

# **AUSTRALIA 2018 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Australia is a constitutional democracy with a freely elected federal parliamentary government. In a free and fair federal parliamentary election held in July 2016, the Liberal Party and National Party coalition won a majority in the 150-seat House of Representatives. Scott Morrison was sworn in as prime minister in August 2018 following a vote by the Liberal Party to replace Malcolm Turnbull. The next national election must be held by May 2019.

Civilian authorities maintained effective control over the security forces.

Human rights issues included allegations of serious abuses against asylum seekers in offshore detention centers in Papua New Guinea and Nauru.

The government took steps to prosecute officials accused of abuses, and ombudsmen, human rights bodies, and internal government mechanisms responded effectively to complaints.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings**

There were no reports the government or its agents committed arbitrary or unlawful killings.

#### **b. Disappearance**

There were no reports of disappearances by or on behalf of government authorities.

#### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The law prohibits such practices, and the government generally respected these provisions. There were occasional claims police and prison officials mistreated suspects in custody; mistreatment of juvenile detainees was a particular concern. In August the West Australia Police Force Commissioner, Chris Dawson, apologized for the police's longstanding mistreatment of Aboriginal and Torres

Strait Islander communities. He also announced a body camera requirement for all officers in Western Australia to address concerns of abuse.

In August Human Rights Watch reported that Waru, an indigenous prisoner with psychosocial disability, was subjected to regular solitary confinement, physical abuse, and racial slurs from prison officers.

### **Prison and Detention Center Conditions**

Prison and detention center conditions generally met international standards.

Physical Conditions: The most recent data from the Australian Institute of Criminology reported 115 prison deaths in 2013-2015. Of those deaths, 80 were from natural causes, 25 from hanging, three from external/multiple trauma, one from head injury, and three from drugs.

A February 2018 Human Rights Watch report compiled through 14 prison visits in Western Australia and Queensland concluded that more than 50 percent of observed inmates had a cognitive, mental health, or physical disability. The study found that inmates with such disabilities were more likely to be placed in solitary confinement due to their perceived “bad” behavior, often exacerbating their condition. The report also documented 32 cases of sexual violence and 41 cases of physical violence.

As of November there were approximately 802 persons in immigration detention facilities in the country and another approximately 1,238 in facilities funded by the Australian Government in Nauru. The Manus Island Regional Processing Center closed in October 2017 pursuant to a Papua New Guinea court decision. There were 671 refugees and failed asylum seekers in Papua New Guinea after the closing of the center. In total, more than 400 refugees held at Manus and Nauru detention centers have been resettled to third countries.

In June 2017 the Australian government reached a court settlement with nearly 2,000 refugees and asylum seekers on Manus Island for illegally detaining them in dangerous and hostile conditions. The government claimed that the settlement was not an admission of liability, but media and independent reports revealed individuals in offshore detention centers were often subjected to sexual and physical abuse by locals and lived in overcrowded and substandard accommodations for prolonged periods. Furthermore, detainees had inadequate

access to basic services, including water and hygiene facilities, clothing and footwear, education, and health services.

In July the Queensland coroner found that 24-year-old asylum seeker Hamid Khazaei's death was "preventable" and resulted from a series of clinical errors, compounded by failures in communication that led to significant delays in his retrieval from Manus Island. Press reports citing human rights organizations' recommendation that Australia streamline medical assessment and transfer procedures for both Papua New Guinea and Nauru based exclusively on medical advice. A 2016 report stressed that policy considerations should not outweigh the need to evacuate a detainees with urgent medical needs. In October following Nauru's cancelation of a Doctors Without Borders mental health program on Nauru, the Australian government agreed to bring some refugee families to Australia for treatment. The government has not yet decided how many families to bring.

Administration: Authorities investigated allegations of inhumane conditions and documented the results of such investigations in a publicly accessible manner. The government investigated and monitored prison and detention center conditions.

Independent Monitoring: The government permitted visits by independent human rights observers. There were no reports of intimidation by authorities. A number of domestic and international human rights groups expressed concerns about conditions at immigration detention centers (see above).

#### **d. Arbitrary Arrest or Detention**

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

#### **Role of the Police and Security Apparatus**

The armed forces, under the Ministry for Defense, are responsible for external security. The Australian Federal Police (AFP), under the Ministry for Justice, and state and territorial police forces are responsible for internal security. The AFP enforces national laws, and state and territorial police forces enforce state and territorial laws. The Department of Immigration and Border Protection and the Australian Border Force are responsible for migration and border enforcement.

Civilian authorities maintained effective control over the armed forces and police, and the government had effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year.

### **Arrest Procedures and Treatment of Detainees**

Police officers may seek an arrest warrant from a magistrate when a suspect cannot be located or fails to appear, but they also may arrest a person without a warrant if there are reasonable grounds to believe the person committed an offense. Police must inform arrested persons immediately of their legal rights and the grounds for their arrest and must bring arrested persons before a magistrate for a bail hearing at the next session of the court. Twenty-four hours is the maximum investigation period police may hold and question a person without charge, unless extended by court order for up to an additional 24 hours.

In terrorism cases, a number of federal and state or territorial laws permit police to hold individuals in preventive detention without charge or questioning for up to 14 days.

By law the Office of the Independent National Security Legislation Monitor helps ensure that counterterrorism laws strike an appropriate balance between protecting the community and protecting human rights. The AFP, the Australian Crime Commission, and intelligence agencies are subject to parliamentary oversight. The inspector general of intelligence and security is an independent statutory officer who provides oversight of the country's six intelligence agencies.

Bail generally is available to persons facing criminal charges unless authorities consider the person a flight risk or the charges carrying a penalty of 12 months' imprisonment or more. Authorities granted attorneys and families prompt access to detainees. Government-provided attorneys are available to give legal advice to detainees who cannot afford counsel.

Arbitrary Arrest: The law allows courts to extend the sentences of convicted terrorists by up to an additional three years if they determine such prisoners continue to pose a significant threat to the community. Various human rights organizations criticized the law asserting it allows the government to detain prisoners indefinitely and arbitrarily. Human rights organizations raised concerns about the National Security Legislation Amendment (Espionage and Foreign Interference) Act 2018 and the Foreign Influence Transparency Scheme Act 2018,

both passed in July, claiming the new laws, which criminalize leaking and the public release of leaked material, do not adequately define national security. The laws also do not provide for a public interest defense for nongovernmental institutions and media for exposing leaks.

In June 2017 the Victoria state government increased antiterrorism measures, giving Victoria police the power to search suspected terrorists and gun crime offenders without warrants. Based on suspicion alone, police are able to impose a firearm prohibition order and search a person, their car, and other property without showing “reasonable belief.” Orders can last up to 10 years for adults and five for youths. Those subject to such an order have the right to appeal to the Victoria Civil Administrative Tribunal.

Detainee’s Ability to Challenge Lawfulness of Detention before a Court: Persons arrested or detained, regardless of whether on criminal or other grounds, are entitled to challenge in court the legal basis or arbitrary nature of their detention and obtain prompt release and compensation if found to have been unlawfully detained.

#### **e. Denial of Fair Public Trial**

The law provides for an independent judiciary, and the government respected judicial independence and impartiality.

#### **Trial Procedures**

The law provides for the right to a fair and timely public trial, and an independent judiciary generally enforced this right. In state district and county courts, and in state and territorial supreme courts, a judge and jury try serious offenses. Defendants enjoy a presumption of innocence and cannot be compelled to testify or confess guilt. They have the right to be informed promptly and in detail of the charges, with free interpretation as necessary from the moment charged through all appeals, the right to an attorney, to be present at their trial, and adequate time and facilities to prepare a defense. Government-funded attorneys are available to low-income persons. The defendant’s attorney can question witnesses, present witnesses and evidence, and appeal the court’s decision or the sentence imposed.

#### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

## **Civil Judicial Procedures and Remedies**

There is an independent and impartial judiciary in civil matters, and individuals or organizations may seek civil judicial remedies for human rights violations. There is also an administrative process at the state and federal levels to seek redress for alleged wrongs by government departments. Administrative tribunals may review a government decision only if the decision is in a category specified under a law, regulation, or other legislative instrument as subject to a tribunal's review.

## **Property Restitution**

For the resolution of Holocaust-era restitution claims, including by foreign citizens, the government has laws and mechanisms in place. Nongovernmental organizations (NGOs) and advocacy groups reported that the government has mechanisms in place, and NGOs and advocacy groups reported that the government made significant/some progress on resolution of Holocaust-era claims, including for foreign citizens.

## **f. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

The law prohibits such actions, and there were no reports the government failed to respect these prohibitions. Police have authority to enter premises without a warrant in emergency circumstances.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Expression, Including for the Press**

Although the constitution does not explicitly provide for freedom of speech or press, the High Court has held that the constitution implies a right to freedom of expression, and the government generally respected this right. An independent press, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for the press. Journalists expressed concern that strict defamation laws have had a "chilling effect" on investigative journalism and freedom of the press.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, and there were no credible reports the government monitored private online communications without appropriate legal authority. The internet was widely available to and used by citizens.

Law enforcement agencies require a warrant to intercept telecommunications, including internet communications.

The Australian Communications and Media Authority (ACMA) maintains a list of “refused classification” website content, primarily pertaining to child pornography, sexual violence, and other activities illegal in the country, compiled through a consumer complaints process. The ACMA may issue a notice to the internet service provider to remove domestically hosted “refused classification” material, or links to such material, that is the subject of a complaint if an investigation concludes the complaint is justified. The list is available to providers of filtering software. An owner or operator of such a website can appeal an ACMA decision to the Administrative Appeals Tribunal, an executive body that reviews administrative decisions by government entities.

According to the International Telecommunication Union, approximately 87 percent of the population used the internet in 2017.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom or cultural events.

### **b. Freedoms of Peaceful Assembly and Association**

Although the freedoms of peaceful assembly and association are not codified in law, the government generally respected these rights.

### **c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

### **d. Freedom of Movement**

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

Abuse of Migrants, Refugees, and Stateless Persons: Domestic and international organizations expressed serious concern about credible allegations of abuse of migrants in the detention centers on Manus Island and Nauru. Abuses included inadequate mental health and other medical services, instances of assault, sexual abuse, suicide, self-harm, suspicious deaths, and harsh conditions. The government claimed to continue to provide necessary services to refugees.

### **Protection of Refugees**

Refoulement: The UN High Commissioner for Refugees (UNHCR) noted that immigration authorities in Australia and offshore detention centers forcibly deported refugees and asylum seekers and employed intimidation tactics so that detainees would voluntarily choose to return to their countries of origin. There were no reports of persecution or torture for returned refugees or asylum seekers, but NGOs and UNHCR considered it a possibility.

Access to Asylum: The law provides for granting asylum or refugee status. The government maintains a humanitarian refugee program that includes several types of visas available to refugees for resettlement in the country. UNHCR identifies and refers the majority of applicants considered under the program.

The law authorizes the immigration minister to designate a country as a regional offshore processing center. Parliament must be notified and then has five days to reject the proposed designation. Asylum seekers transferred to third countries for regional processing have their asylum claims assessed by the country in which the claim is processed. A 2013 agreement with Papua New Guinea ended in 2018. Agreements remained in effect with Nauru (2013) and Cambodia (2014), although the latter has been little used.

In some cases unauthorized arrivals determined not to be refugees who made it to Christmas Island, a small Australian island approximately 300 miles south of Jakarta, were sent to Sri Lanka with the cooperation of the Sri Lankan government. Authorities also occasionally forced intercepted boats carrying smuggled persons back into the territorial waters of their country of embarkation when safe to do so.

By law the government must facilitate access to legal representation for persons in immigration detention in country. Access to government-funded legal assistance is available only to those who arrived through authorized channels.



In June the immigration minister stated no refugee in Papua New Guinea or Nauru, including persons with close family ties to Australia, would be resettled in Australia. Representatives from UNHCR accused the government of breaking its promise to accept refugees with close family ties.

Durable Solutions: The government accepted refugees for resettlement from third countries and funded refugee resettlement services. The Humanitarian Settlement Services program provided case-specific assistance that included finding accommodation, employment programs, language training, registering for income support and health care, and connecting with community and recreational programs.

Temporary Protection: The law permits two temporary protection options for individuals who arrived in Australia and were not taken to regional processing centers in third countries. The temporary protection visa (TPV) is valid for three years, and visa holders are able to work, study, and reside anywhere in Australia with access to support services. Once expired, TPV holders are eligible to reapply for another TPV.

The Safe Haven Enterprise Visa (SHEV) is valid for five years and is granted on the basis that visa holders intend to work or study in nonmetropolitan areas. SHEV holders are eligible to apply for certain permanent or temporary visas after 42 months. As of October 1, the government had granted SHEVs to 11,676 persons.

### **Section 3. Freedom to Participate in the Political Process**

The constitution and law provide citizens the ability to change their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage. Voting is mandatory.

#### **Elections and Political Participation**

Recent Elections: The government held a free and fair federal parliamentary election in 2016. Voters re-elected the Liberal-National Party Coalition government. The coalition won 76 seats in the 150-seat House of Representatives; the Labor Party won 69 seats and others won five seats.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate.

Indigenous persons and other minorities generally were underrepresented relative to their share of the population. Voters elected the first indigenous woman to the House of Representatives in 2016.

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, and the government generally implemented these laws effectively.

All states have anticorruption bodies that investigate alleged government corruption, and every state and territory appoints an ombudsperson who investigates and makes recommendations in response to complaints about government decisions. The government also appoints one commonwealth (federal) ombudsperson as laws differ between states, and one process or policy cannot always be used across jurisdictions. With the exception of Tasmania, whose anticorruption watchdog has been called “toothless” and “weak,” these bodies actively collaborated with civil society, operated independently and effectively, and had adequate resources.

The Northern Territory government does not have an independent watchdog with sufficient power to investigate politicians and their staffers for corruption and misconduct. The Australian Capital Territory is the only other jurisdictions without anticorruption entities.

In July the country passed the Foreign Influence Transparency Scheme Act, which requires persons and entities who have certain arrangements with, or undertake certain activities on behalf of, foreign principals to register with the government. The legislation seeks to increase transparency of the nature and extent of foreign influence over government and political processes.

Financial Disclosure: The law requires all federal, state, and territory elected officials to report their financial interests. Failure to do so could result in a finding of contempt of parliament and a possible fine or jail sentence. Federal officeholders must report their financial interests to a register of pecuniary interests, and the report must be made public within 28 days of the individual’s assumption of office. No federal legislation prohibits foreign campaign donations, although some states and territories do have such legislation.

#### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses of Human Rights**

A variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

Government Human Rights Bodies: The Human Rights Commission (HRC), an independent organization established by parliament and adequately funded by the federal government, investigates complaints of discrimination or breaches of human rights under the federal laws that implement the country's human rights treaty obligations. The HRC reports to parliament through the attorney general. Media and nongovernmental organizations deemed its reports accurate and reported them widely. Parliament has a Joint Committee on Human Rights, and federal law requires that a statement of compatibility with international human rights obligations accompany each new bill.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

### **Women**

Rape and Domestic Violence: The law criminalizes rape, including spousal rape, and the government enforced the law effectively. The laws of individual states and territories provide the penalties for rape. Maximum penalties range from 12 years' to life imprisonment, depending on the jurisdiction and aggravating factors.

The law prohibits violence against women, including domestic abuse, and the government enforced the law. Violence against women remained a problem, particularly in indigenous communities.

Females were more likely than males to be victims of domestic violence, including homicide, across all states and territories. Federal and state government programs provide support for victims, including funding for numerous women's shelters. Police received training in responding to domestic violence. Federal, state, and territorial governments collaborated on the *National Plan to Reduce Violence against Women and their Children 2010-22*, the first effort to coordinate action at all levels of government to reduce violence against women. The *Third Action Plan 2016-19* of the *National Plan* set 36 practical actions in six priority areas.

Female Genital Mutilation/Cutting (FGM/C): Reporting on FGM/C was limited, and it was believed to be infrequent. The law prohibits FGM/C for all women and

girls, regardless of age, in all states and territories. The law applies extraterritoriality to protect citizens or residents from being subjected to FGM/C overseas. Penalties vary greatly across states and territories, ranging from seven to 21 years' imprisonment. A NGO-produced 2018 statistical report highlighted a drastic increase of likely survivors and at risk women and girls for FGM/C over a five-year period. The report noted this was primarily due to increased migration from countries previously identified as FGM/C practicing.

Sexual Harassment: The law prohibits sexual harassment. Complaints of sexual harassment can lead to criminal proceedings or disciplinary action against the defendant and compensation claims by the plaintiff. The HRC receives complaints of sexual harassment as well as sex discrimination. The penalties vary across states and territories.

An independent review of the Victoria Police Department released in 2015 found workplace sexual harassment to be an endemic problem despite more than 30 years of legislation prohibiting sex-based harassment and discrimination. The review found evidence of chronic underreporting with victims afraid of negative professional and personal consequences resulting from making a complaint.

Coercion in Population Control: There were no reports of coerced abortion or involuntary sterilization.

Discrimination: The law provides for the same legal status and rights for women as for men, including under laws related to family, religion, personal status, labor, property, nationality, and inheritance, as well as employment, credit, pay, owning or managing businesses, education, and housing. The government enforced the law effectively.

Employment discrimination against women occurred, and there was a much-publicized "gender pay gap" (see section 7.d.).

## **Children**

Birth Registration: Children are citizens if at least one parent is a citizen or permanent resident at the time of the child's birth. Children born in the country to parents who are not citizens or permanent residents acquire citizenship on their 10th birthday, if they lived the majority of their life within the country. Failure to register does not result in denial of public services. In general, births were registered promptly.

Child Abuse: State and territorial child protection agencies investigate and initiate prosecutions of persons for child neglect or abuse. All states and territories have laws or guidelines that require members of certain designated professions to report suspected child abuse or neglect. The federal government's role in the prevention of child abuse includes funding for research, carrying out education campaigns, developing action plans against commercial exploitation of children, and funding community-based parenting programs.

In December 2017 the Royal Commission into Institutional Responses to Child Sexual Abuse released its final recommendations on what institutions and governments should do to address child sexual abuse and ensure justice for victims.

The rate of indigenous children on care and protection orders was nearly seven times greater than the nonindigenous rate.

In July a court sentenced Archbishop Philip Wilson to one year in detention for failing to report to police the repeated abuse of two altar boys by pedophile priests.

Early and Forced Marriage: The legal minimum age of marriage is 18 for both boys and girls. A person from ages 16 and 18 may apply to a judge or magistrate for an order authorizing marriage to a person who has attained 18 years; the marriage of the minor also requires parental or guardian consent. Two persons younger than age 18 may not marry each other; reports of marriages involving a person younger than age 18 were rare. The government reported an increase in the number of forced marriage investigations, but the practice remained rare.

Sexual Exploitation of Children: The law provides for a maximum penalty of 25 years' imprisonment for commercial sexual exploitation of children, and the law was effectively enforced. There were documented cases of children younger than age 18 exploited in sex trafficking.

The law prohibits citizens and residents from engaging in, facilitating, or benefiting from sexual activity with children overseas who are younger than age 16 and provides for a maximum sentence of 17 years' imprisonment for violations. The government continued its awareness campaign to deter child sex tourism through distribution of pamphlets to citizens and residents traveling overseas.

The legal age for consensual sex ranges from ages 16 to 18 by state. Penalties for statutory rape vary across jurisdictions. Defenses include reasonable grounds for believing the alleged victim was older than the legal age of consent and situations in which the two persons are close in age.

All states and territories criminalize the possession, production, and distribution of child pornography. Maximum penalties for these offenses range from four to 21 years' imprisonment. Federal laws criminalize using a "carriage service" (for example, the internet) for the purpose of possessing, producing, and supplying child pornography. The maximum penalty for these offenses is 10 years' imprisonment, a fine of A\$275,000 (\$197,000), or both. Under federal law, suspected pedophiles can be tried in the country regardless of where the crime was committed.

The government largely continued federal emergency intervention measures to combat child sexual abuse in aboriginal communities in the Northern Territory. These measures included emergency bans on sales of alcohol and pornography, restrictions on the payment of welfare benefits in cash, linkage of support payments to school attendance, and medical examinations for all indigenous children younger than age 16 in the Northern Territory.

While public reaction to the interventions remained generally positive, some aboriginal activists asserted there was inadequate consultation and that the measures were racially discriminatory, since nonindigenous persons in the Northern Territory were not initially subject to such restrictions.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. See the Department of State's report on compliance at [travel.state.gov/content/travel/en/International-Parental-Child-Abduction/providers/legal-reports-and-data.html](https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/providers/legal-reports-and-data.html).

### **Anti-Semitism**

According to the 2016 census, the country's Jewish community numbered 91,000. During the 12-month period ending on September 30, 2017, the nongovernmental Executive Council of Australian Jewry reported 230 anti-Semitic incidents. These incidents included vandalism, threats, harassment, and physical and verbal assaults. In June media reported widespread anti-Semitic actions and statements at St. Mark's College in Adelaide and Charles Sturt University in Wagga Wagga, New

South Wales. A group of residents in South Kalgoorlie, Western Australia, flew a homemade Nazi flag and cut a swastika inside a map of Australia into one home's lawn during Australia Day celebrations. Stickers belonging to an Australian neo-Nazi organization were put up around Canberra in April. In August Senator Anning Fraser in his first speech to the Senate referred to a "final solution to our immigration problem," which was widely criticized as anti-Semitic.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **Persons with Disabilities**

The law prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities. The government effectively enforced the law.

The disability discrimination commissioner of the HRC promotes compliance with federal and state laws that prohibit discrimination against persons with disabilities. The law also provides for HRC mediation of discrimination complaints, authorizes fines against violators, and awards damages to victims of discrimination.

Schools are required to comply with the Disability Discrimination Act, and children with disabilities generally attended school. The government provided funding for early intervention and treatment services and cooperated with state and territorial governments that ran programs to assist students with disabilities.

According to the Australian Bureau of Statistics, only 53 percent of Australians with a disability are employed, compared with 83 percent of all working-age people.

### **National/Racial/Ethnic Minorities**

Of complaints received by the HRC under the Racial Discrimination Act during 2016-17, 34 percent alleged "racial hatred," 26 percent involved employment, and 20 percent involved provision of goods and services. Of the remaining 20 percent, 2 percent involved education, 1 percent involved housing, 1 percent involved "access to places," and 16 percent were listed as "other."

### **Indigenous People**

Aboriginals and Torres Strait Islanders constitute the country's indigenous population. Despite federal and state government initiatives, indigenous people and communities continued to have high incarceration rates, high unemployment rates, relatively low levels of education, and high incidences of domestic and family violence, substance abuse, and limited access to health services in comparison with other groups. The Ministry for Indigenous Affairs has responsibility for policy and programs related to indigenous peoples and communities. The prime minister reports annually to parliament regarding government progress on eliminating indigenous inequalities.

Indigenous groups hold special collective native title rights in limited areas of the country and federal and state laws enable indigenous groups to claim unused government land. Indigenous ownership of land was predominantly in nonurban areas. Indigenous-owned or -controlled land constituted approximately 20 percent of the country's area (excluding native title lands) and nearly 50 percent of the land in the Northern Territory. The National Native Title Tribunal resolves conflicts over native land title applications through mediation and acts as an arbitrator in cases where the parties cannot reach agreement about proposed mining or other development of land. Native title rights do not extend to mineral or petroleum resources and, in cases where leaseholder rights and native title rights are in conflict, leaseholder rights prevail but do not extinguish native title rights.

As part of the intervention to address child sexual abuse in Northern Territory indigenous communities (see section 6, Children), the Indigenous Advancement Strategy allowed the government to administer directly indigenous communities. The strategy and a number of other programs provide funding for indigenous communities.

According to the Australia Bureau of Statistics (ABS), while indigenous people make up less than 3 percent of the total population, they constituted 27 percent of the full-time adult prison population. Nearly half of the imprisoned indigenous persons were serving sentences for violent offenses. Indigenous youth made up 64 percent of Queensland's juvenile detainees, despite accounting for just 8 percent of the state's population between the ages 10 and 17. An Australian Law Reform Commission study released in March found that the Australian justice system contributed to entrenching inequalities by not providing enough sentencing options /or diversion programs for indigenous offenders.



The ABS reported in 2016 that indigenous individuals experienced disproportionately high levels of domestic violence, with hospitalization for family-related assault 28 times more likely for indigenous men and 34 times more likely for indigenous women than the rest of the country's population.

The HRC has an Aboriginal and Torres Strait Islander social justice commissioner.

According to a December 2017 Office of the UN High Commissioner for Human Rights report, although the government adopted numerous policies to address the socioeconomic disadvantages of indigenous peoples, it still failed to respect their rights to self-determination and full and effective participation in society.

### **Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity**

There are no laws criminalizing consensual same-sex sexual conduct between adults. Discrimination based on sexual orientation and gender identity is prohibited by law in a wide range of areas, including employment, housing, family law, taxes, child support, immigration, pensions, care of elderly persons, and social security.

The law provides protections against discrimination based on sexual orientation, gender identity, and sex characteristics.

During 2016-17, the HRC received 40 complaints of discrimination based on sexual orientation, 39 based on gender identity, and seven based on sex characteristics.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law provides for the right of workers to form and join unions and associate freely domestically and internationally, to bargain collectively and to conduct legal strikes. The law prohibits antiunion discrimination and provides for reinstatement of workers fired for union activity.

The law requires that employers act in "good faith" when a majority of employees want a collective agreement, although it places some restrictions on the scope of collective bargaining. Prohibited terms include requiring payment of a bargaining

services fee, enabling an employee or employer to “opt out” of coverage of the agreement, and anything that breaches the law. Furthermore, the law prohibits multienterprise agreements or “pattern bargaining,” although low-paid workers can apply for a “low-paid bargaining stream” to conduct multienterprise bargaining.

When deciding whether to grant a low-paid authorization, the Fair Work Commission (FWC) looks at factors including the current terms and conditions of employment, the bargaining strength of employees, and whether employers and employees are bargaining for the first time. A bargaining agent may represent either side in the process. The law designates collective agreements as being between employers and employees directly; trade unions are the default representatives of their members but, with some exceptions, are not official parties to collective agreements.

The law restricts strikes to the period when unions are negotiating a new enterprise agreement and specifies that strikes must concern matters under negotiation, known as “protected action.” Protected action provides employers, employees, and unions with legal immunity from claims of losses incurred by industrial action. Industrial action must be authorized by a secret ballot of employees; unions continued to raise concerns this requirement was unduly time consuming and expensive to implement. The law subjects strikers to penalties for taking industrial action during the life of an agreement and prohibits sympathy strikes. The law permits the government to stop strikes judged to have caused “significant economic harm” to the employer or third parties. Some provinces have further restrictions. For example, in New South Wales the state government may cancel a union’s registration if the government makes a proclamation or calls a state of emergency concerning an essential service and the “industrial organization whose members are engaged in providing the essential service has, by its executive, members, or otherwise, engaged in activities which are contrary to the public interest.”

The government effectively enforced applicable laws. Penalties for violations of freedom of association and collective bargaining protections for individuals and for corporations were generally sufficient to deter violations. The FWC is the national independent industrial relations management institution. Its functions include facilitating dispute resolution; if dispute resolution is unsuccessful, the parties may elect the FWC to arbitrate the dispute, or the applicant may pursue a ruling by a federal court.

Unions reported concerns that the scope of collective bargaining had been narrowed in recent years, including through decisions by the FWC, which also affected the right to strike.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor, including by migrant workers.

The government effectively enforced applicable labor laws and convicted four defendants in one case involving forced labor. Most forced labor cases were addressed through civil law.

Some foreign nationals who came to the country for temporary work were subjected to forced labor in sectors such as agriculture, cleaning, construction, hospitality, and domestic service. There were reports that some domestic workers employed by foreign diplomats in Australia faced conditions indicative of forced labor.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

There is no federally mandated minimum age of employment. State minimums vary from no minimum age to age 15. With the exception of Victoria, all states and territories have established 18 years as the minimum age for hazardous work.

There are laws and regulations pertaining to hazardous work across sectors. For example, under the law in Western Australia, an underground worker may not be younger than age 18 unless he or she is an apprentice or a cadet working underground to gain required experience; a person handling, charging, or firing explosives may not be younger than age 18; and a person may not be younger than age 21 to obtain a winding engine driver's certificate.

Federal, state, and territorial governments effectively monitored and enforced the laws. Penalties for violations of related laws included fines and were sufficient to deter violations.

The Office of the Fair Work Ombudsman (FWO) actively sought to educate young workers about their rights and responsibilities. Compulsory educational requirements effectively prevented most children from joining the workforce full time until they were age 17. Although some violations of these laws occurred, there was no indication of a child labor problem in any specific sector. There were some reports of commercial sexual exploitation of children (see section 6, Children).

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/reports/child-labor/findings/](http://www.dol.gov/ilab/reports/child-labor/findings/) for information on the Australian territories of Christmas Island, Cocos (Keeling) Island, and Norfolk Island.

#### **d. Discrimination with Respect to Employment and Occupation**

Federal, state, and territory laws provide for protections against employment discrimination. The HRC reviews complaints of discrimination on the ground of HIV/AIDS status under the category of disability-related complaints.

The law requires organizations with 100 or more employees to establish a workplace program to remove barriers to women entering and advancing in their organization. The law requires equal pay for equal work. The government continued efforts to encourage persons under the Disability Support Pension (DSP) program to enter the workforce when they have the capacity to do so, including by requiring compulsory workforce activities for DSP recipients younger than age 35 who can work for more than eight hours per week.

The government enforced laws prohibiting employment discrimination; however, employment discrimination against women, indigenous persons, and persons with disabilities occurred. According to the government's Workplace Gender Equality Agency, the full-time gender pay gap was 15.3 percent. The International Labor Organization noted its concern that, despite several government initiatives, indigenous peoples continued to be disadvantaged and that employment targets were not met.

Persons with disabilities also faced employment discrimination. In 2016-17, the latest year for which such data were available, approximately 33 percent of the complaints about disability discrimination received by the HRC were in the area of employment and 34 percent in the area of goods, services and facilities.

#### **e. Acceptable Conditions of Work**

Effective July 1, the FWC increased the national minimum wage for adults working full time (38 hours per week) to A\$719.20 (\$517), based on a minimum hourly rate of A\$18.93 (\$13.60). There was no official estimate of the poverty income level.

By law maximum weekly hours are 38 plus “reasonable” additional hours which, by law, must take into account factors such as an employee’s health, family responsibilities, ability to claim overtime, pattern of hours in the industry, and amount of notice given. An employee may refuse to work overtime if the request is “unreasonable.”

Federal or state occupational health and safety laws apply to every workplace, including in the informal economy. By law both employers and workers are responsible for identifying health and safety hazards in the workplace. Workers can remove themselves from situations that endangered health or safety without jeopardy to their employment, and authorities effectively protected employees in this situation. The law includes an antibullying provision. The law also enables workers who are pregnant to transfer to a safe job regardless of their time in employment.

The government effectively enforced laws related to minimum wage, hours of work, and occupational safety and health. The FWO provides employers and employees advice on their rights and has authority to investigate employers alleged to have exploited employees unlawfully. The ombudsperson also has authority to prosecute employers who do not meet their obligations to workers. FWO inspectors may enter work sites if they reasonably believe it is necessary to ensure compliance with the law. The number of FWO inspectors was sufficient to enforce compliance. Inspectors can order employers to compensate employees and sometimes assess fines. Penalties were generally sufficient to deter violations, but there were some reports violations continued in sectors employing primarily migrant workers.

Workers exercised their right to a safe workplace and had recourse to state health and safety commissions, which investigate complaints and order remedial action. Each state and territory effectively enforced its occupational health and safety laws through dedicated bodies that have powers to obtain and initiate prosecutions, and unions used right-of-entry permits to investigate concerns. In New South Wales, for example, an individual can be sentenced a maximum of five years’ imprisonment, receive a maximum fine of A\$300,000 (\$215,500), or both, and a

business can be fined up to A\$3 million (\$2.15 million) for exposing an individual to serious injury or illness.

Most workers received higher compensation than the minimum wage through enterprise agreements or individual contracts. Temporary workers include both part-time and casual employees. Part-time employees have set hours and the same entitlements as full-time employees. Casual employees are employed on a daily or hourly wage basis. They do not receive paid annual or sick leave, but the law mandates they receive additional pay to compensate for this, which employers generally respected. Migrant worker visas require that employers respect employer contributions to retirement funds and provide bonds to cover health insurance, worker's compensation insurance, unemployment insurance, and other benefits.

There continued to be reports of employers exploiting immigrant and foreign workers (also see section 7.b.). As part of the FWO's Harvest Trail inquiry into the exploitation of overseas workers in the agricultural sector, the FWO continued to operate a system for migrant workers to report workplace issues anonymously in 16 languages.

There were reports some individuals under "457" employer-sponsored, skilled-worker visas received less pay than the market rate and were used as less expensive substitutes for citizen workers. The government improved monitoring of "457" sponsors and information sharing among government agencies, particularly the Australian Tax Office. Employers must undertake "labor market testing" before attempting to sponsor "457" visas. A 417 "Working Holiday" visa-holder inquiry recently found the requirement to do 88 days of specified, rural paid work in order to qualify for a second-year visa enabled some employers to exploit overseas workers.

Safe Work Australia, the government agency responsible to develop and coordinate national workplace health and safety policy, cited a preliminary estimate that 115 workers died while working during the year. Of these fatalities, 37 were in the transport, postal, and warehousing sectors; 32 in the agriculture, forestry, and fishing sectors; and 20 in construction.