



ISLAMIC COUNCIL OF VICTORIA

**Submission to the Parliamentary Inquiry  
into the *Criminal Code Amendment  
(Genocide, Crimes Against Humanity and  
War Crimes) Bill 2024***

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The Islamic Council of Victoria (ICV) welcomes the opportunity to make a submission to the Parliament of Australia's inquiry into the *Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024* ('Amendment Bill'). As the peak representative body for Muslims in Victoria, the ICV's mission is to protect and advance the rights of Muslims in Victoria, across Australia and globally. The ICV is concerned and horrified by the numerous mass atrocity crimes being committed in the modern world, often seemingly with impunity, including the ongoing genocide and reported war crimes in Gaza. We believe that in the coming years, an alarming number of victims of such atrocities will need channels to pursue justice, and despite Australia's commitments under international law, our government and justice system are shamefully failing to provide those channels and facilitate access to justice. It is from this perspective that we write this submission.

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## **1. Background: Australia's poor history of facilitating access to justice for mass atrocity crimes**

As a signatory to the *International Convention on the Prevention and Punishment of the Crime of Genocide*, the *Rome Statute of the International Criminal Court* and the 1949 *Geneva Conventions*, Australia's domestic laws on genocide, war crimes and crimes against humanity must fulfil our international obligations and seek to uphold international law to the highest possible extent. The international justice system relies heavily on the cooperation of member states to operate effectively, and punishing and deterring mass atrocity crimes often depends on bringing perpetrators to justice through domestic courts.<sup>1</sup>

Australia has rightfully recognised and accepted its responsibility in the global arena to prevent and punish genocide, war crimes and crimes against humanity, wherever they may occur. The principle of universal jurisdiction espoused in the aforementioned treaties aims to ensure that the gravest international crimes are suppressed and punished globally and that no state can become a safe haven for perpetrators of these crimes.<sup>2</sup> It requires states to enact and enforce laws against mass atrocity crimes, and to adjudicate cases brought to court regardless of whether the case has any connection to the adjudicating state.

Despite accepting these obligations in principle, current Australian laws do not adequately reflect and uphold our international responsibilities in relation to mass atrocity crimes. The state's record of pursuing justice and facilitating access to justice for these crimes is deplorable. Firstly, the delay in criminalising genocide between the signing of the *Genocide Convention* in 1949 and enacting the *International Criminal Court (Consequential Amendments) Act 2002* barred access to justice for victims of these crimes for 53 years. Beyond that, the legislation passed in 2002 failed to retrospectively criminalise genocide and crimes against humanity, despite Australia recognising the illegality of these crimes in 1949 by signing the *Genocide Convention* and *Geneva Conventions*. As a result, victims of these crimes before 2002 have no effective means of pursuing justice, despite Australia's stated long-standing commitment to "prevent

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<sup>1</sup> Shirley Scott, 'Why Wasn't Genocide A Crime in Australia? Accounting For the Half-century Delay in Australia Implementing the Genocide Convention' (2004) 10:2 *Australian Journal of Human Rights* 22, 23.

<sup>2</sup> International Committee of the Red Cross, *Universal Jurisdiction Over War Crimes – Fact Sheet* (2021) <https://www.icrc.org/en/document/universal-jurisdiction-over-war-crimes-factsheet>.

and punish” acts of genocide,<sup>3</sup> and protect civilians in times of war or occupation, including enacting appropriate penalties for contraventions of these laws.<sup>4</sup>

While retrospective criminal laws are largely prohibited by principles of domestic and international law, as the Australian Law Reform Commission states, “retrospective criminal laws may be justified where the law in question prohibits a behaviour that could have never been considered innocent, legitimate or moral.”<sup>5</sup> In line with this, the High Court found in 1991 that the retrospective application of legislation prohibiting war crimes was valid, due to the Parliament’s power to make laws “with respect to international crimes which are subject to the universal jurisdiction,” and the inordinately grave nature of these crimes warranting international concern and action.<sup>6</sup> Nonetheless, the passing of the *International Criminal Court Act* in 2002 did not follow the precedent of the *War Crimes Amendment Act 1988*, failing to retroactively criminalise genocide and crimes against humanity.

*“...The horrible crime of genocide is unthinkable in Australia...That we detest all forms of genocide...arises from the fact that we are a moral people.”*

– Leslie Haylen, Labour MP, 1949<sup>7</sup>

In practice, this has severely undermined Australia’s facilitation of access to justice for victims, prohibiting First Nations victims of genocidal assimilation and child removal policies throughout the 20th Century from pursuing justice, punishment or restitution. In 1991, the Final Report of the Royal Commission into Aboriginal Deaths in Custody highlighted the importance of meeting Australia’s international obligation to suppress and punish genocide in its recommendations for law and policy reform.<sup>8</sup> The Commissioners noted that Australia’s policies of assimilation of First Nations people

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<sup>3</sup> *Convention on the Prevention and Punishment of the Crime of Genocide* 1948, 78 UNTS 277, art 1.

<sup>4</sup> *Geneva Convention Relative to the Protection of Civilian Persons in Times of War* 1949, 5 UNTS 287.

<sup>5</sup> Australian Law Reform Commission, *Traditional Rights And Freedoms—Encroachments By Commonwealth Laws* (ALRC Report 129), [13.4].

<sup>6</sup> *Polyukhovich v The Commonwealth* (1991) 172 CLR 501.

<sup>7</sup> David Roache-Turner, ‘Thinking’ about Genocide: Australia and the Political Discourse of Denial’ (2001) 12:1 *Polemic* 33, 33.

<sup>8</sup> Commonwealth, *Royal Commission into Aboriginal Deaths in Custody, National Report* (1991) vol 5, [36.6].

throughout the 20th Century “would, if committed today, be regarded as genocide.”<sup>9</sup> In 1997, the *Bringing Them Home Report* found that “the Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international law.”<sup>10</sup> It aptly highlighted that the practice “[continued] as an official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.”<sup>11</sup> The domestic criminalisation of genocide and crimes against humanity in 2002, which, unlike war crimes, had no retrospective application, was clearly formulated to evade liability for genocidal acts committed against First Nations Australians.<sup>12</sup> This avoidance reflects Australia’s reluctance to confront historical injustices and address the ongoing impacts of colonialism. Victims of the Stolen Generation have made numerous litigation attempts in tort, constitutional and fiduciary law, with a disturbing lack of success.<sup>13</sup> Criminal prosecutions against perpetrators have been all but impossible, particularly for the most abhorrent crimes of genocide and crimes against humanity. These restrictions on access to justice highlight the need for greater accountability from the Australian government and the need to engage with our own history in order to ensure that similar injustices are addressed and prevented in the future.

It is a disgraceful failure of the justice and legislative systems that despite accepting the illegality of genocide since 1949, and the responsibility to prevent and punish this crime, the Australian government not only continued to pursue genocidal policies, but in 2002 actively denied Indigenous victims access to justice despite criminalising future acts of genocide and crimes against humanity. In light of this, Australia’s long-standing commitment to suppressing genocide seems a sanctimonious and empty promise.

## 2. Proposed Amendments to the *Criminal Code Act*

The ICV fully supports the *Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024* and believes this bill would be a crucial step forward in fulfilling Australia’s

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<sup>9</sup> Ibid.

<sup>10</sup> Human Rights and Equal Opportunity Commission, *Bringing Them Home : Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (1997) 13.

<sup>11</sup> Ibid.

<sup>12</sup> Shirley Scott, ‘Why Wasn’t Genocide A Crime in Australia?: Accounting For the Half-century Delay in Australia Implementing the Genocide Convention’ (2004) 10:2 *Australian Journal of Human Rights* 22.

<sup>13</sup> Antonio Butti, ‘The Stolen Generations and Litigation Revisited’ (2008) 32:2 *Melbourne University Law Review* 382, 383.

international law obligations, upholding the rule of law and preventing and punishing the most reprehensible and inhumane of crimes. The Bill provides a rare opportunity for Australia to take positive steps forward and eliminate restrictions on access to justice.

## **2.1 Removing the requirement of the Attorney-General's consent**

The ICV wholeheartedly supports removing the requirement of the Attorney-General's consent to prosecute cases of mass atrocity crimes, in the interest of upholding the rule of law, ensuring justice for past crimes, and addressing grave human rights violations currently being carried out around the world. The ICV believes that matters of justice for the victims of the most heinous of crimes including genocide and crimes against humanity should be above political expediency and should be made transparent to the Australian public.

### **2.1.1 Upholding the rule of law**

The ICV firmly believes that the rule of law must be upheld and universally applied in our society. We define the rule of law as the basic principle that the law applies equally to everyone and all people have the right to procedural fairness, including in relation to criminal investigations. All Australians who hold dear our fundamental rights as citizens of this democratic society would no doubt feel the same. The rule of law is also supported by crucial checks and balances provided by the separation of powers. In relation to genocide and crimes against humanity, the rule of law is critically undermined by the political interference of the Attorney-General's discretion. In a free democratic society, there is no place for executive interference in judicial processes, especially when Australia has voluntarily committed under international law to effectively prosecute and penalise perpetrators.<sup>14</sup>

It is regrettable that not only does section 268.121(1) of the *Criminal Code Act* give the Attorney-General the power to block criminal proceedings, but it establishes no limitations, stipulations or guidelines for the exercise of this power. Mass atrocity criminal cases can be - and have been repeatedly - quashed on dubious grounds or no grounds at all, without being granted any due process or opportunity to be heard.<sup>15</sup> For example, when in 2011 the Attorney-General blocked a war crime case from a Tamil Australian who witnessed armed forces in Sri Lanka burning hospitals and destroying civilian infrastructure, the

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<sup>14</sup> *Convention on the Prevention and Punishment of the Crime of Genocide* 1948, 78 UNTS 277, Articles IV and V, art 4-5.

<sup>15</sup> Hood, Anna; Cormier, Monique, 'Prosecuting International Crimes in Australia: The Case of the Sri Lankan President' (2012) 13(1) *Melbourne Journal of International Law* 235, 237.

Attorney-General's stated reason was that the case would breach Australia's obligations to grant immunity to heads of state.<sup>16</sup> However, legal commentators have questioned this, stating that this area of law is largely unsettled in Australia.<sup>17</sup> Regardless of whether the Sri Lankan president was or was not entitled to immunity under domestic or international law, this is a matter of law for a court to determine, not the executive branch of government. It requires complex analysis from judicial authorities, not merely a short statement from a government spokesperson purporting to decree on unsettled questions of law. In 2018, the Attorney-General also prevented the Australian Rohingya community from pursuing charges against Aung San Suu Kyi for her role in the Rohingya Genocide. The Attorney-General's stated reasoning was again based on the premise that Suu Kyi was entitled to head-of-state immunity, despite her not being the official head of state at the time the case was filed.<sup>18</sup> It is plausible that if the claimants had been given their right to due process and the case had been heard by a judge, Australian courts could have acted as a global leader in preventing and punishing genocide, and contributed to ending the Rohingya Genocide which killed over 9,000 people and displaced a million more.<sup>19</sup>

### 2.1.2 The current need to facilitate future access to justice

The removal of oppressive political interference in criminal prosecutions is especially necessary in the current climate of global politics, as genocide and mass atrocity crimes are being committed across the globe, seemingly with impunity. On October 7, 2023, Hamas and the Palestinian Islamic Jihad (PIJ) launched an unprecedented attack on Israel from the Gaza Strip, killing approximately 695 Israeli civilians and taking over 250 hostages in response to Israel's decades-long crippling blockade on the Gaza Strip, ongoing occupation and expansion of illegal settlements.<sup>20</sup> In response, Israel launched a ground and air military attack, initiating a genocide that continues to this day. Israel's relentless campaign

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid, 253.

<sup>18</sup> Ben Doherty, 'Aung San Suu Kyi cannot be prosecuted in Australia, Christian Porter says,' *The Guardian*, 17 March 2018, <https://www.theguardian.com/world/2018/mar/17/aung-san-suu-kyi-cannot-be-prosecuted-in-australia-christian-porter-says>.

<sup>19</sup> Laura Jakes, 'Myanmar's Military Committed Genocide Against Rohingya, U.S. Says,' *The New York Times*, 21 March 2022, <https://www.nytimes.com/2022/03/21/us/politics/myanmar-genocide-biden.html>.

<sup>20</sup> 'Israel social security data reveals true picture of Oct 7 deaths' *France24*, 2023, <https://www.france24.com/en/live-news/20231215-israel-social-security-data-reveals-true-picture-of-oct-7-deaths>.

has completely destroyed Gaza, killing an estimated 37,877 and injuring 86,969 as of July 2024,<sup>21</sup> and wiping out swathes of civilian infrastructure. Despite multiple attempts from the international community to facilitate peace negotiations, and the killing of Israeli hostages in Gaza by the state's own military operations,<sup>22</sup> Israel's destruction of Gaza has continued uninhibited. In January 2024, the International Court of Justice found that there was a "real and imminent risk" of violations of the rights of Palestinians under the *Genocide Convention*, and ordered Israel to take all available steps to prevent genocide within the state and the territories it occupies. The ICJ decided that there were plausible grounds to adjudicate on the genocide case brought against Israel.<sup>23</sup>

In the meantime, Israeli officials and state forces have made their genocidal intentions undeniable. In October 2023, Israeli Defence Minister Yoav Gallant stated, "Gaza won't return to what it was before... we will eliminate everything." in reference to the beginning of Israel's military campaign. He also stated that he had "ordered a complete siege on the Gaza Strip. There will be no electricity, no food, no fuel, everything is closed... We are fighting human animals, and we are acting accordingly."<sup>24</sup> In November 2023, after weeks of intense bombing in the North of Gaza had already killed over 9,100 Palestinians, Israel's Minister of Heritage Amichai Eliyahu posted a video of a bulldozer demolishing the remains of destroyed homes in Gaza on his social media. He wrote in the caption "The North of the Gaza Strip, more beautiful than ever. Blow up and flatten everything, delightful. After we are done, we allocate the lands of Gaza to the soldiers fighting and the settlers who lived in Gush Katif."<sup>25</sup> In May 2024, after around a million Palestinians had been forcibly displaced to Rafah, declared a safe zone by Israel, a refugee camp was bombed by Israel, killing 45 and injuring several more.<sup>26</sup> Humanitarian aid groups described scenes

<sup>21</sup> 'Death toll in Gaza surges to 37,877 on 268th day of Israel's genocidal war,' *Wafa News Agency*, 30 June 2024, <https://english.wafa.ps/Pages/Details/145432>.

<sup>22</sup> Emily Rose, 'Israeli troops killed hostages, mistaking their cries for help as ambush -military,' *Reuters*, 29 December 2023, <https://www.reuters.com/world/middle-east/israeli-troops-killed-hostages-mistaking-their-cries-help-ambush-military-2023-12-28/>.

<sup>23</sup> *Summary of the Order of 26 January 2024*, International Court of Justice, Document 192-20240126-SUM-01-00-EN.

<sup>24</sup> Emanuel Fabian, 'Defense minister announces 'complete siege' of Gaza: No power, food or fuel,' *The Times of Israel*, 9 October 2023, [https://www.timesofisrael.com/liveblog\\_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/](https://www.timesofisrael.com/liveblog_entry/defense-minister-announces-complete-siege-of-gaza-no-power-food-or-fuel/).

<sup>25</sup> <https://www.facebook.com/watch/?v=148918588283326>. For previous caption and English translation, see Safaa Kasraoui, 'More Beautiful Than Ever': Israeli Minister Delights in Gaza Genocide' *Morocco World News*, 3 November 2023, <https://www.moroccoworldnews.com/2023/11/358737/more-beautiful-than-ever-israeli-minister-delights-in-gaza-genocide>.

<sup>26</sup> Nida Al-Mughrabi, Dan Williams, 'Israeli attack on Rafah tent camp kills 45, prompts international outcry,' *Reuters*, 27 May 2024, <https://www.reuters.com/world/middle-east/israeli-attack-rafah-tent-camp-draws-global-condemnation-2024-05-27/>.



of civilians, including children, being dismembered and “burned alive.”<sup>27</sup> Reuters journalists described the aftermath, “by daylight, the camp in Rafah was a smoking wreckage of tents, twisted metal and charred belongings. Women wept and men held prayers beside bodies in shrouds.”<sup>28</sup> Throughout 2024, Human Rights Watch has accused Israel of the war crime of using starvation as a weapon of war, and the UN has warned of an imminent “man-made famine.”<sup>29</sup> According to the Integrated Food Security Phase Classification and World Food Program, 96% of Gaza’s population is facing acute food insecurity amounting to a “crisis level or higher,” with approximately half a million people facing “catastrophic” famine.<sup>30</sup>

The ongoing genocide in Gaza is creating a countless number victims who deserve access to channels to pursue justice for genocide and other grave international crimes. Now is the time to act. Australia must fully take on the role we have accepted under international law to punish and prevent these crimes, and finally implement our espoused principles without unnecessary hurdles. Not only does Australia need to be prepared to fully implement the principle of universal jurisdiction, but it is plausible that Australia may need to try its own citizens in relation to the atrocities being committed in Gaza. On October 10th 2023, when Israel began its latest military assault, its government issued an order for 360,000 reservists across the globe to engage in its military campaign.<sup>31</sup> There have since been numerous reports of dual Australian-Israeli citizens travelling to Israel to participate in hostilities, and in late 2023, the Australian Border Force stated it was aware of at least 4 Australians travelling to Israel to join the IDF’s offensive.<sup>32</sup> Australians travelling overseas to actively fight for a military force being investigated for genocide by the highest international court, and accused of ongoing war crimes by countless human rights organisations,

<sup>27</sup> ‘Heinous massacre’: Israel’s attack on Rafah tent camp widely condemned,’ Al Jazeera, 27 May 2024, <https://www.aljazeera.com/news/2024/5/27/heinous-massacre-israels-attacks-on-rafah-tent-camp-widely-condemned>.

<sup>28</sup> Nida Al-Mughrabi, Dan Williams, ‘Israeli attack on Rafah tent camp kills 45, prompts international outcry,’ Reuters, 27 May 2024, <https://www.reuters.com/world/middle-east/israeli-attack-rafah-tent-camp-draws-global-condemnation-2024-05-27/>.

<sup>29</sup> ‘Gaza: Israel’s Imposed Starvation Deadly for Children,’ Human Rights Watch, 9 April 2024, <https://www.hrw.org/news/2024/04/09/gaza-israels-imposed-starvation-deadly-children>, ‘Imminent famine in northern Gaza is ‘entirely man-made disaster’: Guterres,’ UN News, 18 March 2024, <https://news.un.org/en/story/2024/03/1147656>.

<sup>30</sup> ‘WFP response to new IPC Food Security Assessment on Gaza,’ 25 June 2024, <https://www.wfp.org/news/wfp-response-new-ipc-food-security-assessment-gaza>.

<sup>31</sup> ‘Letter: Australia should investigate citizens fighting in the IDF,’ Australian Centre for International Justice, 22 December 2023, <https://acij.org.au/letter-australia-should-investigate-citizens-fighting-in-the-idf/>.

<sup>32</sup> Department of Home Affairs, Release under Freedom of Information Act 1982, <https://www.homeaffairs.gov.au/foi/files/2024/fa-231201097-document-released.PDF>.

should not be able to return unquestioned. Australia needs to be prepared for the possibility that our own citizens are currently engaged in mass atrocity crimes abroad, and the removal of unnecessary restrictions on access to justice through the Amendment Act is one crucial step towards this. History will condemn Australia's failure to take a principled stance on the mass atrocity crimes unfolding before our eyes.

The ongoing criminal prosecutions of Australian soldiers for war crimes committed in Afghanistan further demonstrate the pressing need for access to justice for mass atrocity crimes. After the 2020 *Brereton Report* detailed numerous allegations of war crimes committed by Australian forces in Afghanistan over the course of eleven years, the government recognised the need to establish a dedicated body to investigate and prosecute these individuals. The ongoing prosecutions underscore the importance of a robust legal framework that allows for the effective prosecution of mass atrocity crimes without political interference, ensuring accountability and justice for victims.

Similarly, the Chinese government's treatment of Uyghurs in Xinjiang has been widely condemned as genocide and crimes against humanity. Investigations by international organisations, including the United Nations, have documented severe human rights abuses against Uyghurs and other ethnic minorities, including mass detentions in "re-education camps," forced labour, torture, and sterilisations.<sup>33</sup> These acts are part of a broader policy of eradicating Uyghur culture and identity. The international community, including Australia, has a moral and legal obligation to address these atrocities. The removal of barriers to prosecuting such crimes domestically would position Australia as a leader in the global fight against impunity for mass atrocity crimes.

The need to remove political interference from the prosecution of these crimes is not just a theoretical concern but a practical necessity, demonstrated by several ongoing global conflicts and atrocities. Whether dealing with historical injustices like those committed against First Nations Australians or addressing contemporary crises in Gaza, Afghanistan, Myanmar or Xinjiang, Australia must ensure that its legal system facilitates, rather than hinders, access to justice.

## 2.2 Review of cases blocked since 2002

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<sup>33</sup> Justine Nolan, 'UN report on Xinjiang abuses leaves no room for plausible deniability,' *Australian Human Rights Institute*, <https://www.humanrights.unsw.edu.au/research/commentary/un-report-xinjiang-abuses-leaves-no-room-plausible-deniability>.

The ICV endorses the Amendment Bill's proposal to review cases of genocide, war crimes and crimes against humanity blocked at the discretion of various Attorneys-General since 2002. These cases must be reviewed by the appropriate judicial bodies. As explained in section 1, the *International Criminal Court (Consequential Amendments) Act 2002* should never have facilitated interference in the judicial process by the executive branch. In the interest of justice and upholding the rule of law, it is crucial that those victims previously barred from pursuing criminal justice are given the chance to have their cases heard by a court, without oppressive political interference. There are no other offences under the *Criminal Code Act* for which victims face the crushing hurdle of requiring the Attorney-General's consent to pursue justice, and it is shameful that this hurdle is imposed only for the worst, most inhumane of crimes.

Moreover, in order to properly facilitate access to justice, the Australian government should establish a permanent, dedicated body to investigate individuals accused of mass atrocity crimes. Experts such as the Director of the Australian Centre for International Justice, and ex-senior members of Australia's former investigative unit for Nazi war criminals, have repeatedly called for the establishment of such a body, like that which currently exists in the UK, US, Germany, France, Sweden, Norway and Spain.<sup>34</sup> In 2024, these calls have been made all the more significant as the government of Rwanda has issued indictments for two men currently living in Australia accused of participating in the 1994 Rwandan Genocide.<sup>35</sup> The Australian Federal Police acknowledge their own limitations as the body responsible for investigating mass atrocity crimes, due to evidentiary issues, time passed, and diplomatic issues and lack of cooperation from foreign states where crimes occurred.<sup>36</sup> Rawan Arraf, Director of the Australian Centre for International Justice, also highlights that the AFP is underfunded, under-resourced and often lacks the appropriate expertise for the investigation of mass atrocity crimes.<sup>37</sup> A permanent investigative body would help to resolve these challenges, and to better meet Australia's international obligations and commitments. Without a proper investigative body, and with a shameful track record of wilfully

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<sup>34</sup> Ben Doherty, 'Australia needs dedicated body to investigate people accused of international crimes like genocide, legal experts claim,' *The Guardian*, 28 February 2024, <https://www.theguardian.com/australia-news/2024/feb/28/australia-needs-dedicated-body-to-investigate-people-accused-of-international-crimes-like-genocide-claim-legal-experts-ntwnfb>.

<sup>35</sup> Ibid.

<sup>36</sup> 'War crimes, crimes against humanity and genocide,' *Australian Federal Police*, <https://www.afp.gov.au/crimes/breaches-international-law/war-crimes-crimes-against-humanity-and-genocide>.

<sup>37</sup> Ben Doherty, 'Australia needs dedicated body to investigate people accused of international crimes like genocide, legal experts claim,' *The Guardian*, 28 February 2024, <https://www.theguardian.com/australia-news/2024/feb/28/australia-needs-dedicated-body-to-investigate-people-accused-of-international-crimes-like-genocide-claim-legal-experts-ntwnfb>.

neglecting to bring perpetrators to justice, Australia risks becoming a safe haven for the world's most despicable criminals. The role played by the Office of the Special Investigator in relation to the *Brereton Report* demonstrates the need for, and success of, specialised investigative bodies separate from the AFP when investigating mass atrocity crimes. The establishment of a permanent investigative body would support the judiciary in bringing perpetrators to justice and would be able to independently assess the merit of cases without political interference from the executive branch.

### 3. Recommendations

In summary, the ICV makes the following recommendations in relation to legislation and policy on genocide, war crimes and crimes against humanity.

1. The Australian Parliament should enact the *Criminal Code Amendment (Genocide, Crimes Against Humanity and War Crimes) Bill 2024* in its entirety, in order to uphold the rule of law, respect international law, meet the current pressing need for access to justice and redress for victims previously denied due process. By removing unnecessary and oppressive barriers to accessing justice, Australia can position itself as a global leader in preventing and punishing mass atrocity crimes.
2. Australia should amend its domestic laws and processes as required to fully align with our obligations under the *Genocide Convention*, *Rome Statute* and *Geneva Conventions* to ensure the prevention and punishment of genocide, war crimes, and crimes against humanity.
3. Australia should establish a permanent, dedicated body of experts to investigate people accused of genocide, war crimes and crimes against humanity, both in Australia and globally.
4. Australia should retrospectively criminalise genocide and crimes against humanity to allow victims of past atrocities, including First Nations victims, to seek justice.
5. Australia should seek to facilitate global accountability for mass atrocity crimes and must be prepared to implement universal jurisdiction and possibly prosecute its own citizens involved in current international mass atrocity crimes, including in relation to the unfolding genocide in Gaza.