

AUSTRALIA 2019 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 in May, the Liberal Party and National Party coalition was re-elected with a majority of 77 seats in the 151-seat House of Representatives. The House subsequently reconfirmed Scott Morrison as prime minister.

The Australian Federal Police (AFP), an independent agency of the Department of Home Affairs, 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 Home Affairs and the Australian Border Force are responsible for migration and border enforcement. Civilian authorities maintained effective control over the security forces.

There were no reports of significant human rights abuses.

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 (see below).

Prison and Detention Center Conditions

There were no significant reports regarding prison or detention center conditions that raised human rights concerns.

Physical Conditions: The most recent data from the Australian Institute of Criminology reported 74 prison deaths in 2016-17. There were no reports attributing any of these deaths to official neglect or prison authorities' actions.

The Australian Broadcasting Corporation (ABC) reported in May that Queensland police were holding children as young as 10 years old in maximum-security solitary confinement "watch houses" intended for adults. The report highlighted the case of a 17-year-old indigenous boy with a neurodevelopmental disability, who had been left completely naked in one of these cells for three days. He was transferred to a cell with other children but left naked for another four days.

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 allegations of sexual violence or abuse and 41 allegations of physical violence by other inmates or prison staff against inmates with disabilities.

As of March 26, there were approximately 360 persons in facilities funded by the Australian Government in Nauru; 547 refugees or asylum seekers from the former Manus Island Regional Processing Center remained in Papua New Guinea following the center's closure in October 2017.

In 2017 the government reached an Australian dollar (A\$) 70-million (\$47.1 million) court settlement with nearly 2,000 refugees and asylum seekers on Manus Island for illegally detaining them in dangerous and hostile conditions. According to media reports, compensation payments were completed by mid-2018. Individuals received between a few thousand Australian dollars and almost A\$100,000 (\$67,300) each.

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.

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. The maximum investigation period police may hold and question a person without charge is 24 hours, 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 national intelligence agencies.

Bail generally is available to persons facing criminal charges unless authorities consider the person a flight risk or the charges carry a penalty of 12 months' imprisonment or more. Authorities granted attorneys and families prompt access

to detainees. Government-provided attorneys are available to provide legal advice to and represent 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 this law as allowing the government to detain prisoners indefinitely and arbitrarily.

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

The government has laws and mechanisms in place for the resolution of Holocaust-era restitution claims, including by foreign citizens. The country is a signatory of the Terezin Declaration of 2009. Nongovernmental organizations were not aware of any recent restitution cases.

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 limited right to freedom of political 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.

Libel/Slander Laws: Journalists expressed concern that strict defamation laws have had a “chilling effect” on investigative journalism and freedom of the press. In February businessman and political donor Chau Chak Wing won a defamation case against a media organization that linked him to a bribery case implicating a former president of the UN General Assembly. A member of parliament, Andrew Hastie, criticized the verdict, saying, “Generally speaking, we are concerned about the impact that defamation laws in Australia are having on responsible journalism that informs Australians about important national security issues.”

National Security: In June the AFP raided ABC’s headquarters and the home of a News Corp journalist as part of an investigation into the alleged publishing of classified national security information. The media union denounced the raids as an attempt to “intimidate” journalists; an Essential Poll found that three-quarters of citizens were concerned about press freedom in the aftermath of the raids. The country’s three largest media organizations--ABC, News Corp, and Nine Entertainment--jointly called for more legal protections for journalists and

whistleblowers. In July the parliamentary Joint Committee on Intelligence and Security opened an inquiry into the impact of law enforcement and intelligence powers on the freedom of the press. Media companies challenged the constitutionality of the AFP's warrants in court.

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.

In April parliament passed the Sharing of Abhorrent Violent Material Act in response to the livestreaming via Facebook of the shootings at mosques in Christchurch, New Zealand, by an Australian citizen. It introduced new offenses for social media sites and online content-hosting services that allow videos of offensively violent conduct to be viewed in the country. This law defined such conduct as videos depicting terrorist acts, murders, attempted murders, torture, rape, or kidnapping. Services that fail to rapidly remove material from their website are subject to large fines (including up to A\$10.5 million (\$7.1 million) or 10 percent of annual revenue for corporations) and the imprisonment of their employees. In September the government ordered five websites, all based outside the country, to remove "abhorrent violent material" or face prosecution. The material on at least one website included a video of the beheading of a Scandinavian tourist in Morocco.

Two special representatives of the UN Human Rights Council, David Kaye and Fionnuala Ni Aolain, publicly opposed the law and questioned its consistency with human rights standards and freedom of expression. These concerns were echoed by media companies in the country, which warned the law could lead to the censorship of legitimate speech. Facebook, Google, and Amazon also opposed the laws, warning it would require "proactive" surveillance of users worldwide.

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 <https://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.

e. Internally Displaced Persons

Not applicable.

f. Protection of Refugees

Abuse of Migrants, Refugees, and Stateless Persons: Domestic and international organizations expressed serious concern about credible allegations of abuse of migrants in the detention center on Nauru and from the former detention center at Manus Island in Papua New Guinea. 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.

In March parliament passed medevac legislation giving medical experts the authority to authorize refugees and asylum seekers from the former Manus Island detention center or Nauru to travel to Australia to receive medical treatment. According to media reports, 179 persons had transferred to the country for health reasons under this legislation as of December.

In December parliament repealed the medevac legislation, a step human rights advocates denounced. The repeal of the law restores the full discretion of federal ministers to accept or reject medical transfers to the country. The UN High Commissioner for Refugees (UNHCR) released a statement saying that it was

“disappointed by the repeal” and expressing concern that it “may negatively impact vital care for asylum seekers in offshore processing facilities.”

Refoulement: UNHCR noted that immigration authorities in the country and offshore detention centers forcibly deported refugees and asylum seekers. The government refused to allow these families to be reunited in the country. UNHCR is aware of several cases where family members are held on offshore processing facilities, while spouses undergoing medical treatment reside in the country.

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. Agreements were in effect with Nauru (2013) and Cambodia (2014), although the latter has been little used.

In May authorities intercepted a boat with 20 Sri Lankans trying to reach the country to claim asylum. The Sri Lankans were taken to Christmas Island, a small Australian island approximately 300 miles south of Jakarta. They were held there for a few days while their asylum claims were adjudicated. After the claims were denied, the 20 were flown back to Sri Lanka with the cooperation of the Sri Lankan government. The incident was the first use of Christmas Island for detention of asylum seekers in five years. 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 the country. Access to government-funded legal assistance is available only to those who arrived through authorized channels.

In June 2018 the immigration minister stated no refugee in Papua New Guinea or Nauru, including persons with close family ties, would be resettled in the country. The government sought to enforce this policy, although UNHCR representatives accused the government of breaking a previous promise to accept refugees with close family ties. Moreover, the long-term status of persons evacuated to the

country for medical treatment pursuant to the March parliamentary action remained uncertain as of November.

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 the country 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 the country 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.

g. Internally Displaced Persons

Not applicable.

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 May. Voters re-elected the Liberal-National Party Coalition government. The coalition won 77 seats in the 151-seat House of Representatives; the opposition Labor Party won 68 seats and others won six 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 in elective office relative to their share of the population. Voters elected the first indigenous woman to the House of Representatives in 2016 and the first Chinese-Australian woman to the House of Representatives in the May elections. The country's first indigenous cabinet minister, Ken Wyatt, was appointed in May.

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.

Corruption: All states have anticorruption bodies that investigate alleged government corruption, and every state and territory appoints an ombudsman who investigates and makes recommendations in response to complaints about government decisions. The government also appoints one commonwealth (federal) ombudsman as laws differ between states, and one process or policy cannot always be used across jurisdictions.

The Australian Capital Territory established its anticorruption commission in July.

The law requires persons and entities who have certain arrangements with, or undertake certain activities on behalf of foreign principals to register with the government.

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. The law prohibits foreign campaign contributions.

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, 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. The laws of individual states and territories provide the penalties for domestic violence. In the largest jurisdiction, New South Wales, domestic violence offenses cover acts of personal violence (such as stalking, intimidation, or strangulation) committed against a person with whom the offender has (or had) a domestic relationship. For domestic violence offenses, courts must impose a full-time prison sentence unless a valid exception applies. In the case of strangulation, an offense associated with domestic violence, the maximum penalty is five years' imprisonment.

Violence against women remained a problem, particularly in indigenous communities. Indigenous women were 32 times as likely to be hospitalized due to family violence as non-Indigenous women, according to a 2018 report.

Women were more likely than men to be victims of domestic violence, including homicide, across all states and territories. According to a 2016 survey, women were nearly three times more likely to have experienced partner violence than men, with approximately one in six women (17 percent) and one in 16 men (6 percent) having experienced partner violence since the age of 15. According to the Australian Bureau of Statistics, the proportion of women who experienced partner violence in the last decade remained relatively stable. 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.

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.

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 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. Since the recommendations were released, the Royal Commission website reports there have been 42,000 calls handled, 8,000 sessions held, and 2,500 referrals to authorities, including police. The government also responded by creating the National Office for Child Safety in the Department of Social Services in July 2018.

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

In September, Roman Catholic Cardinal George Pell lodged an application with the country's highest court to appeal his child sex abuse convictions. In August the Court of Appeal of the Supreme Court of Victoria upheld Pell's December 2018 conviction on five counts of child sexual abuse of two boys in the 1990s. Pell was sentenced to six years' imprisonment and required to register as a sex offender. The Court of Appeal also refused Pell's release from prison during his appeal.

Early and Forced Marriage: The legal minimum age of marriage is 18 for both boys and girls. Persons age 16 to 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 a maximum penalty of 25 years' imprisonment for commercial sexual exploitation of children and was effectively enforced.

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 (\$186,000), 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, following findings of high levels of child sexual abuse and neglect in a 2007 inquiry. 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 <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

Anti-Semitism

According to the 2016 census, the country's Jewish community numbered 91,000. During the year ending on September 30, 2018, the nongovernmental Executive Council of Australian Jewry reported 366 anti-Semitic incidents, an increase of 59 percent over the previous 12-month period. These incidents included vandalism, threats, harassment, and physical and verbal assaults. One neo-Nazi group, Antipodean Resistance, was responsible for 36 percent of reported anti-Semitic incidents.

During the May election campaign, several candidates' posters were defaced with swastikas and "Hitler" moustaches, including the posters of several Jewish parliamentarians. An anonymous letter was distributed in the electorate of one independent Jewish parliamentarian, opposing her candidacy and claiming Jews were spreading disease.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

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.

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 government sources, approximately half of Australians with a disability are employed, compared with 83 percent of all working-age persons.

National/Racial/Ethnic Minorities

Of total complaints (2,046) received by the HRC in 2017-18, 14 percent related to racial discrimination. The plurality of racial discrimination complaints related to employment (29 percent), with the second largest category being discrimination in the provision of goods and services (28.5 percent). Fewer than 1 percent of racial discrimination complaints related to access to places and facilities.

Indigenous People

Aboriginals and Torres Strait Islanders constitute the country's indigenous population. Despite federal and state government initiatives, indigenous peoples

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 National Indigenous Australians Agency 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 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 national government administered indigenous communities directly. The strategy and a number of other programs provide funding for indigenous communities.

According to the Australia Bureau of Statistics, while indigenous peoples 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. Figures from parliament note that indigenous youth were significantly overrepresented in the criminal justice system. The data indicates that 68 percent of detained juveniles were from an indigenous background. It was more likely that an indigenous juvenile would be incarcerated than at any other point since 1991, when the Royal Commission into Aboriginal Deaths in Custody report was released. An Australian Law Reform Commission study released in March 2018 found that the justice system contributed to entrenching inequalities by not providing enough sentencing options or diversion programs for indigenous offenders.

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

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

No laws criminalize 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.

In 2017-18, the HRC received 87 complaints of discrimination based on sexual orientation and 30 based on gender identity.

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 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 jurisdictions 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. Penalties were sufficient to deter violations. As of January 1, companies of a certain size must file annual statements identifying risks for modern slavery in their supply chains and efforts to address those risks. The first statements are due by mid-2020.

The government effectively enforced applicable labor laws and convicted four defendants in one case involving forced labor. In one case, in April a court convicted a couple of bringing a Fijian woman to the country, withholding her

passport, and forcing her to work as a maid in their Brisbane home between 2008 and 2016. 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 some domestic workers employed by foreign diplomats faced conditions indicative of forced labor.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/trafficking-in-persons-report/.

c. Prohibition of Child Labor and Minimum Age for Employment

Not all of the worst forms of child labor are prohibited. As noted by the International Labor Organization, the use, procuring or offering of a child age 16 and 17 for the production of pornography or pornographic performances is not prohibited in New South Wales. In Queensland it remains unclear whether children ages 16 and 17 can be used, procured, or offered for the production of pornography or pornographic performances. There is no law prohibiting the use, procuring, or offering of a child younger than age 18 for illicit activities, in particular for the production and trafficking of drugs, in the Northern Territory.

There is no federally mandated minimum age of employment. State minimums vary from no minimum age to age 15. With the exception of the states of Victoria and Queensland, and the Norfolk Island territory, 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 <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings> for information on the 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 2017-18, the latest year for which such data were available, approximately 30 percent of the complaints about disability discrimination received by the HRC were in the area of employment and 36 percent in the area of goods, services, and facilities.

e. Acceptable Conditions of Work

For a single adult living alone, the minimum wage exceeded the poverty line defined as 50 percent of median income.

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.

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 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, in the year to October, 121 workers died while working. Of these fatalities, 41 were in the transport, postal, and warehousing sectors; 28 in the agriculture, forestry, and fishing sectors; and 17 in construction.