

# **AUSTRALIA 2022 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Australia is a constitutional democracy with a freely elected federal parliamentary government. Following a free and fair federal parliamentary election on May 21, the Labor Party formed a government with a majority of 77 seats in the 151-seat House of Representatives. Labor Party leader Anthony Albanese was sworn in as prime minister on May 23.

The Australian Federal Police (federal police), an independent agency of the Attorney-General's Department, 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 its Australian Border Force are responsible for migration and border enforcement. Civilian authorities maintained effective control over the security forces. There were no reports that members of the security forces committed abuses.

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 or engage in corruption.

## **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 March a Northern Territory jury acquitted a police officer charged with murdering an Aboriginal man in the community of Yuendumu in 2019. The police officer fatally shot the man during a struggle while attempting to arrest him. The Northern Territory police cleared the officer to return to duty in July. A coronial

inquest into the death commenced in September.

## **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, and Other Related Abuses**

The law prohibits such practices, and the government generally respected these provisions. There were occasional claims police and prison officials mistreated suspects in custody.

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

There were reports of harsh conditions at some prisons in rural areas that also held juveniles.

In March authorities released the results of an inspection at the Banksia Hill Detention Centre, a state-owned and -operated facility in Western Australia. The inspector of custodial services found that detainees faced cruel, inhuman, and degrading treatment that posed a serious risk to their welfare. In particular, the inspector observed that many detainees were being held in conditions akin to solitary confinement and were not receiving the minimum daily out-of-cell time required under state regulations (one hour).

In June the Northern Territory's acting children's commissioner reported 54 cases of self-harm or suicide attempts since July 2021 at the Don Dale youth detention center (a Northern Territory-owned and -operated facility), and independent monitors noted walls smeared with blood when they visited in 2021.

In July, 17 underage male Indigenous detainees were transferred from Banksia Hill Detention Centre to an isolation unit in a maximum-security male adult prison. These individuals were deemed "violent." The unit operated as a juvenile facility and was managed separately from the adult prison.

**Administration:** Authorities investigated allegations of inhuman conditions and documented the results of such investigations in a publicly accessible manner.

**Independent Monitoring:** The government permitted visits by independent human rights observers. Some domestic and international human rights groups expressed concerns regarding 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 to include information related to lawyer-client communication.

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.

#### **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 June the Independent National Security Legislation Monitor concluded an inquiry into the effect of specific national security secrecy provisions on the justice system. 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 but later described as the communication of classified information. The monitor concluded the provision invoked in Johns’ trial “is entirely consistent with Australia’s international human rights obligations,” but made a series of recommendations to strengthen safeguards and increase transparency in its use. In response the attorney general in July requested the monitor conduct another, broader review of the entire framework governing secrecy provisions to consider how the government “can better balance the vital importance of open justice with the essential need to protect national security.”

## **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 abuses. 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.

#### **g. Conflict-related Abuses**

**Physical Abuse, Punishment, and Torture:** The Office of the Special Investigator and the Australian Federal Police continued investigations into alleged Australian Defense Force personnel involvement in unlawful killings in Afghanistan from 2009-13.

### **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 members of the press and other media.

**National Security:** In May, Queensland, the only jurisdiction without shield laws to protect journalists and whistleblowers, passed legislation that excuses journalists from giving evidence or information if it reveals a confidential informant.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content, but human rights groups continued to report that legal developments including the Online Safety Act, which came into force on January 23, laws increasing surveillance, and judicial decisions expanding defamation standards threatened freedom of expression online. Social media companies declared they already had rules similar to those in the Online Safety Act to remove harmful and hateful content.

## **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.

### **Freedom of Peaceful Assembly**

In June climate activists blocked roads, tunnels, and other key infrastructure in Sydney, and police made at least 10 arrests. Police accused the protesters of violence, including throwing of debris and bicycles, and of violently confronting motorists on city streets and at tunnel entrances. In response the New South Wales government increased penalties for demonstrators who disrupt traffic or prevent access on roads, imposing a maximum penalty of two years' imprisonment, and fines of up to 22,000 Australian dollars (\$15,000). Human Rights Watch expressed concern that climate protesters were being "disproportionately subject to vindictive legal action," and several human rights groups called for repeal of the laws.

## **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 related rights.

## **e. 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 number of submissions to parliamentary committees, UNHCR detailed challenges such as prolonged detention of asylum seekers, refugees, and stateless persons in the country; access to asylum; discriminatory restrictions imposed on refugees accessing family reunification mechanisms; 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” applications. Individuals residing offshore (outside the country) may 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 may apply for a Temporary Protection visa or 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; it was generally very difficult for them to legalize their status.

UNHCR identifies and refers some applicants who are residing offshore to the government (Department of Home Affairs) to be considered under the offshore component of the humanitarian program. While the law contains family

reunification provisions, such requests from unauthorized maritime arrivals are given the lowest visa processing 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 as unauthorized 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 of their protection claims and resettlement.

Centers for regional processing in Papua New Guinea and Nauru (based on agreements from 2012 and 2013) were closed in 2017 and 2019, respectively. In September 2021, Australia and Nauru agreed to a new arrangement for a regional processing capability in Nauru. Regional processing 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.

Australia and Papua New Guinea ended their regional processing arrangement on December 31, 2021, and the remaining refugees were offered a permanent migration pathway in Papua New Guinea. As of August 12, approximately 110 refugees or asylum seekers remained in Nauru, housed in community-based facilities funded by the Australian government, pending third-country migration outcomes. Resettlement of unauthorized maritime arrivals progressed through arrangements with the United States and New Zealand.

A detention facility on Christmas Island, an Australian territory, accommodates 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). By law the government must facilitate access to legal representation for 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 to Australia on a temporary basis 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, and that migrants in such facilities were reportedly subjected to violence, drugs, and overcrowding. In July an academic study reported that regularly relocating detainees between interstate detention facilities was separating families and support networks, increasing the isolation of detention spaces. 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 seeking policy changes, including a change to community detention policy, occurred 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. Medical transfers ended for individuals in Papua New Guinea in December 2021. The Australian Human Rights Commission stated they had “serious concerns” regarding the health and safety of persons who remained in Papua Guinea.

**Durable Solutions:** The government accepted refugees for resettlement from third countries and funded refugee resettlement services.

**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 may work, study, and reside anywhere in the country with access to support services. Once expired, Temporary Protection visa holders must apply for another to lawfully remain. 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 on May 21. Voters elected a new Labor Party government. Labor won 77 seats in the 151-seat House of Representatives; the Liberal-National Coalition won 58 seats and other parties won 16 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. Women comprise 38 percent of the House, up seven percentage points. Women were already the majority in the Senate at 53.3 percent, but the election boosted their number to 57 percent.

### **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 regarding government decisions. The government also appoints one commonwealth (federal) ombudsman, as laws differ between states.

### **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 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; it is considered independent and effective. 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. Human rights commissions operate at the state and territory level.

## **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 gender-based violence, including domestic abuse, and the government enforced the law. The laws of individual states and territories provide the penalties for domestic violence. Gender-based violence remained a problem, particularly in Indigenous communities. Indigenous women were 32 times as likely to be hospitalized due to family violence as non-Indigenous women, according to a 2018 report.

Federal, state, and territorial 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, and the government effectively enforced it. 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, including emergency contraception.

**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.).

## **Systemic 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 that included 16 new targets.

Of 3,113 complaints received by the Human Rights Commission in 2020-21 (the most recent data available), 10 percent related to racial discrimination. The plurality of racial discrimination complaints related to the provision of goods and services (27 percent), with the second largest category being discrimination related to employment (21 percent). Of these racial complaints, less than 1 percent related place and facility access.

## **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.

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 concerning 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.

According to the Bureau of Statistics, while Indigenous persons make up 3.2 percent of the total population, they constituted 30 percent of all prisoners. 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 report during the year from the Australian Institute of Health and Welfare, slightly fewer than half of all the juveniles detained were Indigenous, and Indigenous youths ages 10 to 17 were 18 times more likely than non-Indigenous youths to be in detention. In September the director of the Northern Territory Aboriginal Justice Unit criticized the lack of progress in addressing deaths in custody of Indigenous persons since findings on the matter were handed down by a royal commission in 1991, citing the occurrence of more than 500 such deaths since that time.

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

## **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 in the country. Failure to register does not result in denial of public services. In general, births were registered promptly on a nondiscriminatory basis.

Civil society organizations raised concerns regarding the use of citizenship cessation laws for dual nationals, which can leave children stateless, and the ability to use these laws against children ages 14 to 18. This law was used by the

Department of Home Affairs in stripping citizenship from Australian children detained in camps in Syria. On June 8, the High Court ruled that revoking dual citizenship was unlawful; civil society groups welcomed this as a step to help restore the rights of these children. In October the government announced it would repatriate more than 20 women and 40 children who are Australian citizens, or have a claim to citizenship, that have been in Syrian detention camps.

**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 the rate for the non-Indigenous.

**Child, Early, and Forced Marriage:** The legal minimum age of marriage is 18 for both boys and girls. Persons ages 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 child 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; the definition of forced marriage covers all marriages involving children younger than age 16. The government investigated reports of forced marriages.

**Sexual Exploitation of Children:** The law prohibits the commercial sexual exploitation of children and provides a maximum penalty of 25 years' imprisonment; the law 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 and territory. 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; authorities enforced the law. 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 may 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.

In July federal laws banning alcohol in Northern Territory Indigenous communities, imposed in 2007 following findings of high levels of child sexual abuse, expired. Under new Northern Territory law, Indigenous communities may choose whether to allow alcohol.

## **Antisemitism**

According to the 2021 census, the country's Jewish community numbered almost 100,000. NGOs reported 447 antisemitic incidents for the 12-month period through September 2021 (latest data available), a 35 percent increase over the previous year. These incidents include direct verbal abuse, threats, harassment, and physical assaults.

## **Trafficking in Persons**

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

## **Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation, Gender Identity or Expression, or Sex**



## Characteristics

**Criminalization:** No laws criminalize consensual same-sex sexual conduct between adults.

**Violence Against LGBTQI+ Persons:** There were no reports that authorities condoned or perpetrated violence against lesbian, gay, bisexual, transsexual, queer, or intersex (LGBTQI+) persons.

**Discrimination:** 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 or expression, and sex characteristics. Legal protections against discrimination for LGBTQI+ persons generally include exemptions for religious entities.

**Availability of Legal Gender Recognition:** Three states (New South Wales, Queensland, and Western Australia) require proof of surgery or medical treatment as a prerequisite for changing an individual's gender identity on the birth certificate. Identity documents issued by the federal government and other states and territories (including passports) do not have this requirement.

**Involuntary or Coercive Medical or Psychological Practices Specifically Targeting LGBTQI+ Individuals:** According to the Human Rights Center, there were organizations that advertised so-called conversion therapies in the country. These therapies are outlawed in Victoria, Queensland, and the Australian Capital Territory, but remain legal elsewhere. The Australian Human Rights Commission noted in a 2021 report that intersex children born with nonbinary sex characteristics reportedly were operated on and recommended guidelines for when such surgery is conducted.

**Restrictions on Freedom of Expression, Association, or Peaceful Assembly:** There were no reports of such restrictions.

## **Persons with Disabilities**

Persons with disabilities may access education, health services, public buildings, and transportation on an equal basis with others. The law prohibits discrimination against persons with disabilities in employment, education, publicly available premises, provision of goods and services, accommodation, clubs and associations, and other contexts. The government effectively enforced the law.

## **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 multi-enterprise agreements or “pattern bargaining,” although low-paid workers may apply for a “low-paid bargaining stream” to conduct multi-enterprise bargaining. When deciding whether to grant a low-paid authorization and the right to multi-enterprise 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 imposes penalties on strikers 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 protecting freedom of association, collective bargaining, and the right to strike for workers. 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 and were regularly enforced. 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.

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

The law prohibits all forms of forced or compulsory labor, including by migrant workers. 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 are investigated by the Australian Federal Police and may result in prosecution by the Office of the Director of Commonwealth Prosecutions and criminal penalties. 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.

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 and were regularly applied.

The Office of the Fair Work Ombudsman actively sought to educate young workers regarding 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 or AIDS status, or refugee or statelessness 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 may 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. The government regularly applied penalties against violators. 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 2020-21, the latest year for which such data were available, approximately 22 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 national 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 safety and health (OSH) 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 exercised their right to a safe workplace and had recourse to state health and safety commissions, which investigate complaints and order remedial action. 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.

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 11, 106 individuals died while working. Of these fatalities, 42 were in the transport, postal, and warehousing sectors; 22 in agriculture, forestry, and fishing; 12 in construction; eight in manufacturing; and six in public administration and safety.

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. Victoria became an exception to these sick leave arrangements in March because the state government launched a two-year, government-funded trial with five days of paid sick leave annually for casual workers. 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 concerns anonymously in any of 16 languages.

**Wage, Hour, and OSH Enforcement:** The government effectively enforced laws related to minimum wage, hours of work, and occupational safety and health and each state and territory effectively enforced its occupational health and safety laws

through dedicated bodies that have powers to obtain and initiate prosecutions. Unions used right-of-entry permits to investigate concerns. Penalties for violations were commensurate with those for similar crimes and were regularly applied against violators. 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 enforce compliance with the law. The number of ombudsman inspectors was sufficient to enforce compliance. Inspectors may order employers to compensate employees and sometimes assess fines. There were some reports that violations continued in sectors employing primarily migrant workers.