



## Australia

### Country Reports on Human Rights Practices - [2000](#)

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Australia is a constitutional democracy with a federal parliamentary form of government in which citizens periodically choose their representatives in free and fair multiparty elections. The Government respects the constitutional provisions for an independent judiciary in practice.

Federal and State 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 market-based 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. There were some instances of forced labor, and trafficking in women is a limited but growing problem, which the Government is taking steps to address. Leaders in the ethnic and immigrant communities expressed concern that increased numbers of illegal immigrants and violence at migrant detention centers contribute to instances of vilification of immigrants and minorities.

#### 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, 85 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, there were occasional reports that police mistreated 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 1999 the total number of deaths in custody fell by 8 to 85. Of these, 26 deaths occurred in police custody or during attempts by police to detain suspects. The remainder occurred in prison custody. Of the total deaths in

custody, 29 persons died from hanging. Nineteen persons died of natural causes. Eight died as a result of injuries sustained while fleeing police during high-speed pursuit. Another eight died of other injuries. The police shot and killed six persons. Three persons died from self-inflicted gunshot wounds. Eleven persons died as a result of drug overdoses. One person died from unspecified causes. There were no juvenile deaths in custody during 1999. However, in February, a 15-year-old Aboriginal boy committed suicide in a Darwin detention center while serving a mandatory 28-day sentence for property offenses. In all cases where deadly force is used, the circumstances of the case are reviewed and police have been sanctioned in cases where abuses have been found to occur. There were no cases during the year for which police were disciplined for the unjustified use of force.

Aboriginal adults represent 1.6 percent of the adult population but constituted approximately 20 percent of the total prison population, according to a March report by the Australian Bureau of Statistics. During 1999 Aborigines accounted for 19 (roughly 22 percent) of the 85 deaths in custody. Six died in police custody or during attempts by police to detain them. Of the six, three died from hanging; one died of natural causes; and two died from injuries. Thirteen died in prison. Of the 13 who died in prison, 3 died from hanging; 7 died of natural causes; 2 died from injuries; and 1 died from a drug overdose.

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

At several points during the year, there were allegations that staff at Woomera immigration detention center were aware of and did nothing to stop a male detainee from offering his 13-year-old son to other detainees for sex. In December a South Australia state government inquiry found no evidence to support these allegations; it also found no evidence that the boy had been sexually abused.

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 Government respects this provision in practice. The judiciary provides citizens with a fair and efficient judicial process.

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, 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 on 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

Freedom of association is codified in the Workplace Relations Act of 1996. While the right to peaceful assembly is not codified in law, citizens exercise it 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 law provides for the granting of asylum and refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government cooperates with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees. There is no provision for first asylum. In April 1999, the Government offered temporary safe haven to 4,000 Kosovar refugees. On September 1, 1999, 550 East Timorese were given similar temporary protection. In November 1999, 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 reviewed, at which point a full protection visa is issued if the person is 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 sometimes prolonged asylum adjudication process. The large number of asylum seekers entering the country in 1999 and during the year slowed the processing of protection claims while the Department of Immigration and Multicultural Affairs acquired additional staff and resources. Previously a primary decision on an application for refugee status could be made in an average of 6 weeks; however, the increased workload initially raised the average time for the primary decision to 16 weeks. By year's end, the average time for a primary decision had fallen. Those who obtained a positive primary decision were released immediately from detention; those who continued to pursue their cases remain detained until their cases were resolved or they were returned to their country of origin. As a result, a small number of asylum seekers are detained for years, while their cases are reviewed and appealed. The Government's 2000-01 budget, which assumes an 18-week period for processing claims, includes financial incentives to the Department of Immigration and Multicultural Affairs to process claims more quickly in order to reduce the amount of time protection seekers are held in detention. 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 Committee 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 Human Rights Committee 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 (HREOC) also criticized the Government's treatment of asylum seekers as breaching international treaty obligations. However, in 1999, the HREOC acknowledged that conditions in detention centers had improved since its 1997 report. During the year, there were two major disturbances at the Woomera detention center by detainees who alleged that they were being held in unsatisfactory conditions. The first of the disturbances was nonviolent, and was resolved peacefully after the Government pledged increased attention to the detainees' requests. However, the second disturbance became violent when some of the detainees set fire to several buildings at the detention center. Security guards used water cannon to restore order. The Government refused to negotiate with the leaders of the second disturbance, on the grounds that they had used violence. The Government maintains that the detainees' fundamental human rights are protected, and that their demands, for items such as satellite television, are excessive; human rights groups allege that detainees are abused and beaten by the guards at Woomera, but have not provided evidence of such mistreatment. Late in the year, the federal government launched an inquiry to determine whether detainees at Woomera had access to complaint mechanisms such as the government ombudsman and HREOC if they felt that they were being mistreated. At

several points during the year, there were allegations that staff at Woomera were aware of and did nothing to stop a male detainee from offering his 13-year-old son to other detainees for sex. In December a South Australia state government inquiry found no evidence to support these allegations; it also found no evidence that the boy had been abused sexually.

During the year, some Kosovar Albanians, who had been allowed to enter the country on a temporary basis while facing danger in Kosovo, were returned to Kosovo after the UNHCR, determined that it was safe for them to return. However, some claimed that they still feared for their safety and were returned involuntarily. Prior to their departure, these persons were given an opportunity to apply for protection under Australian law; some sought and were granted such protection. Others were granted extensions of their stay for family or health reasons.

In 2000-01, the Government planned to accept 76,000 migrants, with an additional 12,000 admitted under the humanitarian program. This figure was to include 2,000 places for those persons already in the country who were granted refugee status. As in 1997-98 and 1998-99, 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 1998-99, the Government spent approximately \$4.9 million (A\$7.9 million) on resettlement services for refugees. An additional \$3.25 million (A\$5 million) was spent on other forms of refugee assistance.

### 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, 1999, voters rejected a referendum to amend the Constitution to become a republic.

There are no legal impediments that prevent women and indigenous people from holding public office; however, women are underrepresented in government and politics. Approximately 25 percent of federal parliamentarians are women, an increase from 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

Human rights groups, of which there are a large number, 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. The most significant of these is the federally funded but independent Human Rights and Employment Opportunity Commission (HREOC). Overall complaints of discrimination filed with the HREOC dropped from 1,659 in 1998-99 to 1,317 in 1999-00, a 26 percent reduction. Approximately 43 percent of all cases are declined because they do not fall under HREOC's jurisdiction and/or no discrimination has been shown, 37 percent are resolved through conciliation, 12 percent are withdrawn before action can be taken, and 8 percent are referred for further action.

In July the U.N. Human Rights Committee stated that Australia should do more to secure for indigenous Australians a stronger role in decisionmaking over their traditional lands and natural resources. The Committee urged Australia to do more to provide remedy to members of the "Stolen Generation" (see Section 5). The Committee also recommended review of mandatory sentencing policies (see Section 5) and mandatory detention of illegal arrivals (see Section 2.d.). The Government responded that many of the recommendations were neither necessary nor desirable and reiterated its belief that mandatory detention of illegal arrivals was consistent with its treaty obligations.

In March the International Labor Organization's (ILO's) Committee on Freedom of Association made a series of recommendations regarding the country's labor laws, especially the Workplace Relations Act of 1996 and the Trade Practices Act (see Sections 6.a. and 6.b.). The Government stated in response to the recommendations that the ILO's comments "reflect an inadequate understanding of Australian law," and stated that the ILO failed to understand the domestic role that certain labor laws played. The Government rejected all of the ILO's recommendations.

In August the Government announced the results of a review of its cooperation with U.N. human rights treaty committees. While maintaining its commitment to involvement with the committees, the Government, as a result of the review, decided to limit visits by such committees to cases where a "compelling reason" exists for the visit. In addition, the Government stated that it would not delay removal of unsuccessful asylum seekers who appealed to one of the U.N. Human Rights mechanisms; previously, such persons had been allowed to remain pending the resolution of the appeal of their cases to such U.N. bodies.

#### 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 (NSW). According to a recent study by the Australian Institute of Criminology, 37 murders of homosexual men were found to be hate crimes in NSW between 1989 and 1999.

#### 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 had 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 Sections 6.c and 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. A federal-level Office of the Status of Women 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 8 percent between 1999 and this year; 325 new cases were filed during the year. Of these 83 percent were filed by women and 79 percent were employment related. In July the Australian Bureau of Statistics estimated that the ratio of female to male full-time average hourly earnings was 83 percent. However, a study released by the Australian Institute of Management in May was more pessimistic; it found that women were paid only 66 percent of their male counterparts' wages. This study also found that there were fewer female board members in both large and small companies than the previous year. Some members of opposition political parties have attributed the difference to changes in workplace laws, such as the 1996 Workplace Relations Act, which relies on the use of individual employment contracts that are negotiated privately and thus do not necessarily foster equal pay outcomes. Other commentators have suggested that an "old boy's network" can make it difficult for women to negotiate salaries equal to those of their male counterparts.

#### 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 a minimum benefit of approximately 11.5 percent of the cost of childcare for each child to all parents, which increases to as much as 68 percent per child for the lowest income families.

The federal Human Rights and Equal Opportunity Commission receives complaints regarding children 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 nongovernmental organizations (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 (see Sections 6.c. and 6.f.). The NGO End Child Prostitution, Pornography and Trafficking (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.). In August, the Department of Family and Community Services released its "plan of action" against the commercial sexual exploitation of children, which was designed to provide the basis for the development of a coordinated governmental response to this issue.

In the past, the occurrence of female genital mutilation (FGM), which is widely criticized by international health experts as damaging to both physical and psychological health, was insignificant. However, in recent years small numbers of girls from immigrant communities in which FGM is practiced have been mutilated. The Government has implemented a national educational program on FGM, which is intended to combat the practice in a community health context. The program is designed to prevent FGM, to assist women and girls who already have been subjected to it, and to promote a consistent approach to the issue nationwide. The Government also has allocated funds for the development of state and territory legislation to combat FGM. All states and territories except Queensland and Western Australia have enacted legislation against FGM. Western Australia is developing legislation but had not passed it at year's end; Queensland has determined that its existing legislation on assault covered FGM. In all States and Territories where FGM legislation existed, it was a crime either to perform FGM or to remove a child from the jurisdiction to have FGM performed. Punishment for these crimes can include up to 7 years in prison.

In 1992 the High Court ruled that the right to consent to the sterilization of a minor is not within the ordinary scope of parents' or guardians' powers, except in limited circumstances. The High Court ruled that the decision to undertake sterilization procedures should be made by an independent body. The Government made the Family Courts the arbiters in such cases. In 1998 the Government made it illegal for a physician to conduct sterilization of a minor without authorization from the Family Court. Physicians who performed such procedures without court authorization were subject to both criminal and civil action.

#### 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, 1999, 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. An appeal of the ruling by the school was dismissed on May 18 by a federal court, and the girl was awarded financial compensation.

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 be provided reasonably.

During the year, 445 complaints of discrimination due to disability were filed with the HREOC, representing a 13 percent reduction in complaints compared with 1999. Of these 44 percent were employment related and 32 percent concerned the provision of goods and services.

#### 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 elected 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 2000-01 the Government plans to spend approximately \$1.2 billion (A\$2.3 billion) on indigenous-specific programs in areas such as health, housing, education, and employment. Spending on indigenous-specific programs is the highest on record in real terms and amounts to \$11,440 (A\$22,000) per indigenous household (in addition to other nonindigenous-specific federal and state assistance programs to which indigenous persons may be entitled).

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.

According to the Australian Institute of Criminology (AIC), indigenous people were imprisoned nationally at 11

times the rate of nonindigenous people in 1998. The AIC reports that the incarceration rate among indigenous youth was 18.5 times that of the nonindigenous youth population. Over 45 percent of Aboriginal men between the ages of 20 and 30 years have been arrested at some time in their lives. Human rights observers claim that socioeconomic conditions give rise to the common precursors of indigenous crime, for example, unemployment, homelessness, and boredom.

During the year, considerable controversy arose over the mandatory sentencing policies of the Northern Territory and Western Australia. These policies set automatic prison terms for multiple convictions of certain crimes. For example, in the Northern Territory, adults (17 years of age or over) convicted of property crimes of any magnitude must serve 14 days for the first offense, 90 days for the second offense, and not less than 1 year for the third offense. Juveniles (15 to 16 years of age) may be placed in a diversionary program for their first property-related offense, or, if they refuse or do not qualify, may face a 28-day sentence for a second offense. Judges must impose jail sentences on juveniles for a third property offense of any magnitude, even for petty theft. In March 11 juveniles were being held in detention; the Northern Territory reported that 31 percent of the juvenile repeat offenders convicted between March 1997 and December 1999 received mandatory minimum sentences of 28 days. It was not clear how many of those offenders received a mandatory sentence more than once. Human rights groups and international bodies such as the U.N. Human Rights Committee have criticized the mandatory sentencing policies, which they allege have resulted in prison terms for relatively minor crimes and indirectly target Aboriginals. In particular juvenile offenses subject to mandatory sentences were criticized widely after the death in February of an Aboriginal boy serving an automatically imposed sentence in the Northern Territory. Western Australia agreed to reform the system as it applies to juveniles in order to put more juvenile offenders into rehabilitation programs. On July 29, the U.N. Human Rights Committee issued an assessment of the country's human rights record, which was highly critical of mandatory sentencing. Despite the domestic and international pressure, the federal Government decided not to interfere in what it considered to be the states' prerogative, arguing that the laws were passed by democratically elected governments after full political debate, making it inappropriate for the federal government to intervene.

Indigenous groups charge that police harassment of indigenous people, including juveniles, is pervasive and that racial discrimination among police and prison custodians persists. A human rights delegation that visited in 1996 alleged a pattern of mistreatment and arbitrary arrests occurring against a backdrop of systematic discrimination. Most of the juveniles interviewed complained about violence occurring after apprehension and during questioning about alleged offenses. In November 1998, the Queensland Government launched an inquiry after it was discovered that an 11-year-old Aboriginal boy had been held for 3 days in an adult detention center because no youth facility was available in that remote part of the state. Indigenous people believed that police systematically mistreat them; however, there are no government statistics to confirm this perception.

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 2 times that of nonindigenous children. The maternal mortality rate for indigenous women has declined to 4 times that of nonindigenous women. The rates of tuberculosis and hepatitis A and B among indigenous people are 1.5 times that of nonindigenous people. The rate of leprosy among indigenous people is 4 times that of nonindigenous people. According to the Commonwealth Department of Education, Training and Youth Affairs, indigenous youth are 2.5 times more likely than nonindigenous youth to leave school before completing high school. According to the 1996 census, only about 2 percent of indigenous people reported having a bachelor's degree as compared with 11 percent of other citizens. According to a study by the Australian Bureau of Statistics, indigenous unemployment was 17.6 percent in February, down from a high of 27.8 percent in 1994. This figure compared with an unemployment rate of 7.3 percent in February for nonindigenous workers.

Government programs, including a \$390 million (A\$750 million) indigenous land fund and a "Federal Social Justice Package," aim at reducing the challenges faced by indigenous Australians. In July 1998, after a compromise with its opponents, the Government was able to pass amendments to the 1993 Native Title Act. The ATSIC stated that the amended act provided gains for Aboriginal people but still contains "substantial pain" for native title claimants. Aboriginal leaders were pleased by the removal of the time limit for lodging native title claims but expressed deep concern about the weakening of Aboriginal rights to negotiate with non-Aboriginal leaseholders over the development of rural property. Aboriginal groups continue to express concern that the amended act limits the future ability of Aboriginal people to protect their property rights. At present, 14.25 percent of Australian land is owned or controlled by Aboriginal people according to the Australian Surveying and Land Information Group. In March the U.N. Committee on the Elimination of Racial Discrimination (CERD) expressed serious concern that the Government's Native Title amendments would allow the states and territories to pass legislation containing provisions "reducing further the protection of native title claimants." The CERD declared "unsatisfactory" the Government's response to concerns about the Native Title regime expressed in 1999. The Government responded that the laws were passed after full debate in a democratically elected legislature and that the states have a sovereign right to determine land use policy.

On August 26, 1999, the Government, in identical motions passed by both Houses of the Federal Parliament, expressed public regret for past mistreatment of the Aboriginal minority; however, the government-sponsored motion of reconciliation was criticized by many Aboriginal leaders as not going far enough. Prime Minister Howard acknowledged the "most blemished chapter in our national history" and submitted a seven-point motion to Parliament. Howard proposed that Parliament express "its deep and sincere regret" that Aborigines had "suffered injustices under the practices of past generations, and for the hurt and trauma that many indigenous people continue to feel." However, both Aboriginal and opposition leaders stated that only a full apology would be sufficient. The Government also continued to oppose an official apology in the specific case of the "Stolen Generation" of Aboriginal children, who were taken from their parents by the Government from 1910 to the early 1970's and raised by foster parents and orphanages. The Government's position remains that the present generation has no responsibility to apologize for the wrongs of a previous generation. In April material alleged to be a draft of a government report appeared in the media; it appeared to minimize the number of Aboriginal children taken from their families as part of the "Stolen Generation" and generated considerable concern on the part of Aboriginal leaders and others. The Government disavowed the material. In August a Federal court ruled against two claims by members of the "Stolen Generation" for government compensation by stating that the two could not prove sufficiently that they had been taken without their parents' consent. However, the presiding judge stressed that the ruling does not settle the question of compensation for "stolen" children as a whole. The ATSIC has proposed the Government establish a Reparations Tribunal to avoid costly future legal battles.

Following the 1997 publication of HREOC's landmark report on the "Stolen Generation" entitled "Bringing Them Home," the federal government allocated \$32.75 million (A\$63 million) over 4 years to a comprehensive package of initiatives to facilitate family reunion and assist persons to cope with the trauma of separation. As of June 30, total spending on these programs had reached \$10.7 million (A\$20.5 million).

Following the October 1998 reelection of the Government, Prime Minister Howard gave Immigration and Multicultural Affairs Minister Philip Ruddock additional duties with regard to Aboriginal Australians by making him the Minister assisting the Prime Minister for Reconciliation. In his victory speech following reelection, Howard said that he would make reconciliation with Aboriginals one of his second term priorities. However, in February Howard stated that reconciliation was not achievable in the timeline set, because it is such a difficult issue. In June 1999, the Council on Aboriginal Reconciliation released its draft document of reconciliation for public comment and discussion. In 1991 Parliament created the Council for Aboriginal Reconciliation to foster the reconciliation process in the country. The Council held its culminating national event, Corroboree 2000, in May, at which time it released a "Document of Reconciliation", which the Council intended to serve as a national blueprint for healing between indigenous citizens and the wider community. The final report was released in December, and it included recommendations that the federal and state governments set performance benchmarks and timelines for overcoming Aboriginal disadvantage and enact legislation to further the principles of legislation; that Parliament prepare legislation providing for a referendum on deleting a constitutional amendment on racial criteria for voting; and that Parliament add a new section to the Constitution making racial discrimination unlawful. The report also recommended that appropriate recognition be given to the Aboriginal people and Torres Strait Islanders as the original inhabitants of the land. The Council's mandate expired at the end of the year under legislation passed in 1990. The Council is scheduled to be replaced by a government-funded independent foundation, Reconciliation Australia, which is to continue its work.

In July the U.N. Human Rights Committee stated that Australia should do more to secure for indigenous citizens a stronger role in decisionmaking over their traditional lands and natural resources, and urged it to do more to provide a remedy for members of the "Stolen Generation" (see Section 4).

#### 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 indicated concern with the numbers of immigrants arriving in the country. In a 1997 Newspoll, 64 percent of citizens thought that the total number of migrants was "too high," although in the same poll 78 percent thought that multiculturalism has been good for the country. In a February Morgan Poll, 15 percent of citizens listed immigration as one of the three most important issues for the Government to address. 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. Leaders in the ethnic and immigrant communities expressed concern that increased numbers of illegal arrivals, as well as violence at migrant detention centers, contributed to a few incidents of vilification of immigrants and minorities. However, according to the Human Rights and Equal Opportunity Commission, during the financial year ending June 30, the number of racial discrimination complaints fell 62 percent from the previous year. During the year, 325 such cases were filed, 37 percent of which involved employment or the ability to join a union; 19 percent of which involved provision of goods, services, and facilities; and 19 percent of which involved "racial hatred." Nonnative speakers of English filed 55 percent of the complaints and Aboriginals and Torres Straits islanders filed 21 percent of the complaints.

## 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 conferences, but unions do not participate or vote as a bloc.

The 1996 Workplace Relations Act significantly restricted the right of workers to take industrial action by confining it to the period of bargaining, where it remains a protected action. In April 1999, a union in federal court successfully challenged this provision. In its decision, the court refused to grant an injunction against the union for taking industrial action outside of a bargaining period because it was in support of maintaining existing wages and conditions. Legislation that went into force in 1994 for the first time legalized what had always been a de facto right to strike.

In March the ILO's Committee on Freedom of Association recommended substantial changes to the Workplace Relations Act and the Trade Practices Act following an examination of complaints of antiunion discrimination raised by Australian and international trade unions over the Government's role in a 1998 labor dispute involving stevedores. Specifically, the ILO recommended that the Government amend the Workplace Relations Act to eliminate the linkage between restrictions on strike action and legal provisions on interference with trade and commerce. The ILO also criticized the Government's use of serving defense force personnel as replacement workers in the 1998 strike. The Government stated in response to the recommendations that the ILO's comments "reflect an inadequate understanding of Australian law." The Government rejected all of the ILO's recommendations.

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, that are available to them in order to preserve a long-term relationship with their unions.

During the year, the most notable industrial action was taken by iron ore miners in the Pilbara region of Western Australia against the multinational resources company BHP. A series of rolling strikes over a period of several months was taken against the company for its refusal to negotiate a collective agreement with workers in the mines, but rather to introduce individual contracts into the workplace. The unions eventually achieved a court injunction against BHP offering any further individual contracts on the grounds that the action breached industrial legislation. This forced the company to the bargaining table until the full case could be heard. The case is before the Federal Court and is yet to be concluded. Meanwhile, the negotiations have stalled on the issue of union involvement in the workplace. As in past years, there were many other strikes during the year.

Unions freely may form and join federations or confederations, and they actively participate in international bodies. However, in March the ILO's Committee on Freedom of Association also recommended that the Government take measures, including amending legislation, to ensure that in the future trade union organizations are entitled to maintain contacts with international trade union organizations and to participate in their legitimate activities. The Government rejected this recommendation.

### 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. However, in Western Australia, the 1997 Labour Relations Legislation Amendment Act amended several pieces of legislation, stripping workers of some protections against discrimination for trade union activities. Although workers cannot be fired for belonging to a union, the law permits individual employment contracts that override awards systems established through collective bargaining, and imposes complicated prestrike ballot requirements.

The Workplace Relations Act contains curbs on union power, restrictions on strikes, and a new unfair-dismissal system. Several unions are considering challenging the law on the grounds that it violates the right to assembly provided for in several ILO conventions that Australia has signed. The primary curb on union power is the abolition of closed shops and union demarcations. Although unions are weakened, this provision could create many small and competing unions at individual worksites. 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 by employees.

The negotiation of contracts covering wages and working conditions is gradually shifting 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. In March the ILO recommended that the Government amend legislation so that workplace agreements do not undermine the right to bargain collectively; the Government rejected this recommendation.

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, generally is not practiced; however, there were instances of such abuses. Trafficking in persons, particularly in women (but also children) for the sex trade, is a limited but growing problem (see Sections 5 and 6.f.). As a result of the discovery in April 1999 of children in several clothing sweatshops in Sydney and Melbourne, the Attorney General's Department is studying existing laws and considering whether new legislation would strengthen the Government's ability to combat the problem. Most cases of abuses in the past few years have involved members of ethnic communities from nations where child labor is not uncommon. The smuggling of children for work in the sex industry appears to be a limited but growing problem (see Sections 5, 6.d., and 6.f.).

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

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 the minimum school-leaving age, the minimum age to claim unemployment benefits, and the minimum age to engage in specified occupations.

The law does not explicitly prohibit forced and bonded labor by children, but such practices generally are not known to occur, although there were instances of such abuses (see Sections 6.c. and 6.f.). Anecdotal evidence suggests that an increasing number of children, mainly from Asia, are entering the country as sex workers. The numbers of children involved is unknown. Under the laws of the various states it is illegal for an adult to have sex with a minor.

#### 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. The minimum standards for wages, working hours, and conditions are set by a series of "awards" (basic contracts for individual industries). Some awards specify that workers must have a 24 or 48 hour rest break each week while others specify only the number of days off per number of days worked.

Federal or state safety laws apply to every workplace.

The 1991 Occupational Health and Safety (Commonwealth Employment) Act 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.

#### f. Trafficking in Persons

Although there is no specific provision in the law to prohibit trafficking in persons, legislation enacted in late 1999 targets criminal practices associated with trafficking; trafficking in persons, particularly in East Asian women for the sex trade, is a limited but growing problem.

On September 21, 1999 the Criminal Code Amendment (Slavery and Sexual Servitude) Act came into force. The act modernizes the country's slavery laws, contains new offenses directed at slavery, sexual servitude, and deceptive recruiting, and addresses the growing and lucrative trade in persons for the purposes of sexual exploitation. The act provides for penalties of up to 25 years' imprisonment and is part of a federal, state, and territory package of legislation. There have not yet been any prosecutions under this legislation.

Under the act, conduct that amounts to slavery, or exercising a power of ownership over another person, carries a maximum penalty of 25 years' imprisonment. Where a person is engaged to provide sexual services and who, because of force or threats, is not free to cease or to leave, those responsible face penalties of up to 15 years' imprisonment, or 19 years if the victim is under age 18. A person who deceptively induces another person to provide sexual services faces a penalty of up to 7 years imprisonment, or 9 years if the victim is under age 18.

Another government initiative was the 1994 Child Sex Tourism Act, which provides for the investigation and prosecution of citizens who travel overseas and engage in illegal sexual conduct with children.

Prostitution is legal in many areas of the country. In these locations, state and local governments inspect brothels to prevent mistreatment of the workers and to assure compliance with health regulations. There have been some instances of women being forced to work as sex workers in the country by organized crime groups. There are some reports of women working in the sex industry becoming mired in debt or being physically forced to keep working, and some of these women are under pressure to accept poor working conditions, especially if their immigration status is irregular. However, the available evidence suggests that these cases are not widespread.

The Department of Immigration and Multicultural Affairs (DIMA) has determined that women and children from Thailand, the Philippines, Malaysia, China, Indonesia, and South Korea have been trafficked into the country for purposes of prostitution. The high profit potential, combined with the difficulty of detection and previously low penalties when prosecuted, have contributed to the spread of groups engaged in these activities.

While the numbers of women being brought into the country are relatively small (in the hundreds per year), some have been subjected to what is essentially indentured sexual servitude. Some women working in the sex industry were not aware prior to entering the country that this was the kind of work they would be doing. Investigations in past years by DIMA have found women locked in safe houses with barred windows, with no access to medical care or the outside world. These women have been lured either by the idea that they would be waitresses in restaurants or, in some cases, coerced to come by criminal elements operating in their home countries.

Anecdotal evidence suggests that an increasing number of children, mainly from Asia, are entering the country as sex workers. The numbers of children involved is unknown. Under the laws of the various states, it is illegal for an adult to have sex with a minor.

There also has been evidence, much of it anecdotal, of a growing problem of trafficking in women to work in sweatshops in textile, clothing, and footwear industries as well as in service industries, sometimes as bonded labor.

[End.]