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U.S. Department of State

Australia Country Report on Human Rights Practices for 1997

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AUSTRALIA

Australia has a federal system of government and a long history as a multiparty parliamentary democracy. The judiciary is independent.

Federal, state, and local police are under the firm control of the civilian authorities and carry out their functions in accordance with the law. There were occasional reports that police committed abuses.

A highly developed economy, which includes manufacturing, mining, agriculture, and services, provides most citizens with a high per capita income. A wide range of government programs offers assistance for disadvantaged citizens.

The Government respects the human rights of its citizens, and the law and judiciary provide effective means of dealing with individual instances of abuse. There were occasional reports that police beat or otherwise abused persons. The Government administers many programs to improve the socioeconomic conditions of Aborigines and Torres Straits Islanders, who together form about 2 percent of the population, and to address longstanding discrimination against them. Societal discrimination and violence against women are problems which are being actively addressed.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

There were no reports of political killings by government officials. However, persons died in custody or during police attempts to detain them (see Section 1.c.).

b. Disappearance

There were no reports of politically motivated disappearances.

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

The law prohibits all such practices. However, police commonly mistreat indigenous people (see Section 5). Amnesty International reported several incidents that involved such abuses. In one case in 1996, an Aboriginal woman who was a rape victim was held in custody for 15 hours and denied medical treatment. State and territorial police forces have internal affairs units that investigate allegations of abuse and report to a civilian ombudsman.

During a 12-month reporting period ending in July, 17 Aboriginal people were reported to have died in custody or during police attempts to detain them. The total was 21 for 1995-1996. Aborigines account for 20 percent of such deaths, while constituting 2 percent of the population. Aboriginal people are imprisoned at a rate 18 times that of the general population.

Prison conditions meet minimum international standards, and the Government permits visits by human rights monitors.

d. Arbitrary Arrest, Detention, or Exile

The law prohibits arbitrary arrest, detention, or exile, and the government observes this prohibition.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the executive and legislative branches respect its provisions.

There is a well-developed system of federal and state courts, with the High Court at its apex. Almost all criminal trials are conducted by courts established under state and territorial legislation. The Federal Court and the High Court have very limited roles to play.

The law provides for the right to a fair trial and an independent judiciary vigorously enforces this right.

When trials are conducted in local courts, the magistrates sit alone. In higher courts, namely the state district or county courts and the state or territorial supreme courts, trials are usually conducted by judge and jury. The jury decides on the facts and verdict after a trial conducted by a judge.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such practices, government authorities generally respect these prohibitions, and violations are subject to effective legal sanction.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Australia does not have a bill of rights. In two decisions the High Court has indicated that freedom of political discourse is implied in the Constitution. The Government respects these rights in practice. An independent press, an effective judiciary, and a functioning democratic political system combine to ensure freedom of speech and of the press, including academic freedom.

b. Freedom of Peaceful Assembly and Association

Although these rights are not codified in law, citizens exercise them without government restriction.

c. Freedom of Religion

The Constitution provides for freedom of religion and the Government respects this right in practice. A provision of the Constitution precludes the adoption of a state religion. Minority religions are given equal rights to land, status and building of places of worship.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government respects them in practice.

The Government encourages migration to Australia by skilled migrants, family members, and refugees.

The Government cooperates with the United Nations High Commissioner for Refugees and other humanitarian organizations in assisting refugees. There is no provision for first asylum. The Government either grants a protection visa, with full residence and employment rights, or refuses it, with no in-between measures. The Government has continued to repatriate forcibly individuals who it has determined do not have a valid claim to refugee status in accordance with relevant United Nations convention definitions. Human rights and refugee advocacy groups maintain that the Government's refugee and asylum adjudication process is applied inconsistently.

Under the Migration Reform Act of 1994, asylum-seekers, who arrive at the border without prior authorization to enter the country, are automatically detained, but may be released from detention if they meet certain criteria--including age, ill-health, and experiences of torture or other trauma. The majority of asylum-seekers are detained for the duration of the often-prolonged asylum process. The detention policy has led to extensive litigation initiated by human rights and refugee advocacy groups, which charge that the sometimes lengthy detentions violate the human rights of the asylum seekers.

In 1996-97, Australia accepted 73,900 migrants, with 11,903 admitted under the humanitarian program, which accepts refugees and those in refugee-like situations in urgent need of resettlement. This figure included 2,251 persons already in Australia who were granted refugee status.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage and mandatory voting. In March 1996, voters ended 13 years of Labor Party government at the federal level by electing a Liberal-National Party coalition Government.

No legal impediments exist to prevent women and indigenous people from holding public office. However, historical patterns of bias against women have contributed to their underrepresentation in government and politics. Approximately 22 percent of federal parliamentarians are women. The percentage increased from 14 percent as a result of the 1996 election. The Government and the opposition have both declared their intent to increase the numbers of women elected to public office.

The deleterious effects of poor educational achievement and a generally inferior socioeconomic status have contributed significantly to the underrepresentation of Aboriginals among political leaders. There are no Aboriginal Members of Parliament.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of human rights groups operate without government restriction (and in some instances with government funding), investigating and publishing their findings on human rights cases. Government officials cooperate and respond to their views.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The law prohibits discrimination based on these factors, and the Government and an independent judiciary vigorously enforce the prohibition.

In July the Human Rights and Equal Opportunity Commission awarded a record \$38,460 (A\$55,000) to a Ugandan-born factory worker whose company failed to protect him from racial taunts at his workplace.

Women

Social analysts and commentators estimate that domestic violence may affect as many as one family in three or four. Wife beating is particularly prevalent in certain Aboriginal communities. The Government recognizes that domestic violence and economic discrimination are serious problems and the statutorily independent Sex Discrimination Commissioner actively addresses these and other areas of discrimination. Government statisticians state that, because of underreporting and the lack of an agreed method for collecting statistics, it is impossible to provide an accurate national profile of the number of women who are victims of domestic violence.

In 1992 Australia's High Court made sterilization of retarded women and girls illegal if not medically required, unless permission was granted by a court or tribunal. In December, however, a report commissioned by the federal Human Rights and Equal Opportunity Commission was released that reported that, since permission has been granted only 17 times, surgeons in the public health system had illegally sterilized more than 1,000 retarded women and girls since 1992. The report added that the real figure might be several times higher, since the data did not include patients whose sterilization was concealed by being listed as another operation. The Health Ministry responded that the figure was too high, and that the actual number of cases was one-fourth or one-fifth of that total.

Women have equal status under the law, and the law provides for pay equity. There are highly organized and effective private and public women's rights organizations at the federal, state, and local levels. There is a federal-level Office of the Status of Women that monitors women's rights. The federal Sex Discrimination Commissioner receives complaints and attempts to resolve those that are deemed valid. A 1994 U.N. report estimated that women receive approximately 90 percent of wages paid to men for

substantially similar work.

Children

The Government demonstrates its strong commitment to children's rights and welfare through its well-funded systems of public education, day care, and medical care. The Government recently decided to remove subsidies to children under the age of 18.

The federal Human Rights and Equal Opportunity Commission receives complaints and attempts to resolve those it finds valid. Similarly, the six states and two territories investigate complaints of neglect or child abuse and institute practical measures aimed at protecting the child when such complaints prove founded. The Government has enacted strict legislation aimed at restricting the trade in, and possession of, child pornography, and which further allows suspected pedophiles to be tried in Australia regardless of where the crime was committed. There is no societal pattern of abuse.

People With Disabilities

Legislation prohibits discrimination against disabled persons in employment, education, or other state services. The Disability Discrimination Commissioner promotes compliance with federal laws prohibiting discrimination against disabled persons. The Commissioner also promotes energetic implementation and enforcement of state laws that require equal access and otherwise protect the rights of disabled persons.

There is no federal legislation mandating the uniform provision of accessibility for the disabled. It is lawful to deny employment or services to those with disabilities if there are reasonable grounds for believing that the disabled person would be unable to carry out the work or would require the employer or service provider to furnish services or facilities that could not reasonably be provided.

Indigenous People

The Racial Discrimination Act of 1975 prohibits discrimination on grounds of race, color, descent, or national or ethnic origin. The Ministry for Aboriginal Affairs, in conjunction with the Aboriginal and Torres Straits Islander Commission (ATSIC), has the main responsibility for initiating, coordinating, and monitoring all governmental efforts to improve the quality of life of indigenous people. A wide variety of government initiatives and programs seek to improve all aspects of Aboriginal and Torres Straits Islander life.

In practice, however, indigenous Australians continue to experience significantly higher rates of imprisonment, inferior access to medical and educational institutions, greatly reduced life expectancy rates, elevated levels of unemployment, and general discrimination, which contribute to an overwhelming feeling of powerlessness.

Nationally, indigenous people are imprisoned at 18 times the rate of nonindigenous people. Over 45 percent of Aboriginal men between the ages of 20 and 30 years have been arrested at some time in their lives. The prison incarceration rate for indigenous juvenile offenders is 21 times that of nonindigenous juveniles. Indigenous groups claim that the Government's lack of response to a series of recommendations by the 1991 Royal Commission into Aboriginal Deaths in Custody contributes to these disturbing statistics. Human rights observers claim that socioeconomic conditions give rise to the common precursors of indigenous crime, e.g. unemployment, homelessness, and boredom.

Indigenous groups charge that police harassment of indigenous people is pervasive and that racial discrimination among police and prison custodians persists. A human rights delegation that visited Australia in 1996 alleged a pattern of ill-treatment and arbitrary arrests occurring against a backdrop of systematic discrimination. In one study, 85 percent of juvenile indigenous suspects reported being hit, punched, kicked, or slapped by police. Most of the juveniles interviewed had complained about violence occurring after apprehension and during questioning about alleged offenses. Government statistics confirm the common perception among indigenous people that they are systematically mistreated by police. Government reports have suggested that the pursuit of economic self-determination for indigenous people would greatly assist in solving the crime problems in indigenous communities and the differences in rates of imprisonment.

The average life expectancy of an indigenous person is 20 years less than that of a nonindigenous person. The infant mortality rate for indigenous children is 3 times that of nonindigenous children. The maternal mortality rate for indigenous women is 5 times that of nonindigenous women. The incidence of illnesses such as tuberculosis, leprosy, hepatitis, and of sexually transmitted diseases is 10 times greater among indigenous people than nonindigenous people. Data indicate that 22.5 percent of indigenous children complete secondary education compared with 76.2 percent of nonindigenous children. Government statistics for 1995 show that the participation rate in university education for Aborigines is 2.4 percent (up from 1.8 percent in 1991) compared with 2.7 percent for non-Aborigines.

Government programs, including a \$750 million indigenous land fund and a "Federal Social Justice Package," aim at ameliorating the real challenges faced by indigenous Australians. The Government is also seeking ways to improve upon 1993 Native Title Legislation which has been largely unsuccessful in assisting Aborigines to establish and pursue title to land. The December 1996 High Court Wik decision, which ruled that native title to land could coexist with pastoral leases, complicated an already confused situation. The Government's "Ten-Point Plan" response to the decision, if passed in Parliament, would give states and territories the right to convert leasehold to freehold, and thus finally extinguish native title to lands.

In May, after an inquiry, the Government's Human Rights and Equal Opportunity Commission declared that the country's former policy of forcibly separating Aboriginal children from their parents, which was in effect from 1910 until the early 1970's, was a form of genocide. The policy was based on the belief that Aborigines were a doomed race, and saving the children was the only humane alternative. In a 1994 survey, the Government found that 10 percent of Aborigines older than 25--approximately 100,000 persons--had been separated from their parents in childhood. The Commission and Aboriginal leaders called for a government apology and compensation for the children uprooted under the assimilation policy. The Government initially ruled out any compensation, and blocked an opposition Labor Party motion for an apology to the "stolen generation" of Aborigines. However, in December the Government announced a \$40 million aid package to, among other things, establish a national network of "family link-up" services, fund 50 counselors to help those affected by the policy, and expand a network of regional support centers. However, the Minister for Aboriginal Affairs reiterated Prime Minister Howard's earlier rejection of calls for an apology as "asking one generation to accept legal responsibility for the acts of earlier generations."

National/Racial/Ethnic Minorities

Although Asians make up less than 5 percent of the population, they account for 40 percent of recent immigrants. Public opinion surveys indicate growing criticism of immigration, and there were reports of a sharp increase in incidents of racial harassment, with Asians, as well as Aborigines, reporting that they have been spat on, shoved, and threatened. In a survey published in 1996 by the Chinese-language newspaper Sing Tao, more than half the respondents said that they had been abused verbally or

physically in the previous 2 months.

Section 6 Worker Rights

a. The Right of Association

The law and practice provide workers, including public servants, freedom of association domestically and internationally. Approximately 32 percent of the work force is unionized.

Unions carry out their functions free from government or political control, but most local affiliates belong to state branches of the Australian Labor Party (ALP). Union members must make up at least 50 percent of the delegates to ALP congresses, but unions do not participate or vote as a bloc.

Prior to 1997, there were no restrictions on the right to strike. However, the Workplace Relations Act, which went into effect on January 1, restricts the right to strike to the period when a new wages and working conditions contract is being negotiated. Legislation that went into force in 1994 for the first time legalized what had always been a de facto right to strike.

Laws and regulations prohibit retribution against strikers and labor leaders, and they are effectively enforced. In practice employers tend to avoid legal remedies (e.g., secondary boycott injunctions) available to them in order to preserve a long-term relationship with their unions.

Unions may freely form and join federations or confederations, and they actively participate in international bodies.

b. The Right to Organize and Bargain Collectively

The law and practice provide workers with the right to organize and bargain collectively, and the law protects them from antiunion discrimination.

The Workplace Relations Act contains curbs on union power, restrictions on strikes, and a new unfair-dismissal system. Several unions are considering challenging the 1997 law on the grounds that it violates the right to assembly provided for in several International Labor Organization conventions that Australia has signed. The primary curb on union power is abolition of closed shops and union demarcations. Although unions are weakened, this provision could create many small and competing unions at an individual worksite. The restrictions on strikes include heavy fines for labor unrest during the life of an agreement and tougher secondary-boycott provisions. The new unfair-dismissal system further limits redress and compensation claims.

The negotiation of contracts covering wages and working conditions is gradually shifting away from the centralized system of the past. Previously legislation provided for the negotiation of simpler "enterprise agreements," which were negotiated by individual companies with their workers or with the relevant union(s). The federal and state governments administered centralized minimum-wage awards and provided quasi-judicial arbitration, supplemented by industry-wide or company-by-company collective bargaining. The Workplace Relations Act also provides for the negotiation of "Australian Workplace Agreements" (AWA's) between employers and individual workers. These agreements are subject to far fewer government regulations than the awards. At present the AWA's are required to be roughly equivalent to basic working conditions in the award that would apply to the sector to which the firm belongs.

There are no export processing zones. The Darwin Trade Development Zone, Northern Territory, attempts to increase exports via a geographically defined free trade zone. In practice the Darwin initiative is focused almost exclusively on its Asian neighbors to the north and west.

c. Prohibition of Forced or Compulsory Labor

Although there are no laws prohibiting it, forced labor, including forced and bonded labor by children, is not practiced.

d. Status of Child Labor Practices and Minimum Age for Employment

The law does not prohibit forced and bonded labor by children, but such practices are not known to occur (see Section 6.c.).

There is no federally mandated minimum age of employment, but state-imposed compulsory educational requirements, monitored and enforced by state educational authorities, effectively prevent most children from joining the work force until they are 15 or 16 years of age. Federal and state governments monitor and enforce a network of laws, which vary from state to state, governing minimum school-leaving age, minimum age to claim unemployment benefits, and minimum age to engage in specified occupations.

e. Acceptable Conditions of Work

Although a formal minimum wage exists, it has not been relevant in wage agreements since the 1960's. Instead, 80 percent of workers are covered by differing minimum wage rates for individual trades and professions, all of which are sufficient to provide a decent standard of living for a worker and family.

Most workers are employees of incorporated organizations. For them, a complex body of government regulations, as well as decisions of applicable federal or state industrial relations commissions, prescribe a 40-hour or shorter workweek, paid vacations, sick leave, and other benefits, including at least one 24-hour rest period per week.

Federal or state safety laws apply to every workplace.

The Occupational Health and Safety (Commonwealth Employment) Act of 1991 provides federal employees with the legal right to cease work if they believe that particular work activities pose an immediate threat to individual health or safety. Most states and territories have laws that grant similar rights to their employees. At a minimum, private sector employees have recourse to state health and safety commissions, which will investigate complaints and demand remedial action.

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