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1999 Country Reports on Human Rights Practices
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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 generally 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 violence and discrimination against women are problems that are being addressed actively. Trafficking in women, a growing problem, also is being 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, 93 persons died in prisons, police 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 on occasion mistreat suspects in custody. Indigenous groups charge that police harassment of indigenous people is pervasive and that racial discrimination among police and prison custodians persists. Amnesty International reported several incidents that involved such abuses. State and territorial police forces have internal affairs units that investigate allegations of abuse and report to a civilian ombudsman.

In 1998 the total number of deaths in custody fell by 10 to 93. Of these, 24 deaths occurred in police custody or during attempts by police to detain suspects. The remainder occurred in prison custody, including one youth who died in a juvenile detention center. Of the total deaths in custody, 38 persons died from hanging. Twenty persons died of natural causes. Five died as a result of injuries sustained while fleeing police during high-speed pursuit. The police shot and killed six persons; in all cases the use of deadly force was found to be justified. One person died from a self-inflicted gunshot wound. A record eight prison inmates died during 1998 at the hands of another inmate. Eleven persons died as a result of drug overdoses. Three died of unknown causes. One cause of death is still to be determined by a coroner.

Aboriginal adults represent 1.6 percent of the adult population but constituted approximately 19 percent of the total prison population during 1998. Aborigines accounted for 16 (17 percent) of the 93 deaths in custody. Six died in police custody or during attempts by police to detain them. Of the six, one died from hanging; two died of natural causes; one died from injuries; one died from a self-inflicted gunshot wound during a police siege; and one died from an undetermined cause, possibly smoke inhalation, after setting a fire in his cell. Nine died in prison. Of the nine, five died from hanging; three died of natural causes; and one died from injuries inflicted by another inmate. For the first time since 1988, an indigenous youth died, from hanging, in a correctional setting.

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 before a judge and jury. The jury decides on the facts and a 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

Although there is no 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. The Constitution prohibits 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 immigration by skilled migrants, family members, and refugees.

The Government cooperates with the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees, and relevant laws and regulations are in

accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. There is no provision for first asylum. In April the Government offered temporary safe haven to 4,000 Kosovar refugees. On September 1, 550 East Timorese were given similar temporary protection. In November the Government changed its policy on undocumented migrants and asylum seekers. Previously those who claimed a fear of persecution if returned to their country of origin were either issued or denied protection visas, providing for full residence and employment rights, with no intermediate measures. With the change in policy, undocumented arrivals are issued a temporary protection visa valid for 3 years only. This visa does not provide for application for family reunification and limits access to public benefits to medical assistance only. After 3 years, a case is to be reviewed, at which point a full protection visa would be issued if the person were still unable to return home.

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. The U.N. Human Rights Commission (UNHRC) stated in April 1997 that Australia had violated the rights of a boat person by detaining him for more than 4 years while his applications to remain in the country were being considered. The UNHRC stated that his detention was arbitrary and in violation of the International Covenant on Civil and Political Rights. In an April 1997 report to Parliament, the federally funded but independent Australian Human Rights and Equal Opportunity Commission also condemned the Government's treatment of asylum seekers as breaching international treaty obligations.

In 1998-99 the Government planned to accept 68,000 migrants, with an additional 12,000 admitted under the humanitarian program. This figure includes 2,000 places for those persons already in the country who are granted refugee status. As in 1997-98, the humanitarian program continues to give priority to the former Yugoslavia, the Middle East, and Africa. Persons admitted under the humanitarian program have immediate access to a wide range of government welfare and health benefits, including income support, English education, and translating and interpreting services. In 1997-98 the Government spent approximately \$7 million for resettlement services for refugees.

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 October 1998, voters elected the Liberal-National Party coalition to a second 3-year term of office. On November 6, voters rejected a referendum to amend the Constitution to become a republic.

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 25 percent of federal parliamentarians are women, an increase from the 22 percent in the last Parliament. Both

the Government and the opposition have 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. One Aboriginal was elected to the Federal Senate in the October 1998 elections; there were no Aboriginals in the previous 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. Overall complaints of discrimination dropped from 2,249 in 1996-97 to 1,522 in 1997-98, a 32 percent reduction.

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.

From July 1998 to June 1999, 37 cases of assault against gays and lesbians were reported in the state of New South Wales.

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. A 1996 Australian Bureau of Statistics (ABS) study found that 111,000 women who were married or in a common-law relationship experienced an incident of violence by their partner in the previous 12 month period. Almost one in four women who have been married or in a common-law relationship have experienced violence by a partner at some time during the relationship, according to the ABS study.

Trafficking in East Asian women for the sex trade is a growing problem (see Section 6.f.).

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. According to government statistics, sex discrimination complaints fell by 37 percent from the previous year. In August the Office of the Status of Women estimated the ratio of female to male full-time average hourly earnings was 85 percent. This was termed " the highest on record. "

Children

The Government demonstrates its strong commitment to children's rights and welfare through its publicly funded systems of education and medical care. The Government provides rebates of approximately 10 percent of the cost of childcare to all parents and provides additional childcare subsidies to lower income families.

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.

The Government and domestic NGO's have responded promptly to the problem of a small number of children who have been smuggled into the country generally for the sex trade. The NGO End Child Pornography and Trafficking in Children (ECPAT) has conducted an aggressive public education campaign to raise awareness of the issue and offer strategies to combat trafficking in children. ECPAT successfully lobbied the Department of Immigration and Multicultural Affairs (DIMA) to conduct police checks of unaccompanied children entering the country to verify that they are not part of a trafficking operation (see Section 6.f.).

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 that prohibit 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. On July 21, the Human Rights and Equal Opportunity Commission found that a private primary school had violated the federal Disability Discrimination Act when it refused to enroll a 7-year-old girl with spina bifida in its kindergarten program. The school is appealing the ruling through the federal courts.

No federal legislation mandates 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

1998 the Federal Government spent approximately \$1.13 billion on health, welfare, education, and regional development programs targeted at assisting Aboriginal people. Spending on indigenous-specific programs is now the highest on record in real terms and in 1998 amounted to almost \$14,000 annually per Aboriginal household.

However, in practice 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 a feeling of powerlessness.

Nationally, indigenous people are imprisoned at 21 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 including juveniles is pervasive and that racial discrimination among police and prison custodians