

AUSTRALIA 2021 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 2019, 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 (federal police), an independent agency of the Department of Home Affairs, and state and territorial police forces are responsible for internal security. The federal police enforce 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 had effective mechanisms in place to identify and punish officials who commit human rights abuses.

Section 1. Respect for the Integrity of the Person

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

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

In December 2020 the government appointed a special investigator to investigate Australian Defense Force personnel allegedly involved in 39 killings in Afghanistan from 2009-13 and recommend prosecutions. In July the government also announced a reform program to address responsibility for past failures and make cultural and systemic changes to prevent future departures from required

standards. These actions followed a November 2020 recommendation by the inspector general of the Australian Defence Force that federal police investigate 19 soldiers over their alleged role in the murder of 39 prisoners and civilians and the cruel treatment of two others. The inspector general's inquiry found credible information that junior special forces soldiers were goaded by more senior enlisted unit members into mistreating or killing prisoners and noncombatants, planting weapons and equipment on battlefield casualties to create justification for questionable engagements, and other possible crimes.

In August 2019, a Western Australia police officer pleaded not guilty to murder in the shooting of a 29-year-old indigenous woman. On October 23, the officer was acquitted of murder. After the death, the town was the first in the area to introduce a program in which police responded to similar calls with an indigenous cultural liaison officer and a mental health professional.

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.

Impunity was not a significant problem in the security forces.

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 89 prison deaths in 2018-19. In the year to November, four indigenous prisoners died (one by suicide, three of undetermined causes) in prisons. Although media attention and public debate focused on indigenous deaths

in prison, a December 2020 report by the Institute of Criminology stated that overall, indigenous persons in custody did not die at a greater rate than nonindigenous individuals.

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. Some domestic and international human rights groups expressed concerns about conditions at domestic immigration detention centers (see section 2.f.).

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 or as noted below.

Under limited circumstances in terrorism cases, some federal and state or territorial laws permit police to hold individuals in preventive detention without charge or questioning for up to 14 days. These laws contain procedural safeguards including regarding access to information related to lawyer-client communication.

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 federal police, 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 detain convicted terrorists beyond the expiration of their sentence by up to an additional three years for preventive purposes where there is no less restrictive measure available to prevent the risk posed by the offender to the community. Various human rights organizations criticized this law as allowing the government to detain prisoners arbitrarily. In the first half of the year, the Independent National Security Legislation Monitor began a review of the compatibility of these "continuing detention orders" with the country's human rights obligations. In February the constitutional court rejected a challenge to the orders' constitutionality.

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.

The Independent National Security Legislation Monitor opened an inquiry into the effect of national security secrecy provisions on the justice system in March. The inquiry considered the secrecy provisions invoked during the 2019 sentencing of a man known as both "Witness J" and Alan Johns, sentenced in secret for crimes not made public. According to media reports Witness J was a former intelligence official convicted of mishandling classified information. The inquiry considered whether the secrecy provisions of the National Security Information Act are proportionate to the national security threat. In public submissions, human rights groups expressed alarm at "secret trials" and called for reform of the Act, while intelligence agencies maintained the law was necessary.

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 for seeking redress for alleged wrongs by government departments or agents. 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 Seizure and Restitution

Laws and mechanisms are in place for the resolution of Holocaust-era restitution claims, including by foreign citizens. The country is a signatory of the Terezin Declaration. Nongovernmental organizations (NGOs) were not aware of any recent restitution cases. The Department of State's Justice for Uncompensated Survivors Today (JUST) Act report to Congress, released publicly in July 2020, can be found on the Department's website: <https://www.state.gov/reports/just-act->

[report-to-congress/](#).

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

a. Freedom of Expression, Including for Members of the Press and Other Media

Although the constitution does not explicitly provide for freedom of speech or press and other media, 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 media, an effective judiciary, and a functioning democratic political system combined to promote freedom of expression, including for media.

National Security: In May a Senate Inquiry into Press Freedom released a report that tabled 17 recommendations, including on improving the freedom of information laws and amending the criminal code to reverse the onus on journalists to prove their stories are in the public interest. This followed the 2019 federal police raid on the home of a News Corp reporter seeking information about the publication of classified material, and a subsequent raid on the Australian Broadcasting Corporation headquarters over reporting of alleged war crimes in Afghanistan that sparked a national discussion on press freedom. A coalition of media organizations led the debate and calling for more legal protections for journalists and whistleblowers.

Internet Freedom

The government did not restrict or disrupt access to the internet or censor online content, but human rights groups reported that recent legal developments – including the Online Safety Act, laws increasing surveillance, and judicial

decisions expanding defamation standards threatened freedom of expression online. The internet was widely available to and used by citizens. There was less access to internet in rural and remote areas, however, particularly those with high Aboriginal and Torres Strait Islander populations.

There were no credible reports the government monitored private online communications without appropriate legal authority. Law enforcement agencies require a warrant to intercept telecommunications, including internet communications. The International Civil Liberties and Technology Coalition, an NGO, however, raised concerns about amendments to telecommunications law that allow the government to access encrypted information from non-Australian companies.

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 federal law, the government generally respected these rights.

In July and August, thousands of protesters attended “Freedom Rally” demonstrations against stay-at-home orders and other public health measures adopted in response to the COVID-19 pandemic. Following a July 24 protest in Sydney, New South Wales, police reportedly issued hundreds of fines and charged dozens of protesters for violating public health orders. Some police officers were reportedly injured when protesters then began throwing objects; two men were arrested and charged after allegedly striking a police horse. In August a man was sentenced to eight months jail for his role in organizing antilockdown protests in Sydney.

Victoria police fired pepper-ball rounds during an August 21 protest in Melbourne and arrested more than 200 protesters during what the Victoria police commissioner called one of the most violent protests in 20 years. According to

media reports, at least nine officers were taken to the hospital with minor injuries.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement and the Right to Leave the Country

The law provides for freedom of internal movement, foreign travel, emigration, and repatriation and the government generally respected these rights. Public health orders enacted to control the spread of COVID-19, including internal and external border control measures, quarantine requirements, and lockdowns restricted movement.

In-country Movement: Most state and territory governments enacted interstate border control measures to combat the spread of COVID-19, either temporarily prohibiting movement or enforcing a mandatory 14-day quarantine period on arrival. Several jurisdictions at times prevented citizens from returning to their homes after travelling interstate when a COVID outbreak occurred. Most state and territory governments at times imposed strict lockdown measures to control the spread of COVID-19, requiring residents to stay at home unless commuting for a designated purpose, such as to purchase groceries or for essential work. Some governments temporarily restricted residents' movements to a three-mile radius, imposed nighttime curfews, and required work permits for those undertaking essential work. Penalties for breaching stay-at-home orders included substantial fines. In August a man was jailed for two months for leaving Sydney in contravention of public health measures.

Some human rights groups expressed concerns about several public health measures imposed by subnational governments. On November 2, 2020, in the case of *Loiello v Giles*, the Supreme Court of Victoria ruled that a 9 p.m. to 5 a.m. curfew imposed in Victoria in August-September 2020 was lawful, ruling it proportionate to the public health threat and consistent with the state's Charter of Human Rights.

Foreign Travel: In June a federal court rejected a legal challenge to the

pandemic-related requirement for citizens to obtain an exemption from the Department of Home Affairs to leave the country. Citizens and permanent residents must provide evidence that travel supports a permitted purpose such as business, urgent medical treatment not available in the country, or the national interest. Human rights groups criticized pandemic-related health measures sharply reducing inbound international travel, claiming they effectively deprived citizens of the right to enter the country. In April two citizens brought a complaint to the UN Human Rights Committee accusing the government of breaching Article 12 of the International Covenant on Civil and Political Rights, a view echoed by some human rights groups. In May the government implemented a two-week ban on entry by individuals, including citizens, who had recently been in India due to concerns about the COVID-19 situation there. Failure to comply carried a penalty of five years' imprisonment. Human rights groups and the Office of the UN High Commissioner for Human Rights criticized these restrictions.

e. Status and Treatment of Internally Displaced Persons

Not applicable.

f. Protection of Refugees

The government cooperated with the office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, or asylum seekers, as well as other persons of concern. UNHCR noted, however, that it continued to work with the government to overcome the organization's concerns, including access to durable solutions. In a 2019 submission to a Senate committee, UNHCR detailed challenges such as prolonged detention of migrants and access to asylum and statelessness determination procedures.

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 and other humanitarian entrants for resettlement in the country. The Department of Home Affairs oversees refugee resettlement via the Refugee and Humanitarian Program, which distinguishes between "offshore" and "onshore" individuals. Individuals residing offshore – outside the country –

can apply for a humanitarian visa if they are subject to persecution in their home country; meet the “compelling reasons” criterion; and satisfy health, character, and national security requirements. Individuals who arrived in the country legally and later seek protection can apply for a Permanent Protection visa. Persons who seek to enter the country without proper authorization are classified as illegal migrants and subject to detention in the country or, for unauthorized maritime arrivals, in a third country for offshore processing. Individuals who arrived illegally may be permitted to apply for a Temporary Protection visa or a Safe Haven Enterprise visa at the discretion and invitation of the responsible government minister but are precluded from applying for a Permanent Protection visa and it was generally very difficult for them to legalize their status.

UNHCR identifies and refers some applicants who are residing offshore to the government (usually the Department of Home Affairs) to be considered under the offshore component of the humanitarian program. While the Migration Act contains family reunification provisions, such requests from irregular migrants are given lowest priority.

The law allows the home affairs minister to designate and enter into an agreement with a third country as a regional processing country for migrants who attempt to enter the country illegally through maritime arrivals. By law any unauthorized maritime arrival entering the country’s waters is liable for transfer to a designated regional processing country for processing and resettlement.

Memoranda of understanding for refugee processing were signed with Papua New Guinea and Nauru. Centers were established in those countries; however, they were closed in October 2017 and March 2019, respectively. The settlement arrangements provide for third-country resettlement of unauthorized maritime arrivals that Nauru or Papua New Guinea assess as needing international protection. The assessments are conducted by the regional processing country under its domestic laws. On October 6, Australia and Papua New Guinea announced the refugee processing agreement between the two countries will end on December 31, and the remaining refugees will be offered a permanent migration pathway if they wish to stay in Papua New Guinea. A memorandum of understanding for the resettlement of Nauru-determined refugees in Cambodia

existed from 2014-18.

As of August 25, approximately 107 refugees or asylum seekers remained in Nauru, housed in community-based facilities funded by the Australian Government; another 125 remained in similar facilities in Papua New Guinea. Since 2019 all persons transferred to these countries reside in community-based accommodation pending third-country migration outcomes.

A detention facility on Christmas Island, an Australian territory, was reopened in 2020 to accommodate overflow in the country's immigration detention network. As of August 29, the facility held approximately 250 persons, mostly individuals whose visas were cancelled for character reasons (i.e., persons who served 12 months or more in jail and were pending removal from the country). There were media reports asylum seekers were moved to the facility as early as 2019.

By law the government must facilitate legal representation to all persons in immigration detention in the country when requested. Some government-funded legal assistance remained available for visa applications for unauthorized maritime arrivals.

Abuse of Migrants and Refugees: Domestic and international organizations reported deteriorating mental health among migrants brought from Nauru and Papua New Guinea for medical treatment and detained in immigration facilities in the country. These organizations alleged some migrants held in these facilities lacked access to communal and outdoor areas and to adequate mental health and other medical services, increasing the risk of suicide and self-harm among those being treated. The government released some individuals from these facilities on short-stay visas or into community detention pending departure from the country. The government reported that it provided necessary services to refugees and denied claims of harsh conditions or lack of medical services. Protests in Brisbane and Melbourne seeking policy changes, including a change to community detention policy, continued during the year.

Approval of transfers of asylum seekers and refugees from Nauru and Papua New Guinea to Australia for medical treatment not available in the regional processing

location is handled on a case-by-case basis subject to clinical advice.

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 or job training 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 without authorization and were not taken to regional processing countries: the Temporary Protection Visa and Safe Haven Enterprise Visa. The government must invite these migrants, who are otherwise barred from making a visa application due to their status as unauthorized arrivals, to apply for either visa. The Temporary Protection Visa is valid for three years, and visa holders can work, study, and reside anywhere in the country with access to support services. Once expired, Temporary Protection Visa holders may apply for another. The Safe Haven Enterprise Visa is valid for five years and is granted on the basis that the visa holder works or studies in nonmetropolitan areas. Safe Haven Enterprise Visa holders may apply for certain permanent or temporary visas after 42 months.

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 2019. 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 Members of Minority Groups: No laws limit participation of women or members of historically marginalized or minority groups

in the political process, and they did participate.

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. There were isolated reports of government corruption during the year.

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

Section 5. Governmental Posture Towards 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, 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 commission reports to parliament through the attorney general. Media and NGOs 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 and Societal Abuses

Women

Rape and Domestic Violence: The law criminalizes rape of men and women, 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. 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 nonindigenous women, according to a 2018 report.

According to a 2020 statement by the Australian Bureau of Statistics, the proportion of women who experienced partner violence in the last decade remained relatively stable. Women were more likely than men to be victims of domestic violence, including homicide, across all states and territories. The Institute of Criminology released a paper in February that analyzed the prevalence of domestic violence against women during the initial stages of the COVID-19 pandemic. The research showed that 4.2 percent of women had experienced physical violence from a cohabiting partner, while 5.8 percent had experienced coercive control. Aboriginal and Torres Strait Islander women, pregnant women, women with a long-term restrictive health condition, women from non-English speaking backgrounds, and younger women were more likely to experience physical or sexual violence or coercive control in the three months prior to the survey.

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 Human Rights Commission receives complaints of sexual harassment as well as sex discrimination. The penalties vary across states and territories.

Reproductive Rights: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

State and territorial governments provided comprehensive sex education and sexual health and family planning services. Women had access to contraception and skilled medical care, including attendance by skilled health-care workers during pregnancy and childbirth. Indigenous persons in isolated communities had more difficulty accessing such services, including menstrual health- and hygiene-related products, than the population in general. Cultural factors and language barriers also inhibited use of sexual health and family planning services by indigenous persons, and rates of sexually transmitted diseases and teenage pregnancy among the indigenous population were higher than among the general population. Government, at national and state and territory levels, provided access to sexual and reproductive health services for survivors of sexual violence.

Discrimination: The law provides the same legal status and rights for women and 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.).

Systematic Racial or Ethnic Violence and Discrimination

It is unlawful to discriminate against a person because of his or her race, color, descent, national origin or ethnic origin, or immigrant status. The law protects

individuals from racial discrimination in many areas of public life, including employment, education, getting or using services, renting or buying a house or unit, and accessing public places. The law also makes racial hatred unlawful. The government effectively enforced the law.

Government programs to mitigate factors contributing to racial discrimination included the *Closing the Gap* framework launched in 2008 and the 2020 *National Agreement on Closing the Gap*, a revised framework for the *Closing the Gap* strategy that included 16 new targets. In March the government launched a *National Anti-Racism Framework*, which seeks to outline a coordinated, shared vision to tackle racism and promote racial equality.

Of 2,307 complaints received by the Human Rights Commission in 2019-20 (the most recent data available), 17 percent related to racial discrimination. The plurality of racial discrimination complaints related to the provision of goods and services (37 percent), with the second largest category being discrimination related to employment (19 percent). Of these racial complaints, 1 percent related to access to places and facilities.

Indigenous Peoples

Aboriginal persons 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.

In August the prime minister announced Australian dollars AU\$379 million (\$280 million) for reparations to indigenous individuals whom various bodies – including police, churches, and welfare institutions – forcibly removed from their families when they were children in the Northern Territory, Australian Capital Territory, or

Jervis Bay Territory.

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 directly administered indigenous communities, including some policing powers, education, healthcare, etc., and has several programs that provide funding for indigenous communities.

According to the Bureau of Statistics, while indigenous peoples make up less than 3 percent of the total population, they constitute 29 percent of all prisoners. The imprisonment rate for indigenous adults in 2019 was 12 times that for others. 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. According to a 2020 report by the Australian Institute of Health and Welfare, just under half of all the juveniles detained were indigenous, and indigenous youths ages 10-17 were 17 times more likely than non-indigenous youths to be in detention.

The Human Rights Commission has an Aboriginal and Torres Strait Islander social justice commissioner.

Children

The Law Council of Australia; a conglomeration of legal, medical, and social justice organizations called Raise the Age Alliance; and other civil society groups

campaigns for all governmental jurisdictions to raise the age of criminal responsibility from 10 to 14. The age of responsibility is set independently by federal, state, and territory governments.

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 in 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 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.

The rate of indigenous children removed from their families for legal or safety reasons was nearly 10 times greater than that for the nonindigenous.

Child, Early, and Forced Marriage: The legal minimum age of marriage is 18 for both boys and girls. Persons aged 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. Forced marriage is a criminal offense. In 2019 the government expanded the definition of forced marriage explicitly to capture all marriages involving children younger than age 16. 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 a substantial fine and 15 years' imprisonment. Under federal law, suspected pedophiles can be tried in the country regardless of where the crime was committed, and the maximum penalty for persistent sexual abuse of a child outside the country is 25 years' imprisonment.

The government largely continued federal emergency intervention measures to combat child sexual abuse in indigenous communities in the Northern Territory, following findings of high levels of child sexual abuse and neglect in a 2007 inquiry. In 73 remote communities, these measures included emergency bans on sales of alcohol and pornography, restrictions on how welfare recipients could receive and spend payments, the linkage of support payments to school attendance, and required medical examinations for all indigenous children younger than age 16 in the Northern Territory. Police received authority to enter homes and vehicles without a warrant to enforce the intervention. Public reaction to the intervention was mixed, with some indigenous activists asserting there was inadequate consultation with affected communities, that the policies lacked evidentiary substantiation, that the intervention aimed to roll back indigenous land rights, and that the measures were racially discriminatory, because 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 *Annual Report on International Parental Child Abduction* 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. The Executive Council of Australian Jewry reported the first decrease in anti-Semitic incidents since 2015; however, incidents categorized as “serious” rose significantly. These incidents included direct verbal abuse, threats, harassment, and physical assaults. Media reported that persons in the country posted comments and shared various images online portraying the coronavirus as a Jew and accusing Jews of creating and spreading the virus. In August antisemitic content surfaced online after some members of the Orthodox Jewish community attended an illegal engagement party during a pandemic lockdown. Victoria state premier Daniel Andrews publicly condemned the anti-Semitism.

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

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.

Persons with disabilities may access health services, public buildings, and transportation on an equal basis with others.

According to government sources, approximately half of Australians with a disability are employed, compared with approximately 80 percent of all working-age persons.

Acts of Violence, Criminalization, 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 February Victoria passed a law prohibiting “practices that seek to change or suppress a person’s sexual orientation or gender identity,” joining other jurisdictions including the Australian Capital Territory and Queensland in outlawing so-called “conversion therapy.”

Transgender adolescents who seek certain treatments including hormone therapy and gender-affirming surgery are required to obtain either parental consent or court authorization. Three states – New South Wales, Queensland, and Western Australia – require surgery or medical treatment as a prerequisite for changing an individual’s gender identity on their birth certificate. Other identity documents issued by federal, state, and territory governments (including passports) do not have this prerequisite. In November, the Australian Medical Association expressed the view that no person, including intersex persons, should be subjected to medical procedures that modify sex characteristics without their informed

consent.

Legal protections against discrimination for LGBTQI+ persons generally include exemptions for religious entities. In December Victoria passed a law removing exemptions that previously allowed religious schools to discriminate against employees on the basis of sexual orientation and other attributes. Several Australian states and territories have laws protecting LGBTQI+ persons against hate speech. Several have laws that require courts to consider whether a crime was motivated by hatred towards LGBTQI+ persons when sentencing an offender.

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 strikes under certain conditions. 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 most 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. 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 and the right to multienterprise collective bargaining, the Fair Work Commission 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. The

law provides for “protected action” and grants employers, employees, and unions 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 a collective bargaining 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 proclaims 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 commensurate with those for other laws involving denials of civil rights, such as discrimination. The Fair Work Commission is the national independent industrial relations management institution. Its functions include facilitating dispute resolution; if dispute resolution is unsuccessful, the parties may elect the commission to arbitrate the dispute, or the applicant may pursue a ruling by a federal court. Procedures were not subject to lengthy delays or appeals.

Unions reported concerns that the scope of collective bargaining had narrowed in recent years, including through decisions by the Fair Work Commission. Over the last few years, the number of industrial disputes (a category that includes strikes) has declined.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor, including by migrant workers. Penalties were commensurate with those for analogous serious crimes, such as kidnapping. 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 government effectively enforced applicable labor laws. Suspected crimes of forced labor and other forms of criminal labor exploitation in the Commonwealth Criminal Code Act 1995 are investigated by the Australian Federal Police and can result in prosecution by the Office of the Director of Commonwealth Prosecutions and criminal penalties. In June a Sydney court convicted a couple of keeping a woman in forced labor at their home and business for more than three years. One defendant was sentenced to three years' and three months' imprisonment and ordered to pay the victim more than AU\$45,000 (\$34,000) in reparations. The second defendant was sentenced to two and one-half years, including one year of home detention and 500 hours of community service. and the defendant was ordered to pay the victim more than AU\$25,000 (\$19,000) in reparations. In July a Melbourne court convicted a couple for keeping a woman in forced labor at their home for nearly nine years and sentenced the defendants to six and eight years of imprisonment respectively. Some foreign nationals who came to the country for temporary work were subjected to forced labor in sectors such as agriculture, cleaning, construction, and domestic service.

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

c. Prohibition of Child Labor and Minimum Age for Employment

Not all the worst forms of child labor are prohibited. Not all state and territorial jurisdictions prohibit the use, procuring, or offering of a child younger than age 18 for certain illicit activities. There is no federally mandated minimum age of employment. In Victoria the minimum age of employment is 15 (with exceptions for children working in a family business or in the entertainment industry, both of which do not have minimum ages of employment). Children are not permitted to work during school hours in any state or 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 younger than 21 may not obtain a winding engine driver's certificate.

Federal, state, and territorial governments effectively monitored and enforced the laws. Penalties for violations were commensurate with those for analogous serious crimes, such as kidnapping.

The Office of the Fair Work Ombudsman 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

The law prohibits discrimination based on race, religion, national origin, color, sex, ethnicity, disability, age, sexual orientation or gender identity, HIV/AIDS status, or refugee or stateless status. Federal, state, and territory laws provide for protections against employment discrimination.

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 program to enter the workforce when they have the capacity to do so, including by requiring compulsory workforce activities for its recipients younger than age 35 who can work for more than eight hours per week.

The government enforced laws prohibiting employment discrimination and

penalties were commensurate with laws related to civil rights, such as election interference; 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 14 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.

In 2019-20, the latest year for which such data were available, approximately 20 percent of the complaints about disability discrimination received by the Human Rights Commission were related to employment.

e. Acceptable Conditions of Work

Wage and Hour Laws: For a single adult living alone, the minimum wage exceeded the poverty line defined as 50 percent of median income. Most workers received higher compensation than the minimum wage through enterprise agreements or individual contracts.

By law maximum weekly hours are 38 plus "reasonable" additional hours, which, by law, must consider 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."

Occupational Safety and Health: 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 endanger 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 Office of the Fair Work Ombudsman provides employers and employees advice on their rights and has authority to investigate employers alleged to have exploited employees unlawfully.

The ombudsman also has authority to prosecute employers who do not meet their obligations to workers. Ombudsman inspectors may enter work sites unannounced if they reasonably believe it is necessary to ensure compliance with the law. The number of ombudsman inspectors was sufficient to enforce compliance and penalties were commensurate with those for crimes like negligence. Inspectors can order employers to compensate employees and sometimes assess fines. 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.

Safe Work Australia, the government agency responsible for developing and coordinating national workplace health and safety policy, cited a preliminary estimate that, in the year to August 19, 73 workers died while working. Of these fatalities, 28 were in the transport, postal, and warehousing sectors; 11 in construction; eight in manufacturing; and seven in the agriculture, forestry and fishing sectors.

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 2018 Fair Work Ombudsman's Harvest Trail inquiry into the exploitation of overseas workers in the agricultural sector, the ombudsman continued to operate a system for migrant workers to report workplace issues anonymously in 16 languages.