

AUSTRALIA 2017 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 and formed a government with Malcolm Turnbull as prime minister.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included: abusive treatment of minors in detention centers; and allegations of serious abuses against asylum seekers in off-shore detention centers.

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 May a royal commission released an interim report on excessive abuse and unlawful treatment of youth detainees at Alice Springs Youth Detention Center and Aranda House Youth Detention Center in the Northern Territory. The UN Special Rapporteur on Torture, the Human Rights Commission (HRC), and others launched formal complaints against these detention centers. Media revealed in July 2016 that from 2010 until 2015, some juveniles at the Don Dale Detention Center in the Northern Territory were teargassed, physically assaulted, stripped naked, shackled, and hooded. In response, Prime Minister Turnbull announced a joint royal commission into juvenile detention in the Northern Territory, prompting calls for the commission to look into alleged abuses in other states as well.

Also in May a Victoria state Supreme Court judge ruled that the detention of minors in the Barwon maximum security prison for adults since late 2016, albeit in a separate unit, was unlawful. The court also found that prison guards violated the rights of the juveniles who were transferred to Barwon. The youths were reportedly handcuffed when released from their cells for exercise, continuously placed in isolation, and frequently restrained. A total of 28 youths were transferred to Barwon; at the time of the ruling 15 youths were incarcerated in the prison.

In September 2016 media reported abuse in the Cleveland Youth Detention Center in northern Queensland. Queensland Attorney-General Yvette D'Ath subsequently launched an inquiry into other possible cases of abuse in Queensland prisons and detention centers.

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 53 prison deaths in 2012-13. Of the 53 deaths, 32 were from natural causes, nine from hanging, five from external/multiple trauma, one from head injury, one from drugs, and one from other/multiple causes. The report excluded four cases due to missing data.

In June 2016 the Queensland Corrective Services minister indicated the increase in prisoner-on-prisoner assaults was “partly due to overcrowding in the state’s prison system.” A November 2016 New South Wales (NSW) Auditor-General’s report found the state’s prisons were operating at 122 percent of capacity.

In April the Department of Corrective Services in Western Australia reported overcrowding in Greenough Regional Prison with detainees forced to sleep on mattresses on cell floors. The Inspector of Custodial Services indicated that the prison was running at 140 percent of its capacity, holding 323 inmates in a prison designed to hold only 232.

As of October there were approximately 1,400 persons in immigration detention facilities in the country and another approximately 2,000 in facilities funded by the Australian Government in Papua New Guinea (Manus Island) and Nauru. The Manus Island Regional Processing Center closed down October 31 pursuant to a Papua New Guinea court decision contesting its legality.

In June 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 those in offshore detention centers were often subjected to sexual and physical abuse by locals and were living 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 October a Sri Lankan asylum seeker committed suicide while receiving treatment for mental illness at Lorengau General Hospital on Manus Island. He was the ninth asylum seeker and sixth on Manus Island to die by unnatural means while in the offshore detention system.

Administration: Authorities investigated allegations of inhuman 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 minister for defense, are responsible for external security. The Australian Federal Police (AFP)--under the minister 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 the law permits police to hold individuals in preventive detention without charge or questioning for up to 48 hours under federal law and up to 14 days under state and territory laws if a senior police official finds it is “reasonably necessary to prevent a terrorist act or preserve evidence of such an act.”

If an individual is determined to be a terrorism suspect, police may detain the person for up to seven continuous days and can question the suspect for a maximum period of 24 hours, or 48 hours if an interpreter is needed. A separate provision of law permits the attorney general to grant the Australian Security Intelligence Organization (ASIO) authority to detain a person for a continuous period of up to 168 hours (seven days) in special circumstances, such as where there are “reasonable grounds for believing that issuing the warrant to be requested

will substantially assist the collection of intelligence that is important in relation to a terrorism offense.” The ASIO, however, reportedly has not used this authority.

By law the Independent National Security Legislation Monitor helps provide 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. Arrested persons enjoy additional legal protections, such as the ability to challenge the lawfulness of their detention and to apply for compensation if unlawfully detained.

Arbitrary Arrest: In December 2016 the government passed legislation allowing courts to hold convicted terrorists up to an additional three years if the courts find that prisoners still pose significant threats to the community. Various human rights organizations criticized the law saying it allows the government to detain prisoners indefinitely and arbitrarily.

In June 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 issued with 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.

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 taken comprehensive steps to implement these programs.

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 speech and 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) maintained 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.

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/.

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: In April Senate Standing Committees released findings from a seven-month inquiry into allegations of serious abuse in the detention centers on Manus Island and Nauru. The inquiry documented evidence that asylum seekers were exposed to physical violence, sexual assault, medical neglect leading to death, and collected “indisputable” evidence of corresponding widespread mental health problems that led to self-harm. Members of parliament on the committee dismissed the report as “politically motivated.”

Protection of Refugees

Refoulement: In February the UN High Commissioner for Refugees (UNHCR) reported 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 believe it to be a possibility.

Access to Asylum: The law provides for granting of 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. Per this law, in 2013 the government entered into Regional Resettlement Arrangements with Papua New Guinea and Nauru to send all unauthorized maritime arrivals to those countries for assessment and resettlement of those found to be refugees.

Processing of asylum seekers in Papua New Guinea and Nauru has applied to unauthorized maritime arrivals seeking asylum since July 19, 2013. In some cases, unauthorized arrivals determined not to be refugees that 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.

In addition to the asylum seekers being processed out of country, as of December 2016, 29,590 asylum seekers were living in country while authorities processed their cases.

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

In July Immigration Minister Peter Dutton stated that 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 Australian Government of breaking its promise to accept refugees with close family ties.

In April 2016 the supreme court of Papua New Guinea ruled that the Manus Island regional processing center was illegal and unconstitutional. In May 2017 immigration officials began notifying asylum seekers that parts of the center will begin closing down. Also in May the Australian Immigration Minister stated that the center would be shut down entirely by the end of October and the remaining asylum seekers moved to transit centers in Lorengau or transferred to Nauru. In August hundreds of asylum seekers protested their planned eviction from the regional processing center. There were no plans to shut down the center in Nauru. A number of asylum seekers were granted refugee status by the governments of Papua New Guinea and Nauru.

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 issuance of three-year temporary protection visas (TPV) for asylum seekers who arrived between August 13, 2012 and December 31, 2013 and introduced a “fast-track” assessment process for those who arrived during this period. It also establishes a Safe Haven Enterprise Visa (SHEV) that enables TPV holders to apply for five-year visas to work in non-metropolitan areas. After holding a SHEV for three and a half years, an applicant is eligible to apply for other onshore visas, such as a permanent skilled visa.

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 and Malcolm Turnbull remained prime minister. The coalition won 76 seats in the 150-seat House of Representatives, the Labor Party 69, and others five.

Participation of Women and Minorities: No laws limit participation or women and/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 except Tasmania have anticorruption bodies that investigate alleged government corruption, and every jurisdiction has an ombudsperson who investigates and makes recommendations in response to complaints about government decisions. 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 and Tasmania are the only other jurisdictions without anticorruption entities.

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 made public within 28 days of the individual's assumption of office.

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 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. The 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.

In addition to the HRC at the federal level, each state and territory has a human rights ombudsperson.

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. A 2015 policy initiative to address domestic violence included A\$100 million (\$75 million) for federal and state government programs to 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. In October 2016 the Third Action Plan 2016-2019 of the National Plan set 36 practical actions in six priority areas.

Female Genital Mutilation/Cutting (FGM/C): FGM/C occurred infrequently. The practice is a criminal act in all states and territories of the country, and these laws apply extraterritoriality to protect citizens or residents from being subjected to FGM/C overseas. Penalties vary greatly across states and territories, ranging from imprisonment from seven to 21 years.

During the year the Australian Pediatric Surveillance unit at Westmead Children's Hospital in Sydney reported that pediatricians and health officials saw nearly 60 girls with FGM/C since 2010, many having undergone the most severe form of FGM/C.

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 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, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: The law provided 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 and/or managing businesses, education, and housing. 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.

During the year 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. As of October 25, the Royal Commission has not submitted its final report to the Governor-General.

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

In 2016 the United Nations investigated dozens of incidents at schools in which children with disabilities were allegedly assaulted, locked in dark rooms, and restrained. Despite education department rules that allow such measures to be used only as a “last resort,” reports show that teachers regularly grabbed schoolchildren by their wrists, held their arms behind their backs, forcibly pinned them to ground, and locked them in small, dark rooms.

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

The law prohibits citizens and residents from engaging in, facilitating, or benefiting from sexual activity with children overseas who are younger than 16 years 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 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 (\$206,000), 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 16 in the Northern Territory.

While public reaction to the interventions remained generally positive, some aboriginal activists asserted there was inadequate consultation and 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. For information see the Department of State's report on compliance at travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

According to the 2011 census, the country's Jewish community numbered 97,300 persons. During the 12-month period ending on September 30, 2016, the nongovernmental Executive Council of Australian Jewry reported 210 anti-Semitic incidents logged by the council, Jewish community umbrella groups in each state, and the Australian Capital Territory, and community security groups. These incidents included vandalism, threats, harassment, and physical and verbal assaults. In May unknown persons spray-painted swastikas on a playground near a synagogue in Canberra and were reported to local police. Canberra City Services removed the graffiti in August.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at 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.

In May 2016 two deaf Australians in NSW could not perform their jury duties because the NSW Sheriff's Office denied them access to sign language interpreters and real-time steno-captioning services, citing cost burdens and jury confidentiality as reasons.

National/Racial/Ethnic Minorities

Of complaints received by the HRC under the Racial Discrimination Act during 2015-16, 21 percent involved employment, 18 percent involved provision of goods and services, and 15 percent alleged "racial hatred." Of the remaining 46 percent, two percent involved education, two percent involved housing, one percent involved "access to places," and 41 percent was listed as "other."

In August 2016 a Sydney resident was the victim of a racist attack near Macquarie University in which the aggressor demanded she take off her niqab and called her a terrorist. The NSW court fined the aggressor A\$750 (\$596) and ordered supervision by Community Corrections.

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 on the government's 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 three percent of the total population, they constitute 27 percent of the full-time adult prison population. Nearly half of the imprisoned indigenous persons were serving sentences for violent offenses. Indigenous youth make up 64 percent of Queensland's juvenile detainees, despite accounting for just eight percent of the state's population aged between 10 and 17.

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 May Office of the United Nations High Commissioner for Human Rights report, although the government adopted numerous policies to address the socio-economic disadvantage of indigenous peoples, it still fails 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 in 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 intersex status.

The HRC received 54 complaints of discrimination based on sexual orientation, 29 on gender identity, and two on intersex during 2015-16.

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 multi-enterprise agreements or “pattern bargaining,” although low-paid workers can apply for a “low-paid bargaining stream” to conduct multi-enterprise 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 secondary action (e.g., a sympathy strike). The law permits the government to stop strikes judged to have “significant economic harm” to the employer or third parties. Some provinces have further restrictions. For example, in NSW 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, including federal, state, and territorial laws, regulations, and statutory instruments. 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 there is a dispute, the FWC convenes a conference between parties to facilitate a resolution. If the conference is unsuccessful, the parties may elect the FWC to arbitrate the dispute, or the applicant may pursue a ruling by a federal court. An applicant may also pursue a court ruling if one or both parties do not agree to participate in the FWC conference.

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, but did not obtain any successful prosecutions of criminal laws prohibiting forced labor during the year. The majority of forced labor cases, however, were addressed through civil law. The law provides for sufficiently stringent penalties against forced labor commensurate with those prescribed for other serious crimes.

There were reports some foreign nationals, who came to the country for temporary work, were subjected to forced labor in such sectors as agriculture, cleaning, construction, hospitality, and domestic service.

Also see the Department of State's *Trafficking in Persons Report* at 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 15 years. 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 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 18; and a person may not be younger than 21 to obtain a winding engine driver's certificate.

Federal, state, and territorial governments effectively monitored and enforced laws, which varied among jurisdictions, governing the minimum age for leaving school and engaging in specified occupations. 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. State-imposed compulsory educational requirements, enforced by state educational authorities, effectively prevented most children from joining the workforce full time until they were 17 years old. 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/ 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 based on race, color, sex, religion, political opinion, national origin or citizenship, social origin, disability, sexual orientation and/or gender identity, age, language, and HIV or other communicable disease status. 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 also prohibits discrimination against employees based on family responsibilities, including breastfeeding, and 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 35 years who can work for more than eight hours per week.

The government effectively enforced laws prohibiting employment discrimination, and penalties were sufficient to deter violations.

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 14.7 percent.

Persons with disabilities also faced employment discrimination. In 2015-16, the latest year for which such data were available, approximately 44 percent of the complaints about disability discrimination received by the HRC were in the area of employment.

e. Acceptable Conditions of Work

Effective July 1 the FWC increased the national minimum wage for adults working full time (38 hours per week) by 2.4 percent to A\$672.70 (\$500), based on a

minimum hourly rate of A\$17.70 (\$13.30). There was no official estimate of the poverty income level.

By law maximum weekly hours are 38 plus “reasonable” additional hours (determined according to the law, taking 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” considering the aforementioned factors.

Federal or state occupational health and safety laws apply to every workplace, including in the informal economy. Some states have harmonized their laws with federal occupational health and safety laws to make it easier for workers and businesses to understand requirements across different states and territories. 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. However, 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 NSW, for example, an individual can be sentenced a maximum of five years’ imprisonment and/or receive a maximum fine of A\$300,000 (\$238,200), and a business can be fined up

to A\$3 million (\$2.4 million) for exposing an individual to serious injury or illness. In 2015 a worker died in NSW after being pinned between material on a forklift and a wall. After a SafeWork NSW investigation, the employer was fined A\$375,000 (\$297,750).

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.

In July a Federal Circuit Court fined a Queensland company for violating recordkeeping and pay slip laws relating to vulnerable foreign workers. As part of the FWO's Harvest Trail inquiry into the exploitation of overseas workers in the agricultural sector, the FWO made it easier for migrant workers to anonymously report workplace issues by launching the Anonymous Report function in 16 languages.

During the year the Queensland farm lobby group Growcom secured A\$800,000 (\$634,848) from the Fair Work Ombudsman Community Grants program to train employers in ethical labor hiring practices. Part of the grant will be used to develop a new national "ethical labor" certification for farmers who want to prove they are not exploiting their workers following reports in recent years of farmers underpaying and mistreating seasonal foreign workers.

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.

The Financial Sector Union (FSU) reported that the Commonwealth Bank (CBA) refused to make mandatory retirement pension contribution payments for more than 7,000 part-time workers. The CBA underpaid part-time staff for work in branches, call centers, and administration areas with set hours each week. According to the FSU, almost 90 percent of the estimated 7,000 workers affected were women and among the lowest-paid workers at the CBA. In March the CBA agreed to reimburse the unpaid sums.

According to Safe Work Australia, the government agency responsible to develop and coordinate national workplace health and safety policy, a preliminary estimate was that 120 workers died while working during the year. Of these fatalities, 47 were in the transport, postal, and warehousing sectors; 27 in the agriculture, forestry, and fishing sectors; and 23 in construction.