury or desecration when State or Territory law fails to do so. Under the Heritage Act, Aborigines and Torres Strait Islanders can ask the federal minister to make a declaration to protect an area or object under threat of injury or desecration. Declarations range from emergency declarations of up to 48 hours to long term declarations of 20 years or more. Of the four long term declarations made since 1984, only one remains in force.
- However, there is much dissatisfaction with this Act, with many expressing concern at the ineffective protection of Aboriginal land rights and heritage in Australia. This concern was also shared by UN Special Rapporteur on Freedom of Religion or Belief Abdelfattah Amor on his visit to Australia. The Special Rapporteur highlighted the inconsistent protection that various state, territory and federal laws provide, and the inability to take account of Aboriginal values.

### **4. Same Sex Marriage:**

- Same sex marriage was made legal in Australia in December 2017 with the enactment of the Marriage Amendment (Definition and Religious Freedoms) Act of 2017.
- The national debate on same sex marriage prior to the enactment of the Act in 2017 centred around the concern that religious freedom would be negatively affected, for example by forcing religious ministers to marry same sex couples in a religious ceremony.<sup>21</sup>
- Some argued that the recognition of same-sex marriage raises practical religious freedom questions, such as whether a church school would have the choice to decline to offer married quarters to a teacher in a same sex marriage or to offer employment to a married gay teacher.<sup>22</sup>
- Proponents of same-sex marriage argued that religious freedom would not be affected, arguing they would be protected under current discrimination laws, which are generally

<sup>19</sup>[http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A\\_HRC\\_28\\_68\\_Add.1\\_A\\_V.doc](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68_Add.1_A_V.doc)

<sup>20</sup> Evidence of this oversight was noted by the UN Special Rapporteur on Religion and Belief, Abdelfattah Amor, during his visit to Australia in 1997.

<sup>21</sup> <https://pursuit.unimelb.edu.au/articles/same-sex-marriage-religious-freedom-and-the-law>

<sup>22</sup> <https://www.theguardian.com/commentisfree/2017/aug/17/religious-freedom-is-an-important-right-once-same-sex-marriage-is-legal-it-must-be-protected>

similar in each state. Religious organisations are given some exemptions from the operation of discrimination laws when it is necessary to do so to act in compliance with their religion.