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Australia

Country Reports on Human Rights Practices - [2005](#)

Released by the Bureau of Democracy, Human Rights, and Labor

March 8, 2006

Australia is a constitutional democracy with a federal parliamentary government. Its population was approximately 20.4 million. Citizens periodically choose their representatives in free and fair multiparty elections. John Howard began his fourth consecutive term as prime minister in October 2004; his Liberal and National Party coalition government held 87 of 150 seats in the lower house of the Federal Parliament and 39 of 76 seats in the upper house. The civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens, and the law and judiciary provide effective means of addressing individual instances of abuse. The following human rights problems were reported:

- prolonged detention of unsuccessful asylum seekers who could not be returned to their home country
- domestic violence against women, particularly in Aboriginal communities
- societal discrimination against Aboriginal people
- trafficking in persons
- a few interrelated incidents of interethnic societal violence in December
- labor law reform including restrictions on the right to strike

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

There were no reports that the government or its agents committed arbitrary or unlawful killings. However, the Australian Institute of Criminology (AIC), an agency of the attorney general's department, reported that in 2004, 28 persons died in police custody or in the process of arrest. Police shot and killed six persons; all six shootings were found to be justifiable. In the remaining cases, 11 deaths were attributed to accidents, 9 to self-inflicted injuries, and 2 to natural causes.

b. Disappearance

There were no reports of politically motivated disappearances.

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

The law prohibits such practices; however, there were occasional reports that police and prison officials mistreated suspects in custody. Some indigenous groups charged that police harassment of indigenous people was pervasive and that racial discrimination by some police and prison custodians persisted (see section 5).

In December, 31 persons were injured in assaults and rioting between mostly white and ethnic Arab youths in the Sydney area (see section 5).

Prison and Detention Center Conditions

Prison conditions generally met international standards, and the government permitted visits by independent human rights observers.

According to the AIC's annual report on prison deaths, 39 persons died in prison custody in 2004. Of these, 15 deaths were attributed to self-inflicted injuries, 20 to natural causes, 1 to accident, 1 to unlawful homicide, and 2 to undetermined causes.

Juvenile offenders under age 17 generally were incarcerated in youth detention or training centers but could be sentenced to custody in an

adult prison upon conviction of a serious criminal offense such as homicide. In immigration detention facilities, children were held with adults, most often family members, until July, when families with children were removed from the immigration detention centers to housing in the community under newly established "residency determination arrangements" (see section 2.d.).

d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the government generally observed these prohibitions.

Role of the Police and Security Apparatus

Each of the country's six state and two territorial jurisdictions has a separate police force that enforces state and territorial laws. The Australian Federal Police (AFP) enforce commonwealth laws. The minister for justice and customs oversees AFP activities, while the state police forces report to the respective state police ministers. The police forces generally do not have problems with corruption and impunity. State and territorial police forces have internal affairs units that investigate allegations of misconduct and a civilian ombudsman's office that can either review an investigation upon request of the complainant or initiate its own inquiry into a complaint.

Arrest and Detention

Police officers may seek an arrest warrant from a magistrate when a suspect cannot be located or fails to appear; however, they also may arrest a person without a warrant if there are reasonable grounds to believe the person has committed an offense. Police must inform arrested persons immediately of their legal rights and the grounds for their arrest, and arrested persons must be brought before a magistrate for a bail hearing at the next sitting of the court. However, legislation passed in December permits the police to hold individuals for up to 48 hours without charge if a senior police official finds it is "reasonably necessary to prevent a terrorist act or preserve evidence of such an act." Bail generally is available to persons facing criminal charges unless the person is considered to be a flight risk or is charged with an offense carrying a penalty of 12 months' imprisonment or more. Attorneys and families were granted prompt access to detainees.

There were no reports of political detainees.

The December antiterrorism law permits a judge to authorize "control orders" on individuals suspected of involvement with terrorism-related activities. Such orders may include a range of measures, including monitoring of suspects and house arrest, and may be in effect for up to a year without the filing of criminal charges. Under certain circumstances a judge may approve extension of an expiring control order for up to an additional year at a time, up to a maximum cumulative period of 10 years.

In August 2004 the High Court ruled that the government had the authority to detain asylum seekers indefinitely (see section 2.d.).

e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected this provision in practice.

There are federal, state, and territorial courts, which handle both civil and criminal matters. The highest federal court is the High Court, which exercises general appellate jurisdiction and advises on constitutional issues. State and territorial supreme, district, and county courts conduct most major criminal and civil trials, while the magistrates' and specialists' courts (such as the Children's Court and administrative tribunals) adjudicate less serious criminal and civil cases and conduct preliminary hearings.

Trial Procedures

The law provides for the right to a fair trial, and an independent judiciary generally enforced this right. In the state district and county courts, and the state and territorial supreme courts, there generally is a judge and jury. The judge conducts the trial, and the jury decides on the facts and on a verdict. Defendants have the right to an attorney, and a government-funded system of legal aid attorneys is available to low-income persons. The defendant's attorney can question witnesses, present evidence on the defendant's behalf, and access relevant government-held evidence. Defendants enjoy the presumption of innocence and have the right to appeal the court's decision or the sentence imposed.

Political Prisoners

There were no reports of political prisoners.

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

The law prohibits such actions, and the government generally respected these prohibitions in practice.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice and did not restrict academic freedom or the Internet. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and of the press.

In December 2004 the Victoria Civil and Administrative Tribunal upheld a 2003 complaint by the Islamic Council of Victoria that two Christian pastors and their ministry had vilified Muslims in 2002; in June the tribunal directed the pastors to apologize and not repeat the comments (see section 2.c.). The defendants maintained that their speech was protected under the constitution and appealed the tribunal's decision.

During the year some members of the media expressed concern that the definition of sedition contained in proposed antiterrorism legislation possibly could be applied to them for publishing certain types of information. To address these concerns Parliament amended the legislation's definition of sedition and inserted a provision that shields from prosecution for sedition offenses journalists and other commentators who publish "in good faith a report or commentary about a matter of public interest."

b. Freedom of Peaceful Assembly and Association

While the rights of peaceful assembly and association are not codified in law, the government generally respected these rights in practice.

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice.

Societal Abuses and Discrimination

On December 13, shots were fired at parked cars of Catholic parishioners attending a church service in the Sydney suburb of Auburn. Police were investigating the incident at year's end.

The country's Jewish community numbered approximately 84 thousand persons. In the 12-month period ending September 30, the Executive Council of Australian Jewry recorded 332 anti-Semitic incidents, a 25 percent decrease from the number recorded in the previous 12 months. Although this was a significant decrease, it was still higher than the annual average of 301 incidents since reports were first compiled in 1989. The incidents ranged from property damage and/or assaults (11 reports) to harassment and offensive written and electronic media. At year's end the leader of a neo-Nazi group was in jail awaiting trial on charges of criminal damage relating to, among other things, the vandalizing of a Perth synagogue in 2004 (see section 5).

In June the Victoria Civil and Administrative Tribunal ordered two Christian pastors to make a public apology, via newspaper advertisements, for comments that the court held had vilified Muslims. The pastors also were ordered not repeat the comments anywhere in the country. In August the Court of Appeal granted a stay on the order for an apology but left in place the order that the pastors not repeat the comments. The pastors appealed the court's decision to the Victoria Supreme Court; the appeal was pending at year's end. In 2003 the Islamic Council of Victoria (ICV) had filed a complaint under Victoria's Racial and Religious Tolerance Act against the pastors and their ministry organization, and in December 2004 the tribunal upheld the ICV's complaint but postponed sentencing.

For a more detailed discussion, see the [2005 International Religious Freedom Report](#).

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

The law provides for these rights, and the government generally respected them in practice.

The law does not address exile; however, the government did not use it.

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol. The government has established a system for providing protection to refugees subject to certain geographic and time constraints on claims by those who previously sought asylum in a safe country of transit. In practice the government provided protection against *refoulement*, the return of persons to a country where they feared persecution. The government granted refugee status or asylum.

The government cooperated with the Office of the UN High Commissioner for Refugees and other humanitarian organizations in assisting refugees and asylum seekers.

The government sets an annual quota on the number of protection grants it makes. In the 12-month period ending June 30, the government granted 13,178 humanitarian class visas, which included an offshore resettlement component of 12,096 visas (for persons resettled in the country) and an onshore component of 1,082 visas (for persons already in the country who were granted asylum). The program's offshore component was made up of 5,511 refugees and 6,585 special humanitarian grantees. Special humanitarian grantees were displaced persons subjected to gross violations of human rights, and whose applications were supported by residents or organizations based in the country. The government continued to resettle those detainees granted refugee status and provided extensive social services to aid in the adjustment process.

Noncitizens arriving at a national border without prior entry authorization automatically are detained. Legal assistance is provided upon request to detainees making an initial asylum claim or application for lawful residence. Individuals may be released pending full adjudication of their asylum claim only if they meet certain criteria such as old age, ill health, or experience of torture or other trauma. However, most did not meet release criteria and were detained for the length of the asylum adjudication process. They were either released upon receiving asylum and an appropriate visa or removed once it was determined that they did not qualify for protection. The federal government oversaw five immigration detention facilities and one residential housing detention facility within the country. During the year some asylum seekers who had been intercepted at sea continued to be housed in offshore detention centers in Nauru. In October, 25 of the 27 remaining detainees in Nauru were transported to Australia, where 13 were released and 12 were detained onshore while their status was assessed. Two detainees who had received adverse security assessments remained in detention in Nauru. As of December onshore detention facilities held 805 detainees.

Noncitizens who arrive by boat and have their asylum claims confirmed are granted a three-year temporary protection visa (TPV), which provides full access to medical and social services but does not authorize family reunification or allow travel abroad with reentry rights. A permanent protection visa, which gives authority for family reunification and reentry rights, may be granted to an applicant at any stage of the asylum adjudication process. Denials of asylum claims may be appealed on merit grounds to the Refugee Review Tribunal, and on grounds of legal error to the Federal Court of Australia and, in certain cases, to the High Court. The minister for immigration and multicultural and indigenous affairs may exercise discretion and grant a visa after the asylum seeker has exhausted the review process. As of August 2004, TPV and temporary humanitarian visa holders may apply for permanent visas without leaving the country.

Although long delays in processing asylum applications were not a significant problem during the year, a small number of asylum seekers remained in detention, some for years, despite having exhausted the appeal process. They could not be returned to their home country because they lacked travel documents or could not obtain necessary transit visas. In July 2004 the High Court overturned the Federal Court of Australia's 2003 ruling that the indefinite detention of asylum seekers was unlawful. In May a new Removal Pending Bridging Visa (RPBV) came into effect that allows the minister of immigration to grant a visa to a person in immigration detention whose removal from the country is not practical at that time. Holders of RPBVs may work, access government services, including free medical care, and attend public school. At least 67 people were invited to apply for the visa during the year.

The country's immigration laws and detention policy continued to be criticized by some human rights and refugee advocacy groups, which charged that the sometimes-lengthy detentions violated asylum seekers' human rights.

In its May 2004 report on children in immigration detention, the government-funded, but independent, Human Rights and Equal Opportunity Commission (HREOC) concluded that the country's laws requiring child asylum seekers to be held in mandatory immigration detention breached the UN Convention on the Rights of the Child (CRC), to which the country is a party. The government rejected the commission's view that its policies violated the CRC but announced in June that the Migration Act would be amended to provide that "a minor child shall only be detained as a measure of last resort." On July 29, the remaining 42 children in detention were moved with their families from the detention centers under government-funded "residency determination arrangements" put in place with NGO assistance. Under these arrangements the families were housed among the general population, subject to reporting conditions and a commitment to remain available to the immigration department.

There were no reports of the forced return of persons to countries where they feared persecution, before their asylum claims were considered and rejected. However, during the year

refugee, church, and human rights groups continued to express concern about the government's practices in repatriating unsuccessful asylum seekers.

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

The law provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage and mandatory voting.

Elections and Political Participation

In October 2004 citizens elected a coalition of the Liberal Party and the National Party to a fourth three-year term of office. The opposition Australian Labor Party (ALP) won all six state and two territorial elections held in 2002 for Victoria, South Australia and Tasmania; 2003 for New South Wales (NSW); 2004 for Queensland and the Australian Capital Territory; and during the year for Western Australia (WA) and the Northern Territory (NT).

There are no legal impediments to public office for women and indigenous people. Both the government and the opposition have declared their intent to increase the numbers of women elected to public office. As of July there were 64 women in the 226-seat Federal Parliament, 3 female ministers in the 17-member federal government cabinet, and 6 female ministers in the 25-member federal government ministry. There was one woman among the eight premiers and chief ministers of the six states and two territories, the chief minister of the NT. During the year a woman was appointed to the High Court of Australia as one of seven justices.

Aboriginals generally were underrepresented among the political leadership (see Section 5). The term of the sole Aboriginal federal senator expired on June 30. No Aboriginals were elected to the Federal Parliament in 2004. There was one Aboriginal woman in the Tasmanian state parliament, one in the NSW state parliament, and one in the WA state parliament. There were four Aboriginals, including a woman, in the NT legislative assembly.

Government Corruption and Transparency

There were no reports of government corruption during the year.

The federal, state, and territorial governments have freedom of information (FOI) laws, which provide the public with access to government information. FOI requests generally are subject to both an application and a processing fee. Federal law enables a person to access and correct inaccurate personal information held by government ministries and agencies and to access other government information that has not been exempted to protect essential public interests or the private or business affairs of others. An applicant, including foreign media, may appeal a government decision to deny a request for information to the quasi-legal Administrative Appeals Tribunal (AAT), an executive body that reviews administrative decisions by government entities. An adverse AAT decision may be appealed to the Federal Court of Australia.

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

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

Federal laws prohibit discrimination based on sex, disability, race, color, descent or national or ethnic origin, marital status, or age. An independent judiciary and a network of federal, state, and territorial equal opportunity offices effectively enforced the law. HREOC investigates complaints of discrimination or breaches of human rights under the federal laws that implement the country's human rights treaty obligations.

Women

The law prohibits violence against women, including spousal rape and abuse, and the government enforced the law. Nonetheless violence against women remained a problem, particularly in Aboriginal communities. In October 2004 the Office for Women, which monitors women's rights and advises the federal government on issues affecting women, published a report entitled *The Cost of Domestic Violence to the Australian Economy*, which found that domestic violence cost the economy \$6 billion (A\$8.1 billion) in the 12-month period from July 2002 to June 2003. The report ranked domestic violence among the top five risks to women's health. The federal Department of Family and Community Services and the state departments of community services had programs to both combat domestic violence and support victims of domestic violence, and the federal, state, and territorial governments funded numerous women's shelters.

It is a crime in all states and territories to perform female genital mutilation (FGM) or to remove a child from the jurisdiction for the purpose of having FGM performed; maximum penalties range from 7 to 21 years' imprisonment. There were no reports of new cases or prosecutions for the offense during the year.

Prostitution is legal or decriminalized in several states and territories, and the governments of Victoria, Queensland, and the Australian Capital Territory license brothels operating within their borders. However, many brothels operated illegally. In some locations state-funded sexual health services employees visited brothels to educate workers about sexual health matters and to prevent worker mistreatment. Local governments or prostitution licensing authorities inspected brothels to assure compliance with planning laws and licensing requirements, including health and safety regulations. However, government officials faced difficulties enforcing health and safety standards in illegal brothels. Trafficking in persons, primarily women from Asia, for prostitution was a limited problem (see section 5, Trafficking).

The Sex Discrimination Act prohibits sexual harassment. The independent federal sex discrimination commissioner, which is part of HREOC, undertakes research, policy, and educational work designed to eliminate discrimination between men and women.

According to HREOC's July 2004 to June annual report, sex discrimination complaints fell by 1 percent during the reporting period compared with the previous reporting period. Of the 348 new cases filed during the reporting year, women filed 81 percent, and 85 percent were employment related.

There were highly organized and effective private and public women's rights organizations at the federal, state, and local levels.

Women have equal status under the law, and the law provides for pay equity. In August the Australian Bureau of Statistics (ABS) estimated that women's full-time total average weekly earnings were 81 percent of men's.

Children

The government demonstrated its strong commitment to children's rights and welfare through its publicly funded educational and medical care systems. While the structure of education varied among states and territories, all children between 6 and 15 years of age are entitled to 9 to 10 years of compulsory and free education. A 2004 ABS survey found that the full-time school participation rate for 15-year-olds was 93.4 percent, with most children completing grade 12. The student retention rate from grades 7 and 8 to grade 12 was 81.2 percent for girls and 70.4 percent for boys. The government provided universal health insurance coverage to all citizens and lawful residents from birth on a copayment basis. The government also provided a minimum benefit of 16.8 percent of the cost of a first child's childcare to all parents (with a smaller benefit for additional children), which increased to as much as 100 percent for the lowest income families.

State and territorial child protection agencies investigate and institute prosecutions of persons for child neglect or abuse. All states and territories have laws or guidelines that require members of certain designated professions to report suspected child abuse or neglect. The federal government's role in child abuse prevention is limited to funding research and education campaigns, developing an action plan against the commercial exploitation of children, and funding community-based parenting programs. According to the Australian Institute of Health and Welfare, there were 40,416 substantiated cases of child abuse and neglect from July 2002 to June 2003, the latest period for which national statistics were available. These included physical abuse (28 percent of cases), sexual abuse (10 percent), emotional abuse (34 percent), and neglect (28 percent).

The government has enacted tough criminal laws aimed at restricting the trade in, and possession of, child pornography; the law allows suspected pedophiles to be tried in the country regardless of where the crime was committed. The Child Sex Tourism Act prohibits child sex tourism and related offenses for the country's residents and citizens overseas and provides for a maximum sentence of 17 years' imprisonment upon conviction. During the 12-month period ending June 30, the AFP began 24 investigations, and 4 persons were charged under the act. Of these, one person pled guilty and was awaiting sentencing, two cases were before the courts, and one case had not yet come to trial. During the year the government continued its awareness campaign to deter child sex tourism, through the distribution of materials to citizens and residents traveling overseas. Child protection NGOs raised community awareness of child trafficking. There were no reports of children being trafficked into the country during the year (see section 5, Trafficking).

In April 2004 the High Court overturned a 2003 ruling by the Family Court that the Family Court's jurisdiction extended to children in immigration detention facilities; however, in July all children were moved with their families from the detention centers (see section 2.d.).

Trafficking in Persons

The law prohibits trafficking in persons, but the country continued to be a destination for some trafficked women in the sex industry.

The Federal Migration Act prohibits smuggling of persons in all forms and provides for a maximum penalty of 20 years' imprisonment. The Border Protection Act authorizes the boarding and searching in international waters of vessels suspected of smuggling or trafficking in persons. The Commonwealth Criminal Code provides for sentences of up to 20 years' imprisonment for "people smuggling" aggravated by exploitation. Under the code, conduct that amounts to slavery, or exercising a power of ownership over another person, carries a maximum penalty of 25 years' imprisonment. Under the Child Sex Tourism Act, it is an offense for citizens or residents to travel abroad to engage in sex with minors under age 16 (see section 5, Children).

In 2004 four persons were charged with trafficking in persons offenses in two separate cases; both cases were pending at year's end.

The Department of Immigration and Multicultural and Indigenous Affairs, the Australian Customs Service, and the AFP have lead roles in combating trafficking in persons. The AFP's Transnational Sexual Exploitation and Trafficking Team, a 23-member mobile strike force, is responsible for investigating trafficking syndicates operating in the country and abroad. State police forces worked closely with the AFP to develop a comprehensive policing strategy to counter trafficking in persons.

Some women, primarily from China and Southeast Asia, were brought into the country for the purpose of prostitution, sometimes entering with fraudulently obtained tourist or student visas. Many of these women traveled to the country voluntarily to work in both legal and illegal brothels, but some reportedly were deceived or coerced into debt bondage or sexual servitude. Authorities believed that sex trafficking networks were composed primarily of individual operators or small crime groups that often relied on larger organized crime groups to procure fraudulent documentation for the trafficked women. In June 2004 a federal parliamentary committee issued a report on its yearlong inquiry into the national criminal intelligence agency's response to sex trafficking and the adequacy of federal antitrafficking laws. In response to the report's recommendations, in June the government expanded existing antitrafficking laws to include new offenses for debt bondage, child trafficking, and domestic trafficking, with penalties of up to 25 years in prison, and in September ratified the UN Trafficking Protocol.

An ambassador for people smuggling issues is responsible for promoting a coherent and effective international approach to combating trafficking in persons (particularly in the Asia-Pacific region), assisting in the negotiation of international agreements for the return and resettlement of persons brought illegally into the country, and working for the prosecution of traffickers in persons. The ambassador coordinates the country's participation with Indonesia in the Bali Process on People Smuggling, Trafficking in Persons, and Related Transnational Crime. The government has antitrafficking agreements with Cambodia, Burma, Laos, and Thailand designed to improve international cooperation and police investigations of trafficking syndicates. The government also funded awareness campaigns in source countries and continued funding the Asia Regional Cooperation to Prevent People Trafficking project. Underway in four countries--Thailand, Laos, Burma, and Cambodia--the project focused on strengthening the criminal justice process to combat trafficking in persons.

Within the country the government continued an awareness campaign targeting the sex industry and the community at large and widely publicized criminal cases against traffickers. Trafficking victims willing to cooperate with authorities in the investigation and prosecution of traffickers qualify for a temporary visa and a range of social services. Counseling, temporary shelter, and other assistance were available to all trafficking victims.

There were no NGOs devoted solely to trafficking victims. Nonetheless, assistance was available through various NGOs that dealt with women's and children's issues. Some NGOs received government funding; others were funded privately. Local NGOs and the media were instrumental in bringing to the authorities' attention the presence of illegal migrant women and girls in brothels and massage parlors, and raising public awareness of the problem.

Persons with Disabilities

The law prohibits discrimination against persons with disabilities in employment; education; access to premises; provisions of goods, services (including health services), and facilities; accommodation; purchase of land; activities of clubs and associations; sport; and the administration of federal laws and programs, and the government effectively enforced the law. The disability discrimination commissioner, which is part of HREOC, promotes compliance with federal laws that prohibit discrimination against persons with disabilities. The commissioner also promotes implementation and enforcement of state laws that require equal access and otherwise protect the rights of persons with disabilities. The law also provides for mediation by HREOC of discrimination complaints, authorizes fines against violators, and awards damages to victims of discrimination.

HREOC's July 2004 to June annual report stated that 523 complaints of discrimination based on disability were filed during the reporting period, including 211 complaints based on physical disability, 175 complaints based on psychiatric disability, and 48 complaints based on learning disabilities. Of these, 49 percent were employment related and 30 percent concerned the provision of goods and services.

National/Racial/Ethnic Minorities

Although Asians comprised less than 5 percent of the population, they made up approximately 40 percent of new immigrants. Leaders in the ethnic and immigrant communities continued to express concern about incidents of vilification and discrimination directed against immigrants and minorities.

On December 11, violence broke out mostly between white and ethnic Arab youths, initially at Cronulla, a suburban Sydney beach. Approximately five thousand persons gathered at the beach to protest an alleged attack by ethnic Lebanese youths on two beach lifeguards the previous week. Some of the protesters, including members of neo-Nazi and other extremist groups, assaulted persons they believed to be of Middle Eastern extraction. Rioting ensued in which at least 31 persons were injured and 16 arrested, and cars and other property vandalized. Police were unable to control the initial violence. On December 12, ethnic Arab youths retaliated by vandalizing cars and shops, assaulting persons, and firing gunshots at various locations around Sydney. At least 7 persons, including a police officer, were injured and 11 arrested in those incidents. Over 400 additional NSW police officers were deployed to Sydney from other locations to prevent further violence. On December 14, two incidents of violence against persons of Middle Eastern descent were reported in other locations, one in Adelaide and one in Perth. On December 15, in response to the December 11-12 Sydney incidents, the NSW parliament passed legislation giving state police additional powers to deal with large-scale public disorder, including authority to establish emergency alcohol-free zones and to "lock down" trouble spots, including expanded authority to search persons and vehicles within such areas. The law also increases the penalties for the crimes of assault and riot and provides for a presumption against bail for such offenses.

In January the leader of the neo-Nazi Australian Nationalist Movement pleaded not guilty to charges of criminal damage and conspiracy to cause arson in connection with incidents in 2004 in which several Asian businesses and a synagogue in Perth were firebombed or sprayed with racist graffiti. At year's end he remained jailed pending trial, which the Perth District Court scheduled for March 2006.

According to HREOC's July 2004 to June annual report, the number of racial discrimination complaints rose by 5 percent during the reporting period. Of 167 reported cases, 43 percent involved employment; 24 percent involved provision of goods, services, and facilities; and 20 percent alleged "racial hatred." Persons born outside the country filed 52 percent of the complaints, and Aboriginals and Torres Strait Islanders filed 28 percent.

Indigenous People

From 1990 to 2004, Aboriginals and Torres Strait Islanders participated in government decisionmaking through the Aboriginal and Torres Strait Islander Commission (ATSIC). In July 2004 in response to claims of corrupt dealings by ATSIC board members, the government transferred ATSIC's functions to federal civil service departments, and in November 2004 it established the National Indigenous Council, a government-appointed advisory council, to replace ATSIC. An opposition-led Senate inquiry into the administration of indigenous affairs, initiated in 2004, was critical of the government's handling of aboriginal affairs, particularly its decision to move ATSIC responsibilities to relevant government agencies. In March Parliament passed legislation abolishing ATSIC and its subordinate regional entities; the National Indigenous Council was retained as ATSIC's successor.

While some Aboriginal groups claimed that the government's abolishment of ATSIC was an attempt to silence its indigenous critics, other Aboriginal groups welcomed the move as an attempt to refocus the domestic indigenous policy debate on improving health and social conditions and away from ATSIC's leadership team, which they viewed as impeding ATSIC's effectiveness.

The government's approach toward Aboriginals emphasized a "practical reconciliation" aimed at raising the health, education, and living standards of indigenous people. A wide variety of government initiatives and programs sought to improve all aspects of Aboriginal and Torres Strait Islander life. In 2005-06 the government budgeted approximately \$417 million (A\$556 million) for the indigenous-specific community housing and infrastructure program; a further \$407 million (A\$543 million) for indigenous education and training programs; \$356 million (A\$475 million) for indigenous-specific health services; and \$607 million (A\$809 million) for indigenous employment and economic development programs. The government maintained a national network of "Link Up" offices to provide family tracing, reunion, and other support to indigenous families separated as a result of past government practices. However, indigenous citizens continued to experience significantly higher rates of imprisonment, inferior access to medical and educational institutions, greatly reduced life expectancy rates, higher levels of unemployment, and general discrimination. Poverty and below-average educational achievement levels contributed significantly to Aboriginal underrepresentation in national, territorial, and state political leadership (see section 3).

According to a government report entitled *Overcoming Indigenous Disadvantage* released during the year, the life expectancy of an indigenous person remained 20 years less than that of a nonindigenous person, and the indigenous infant mortality rate was 2.5 times the rates found in nonindigenous populations. In 2002-03 the hospital admission rate for indigenous children under age four for infectious diseases was more than twice the rate for other children. According to a 2004 ABS survey indigenous youth were 1.9 times more likely than

nonindigenous youth to leave school before graduation; however, this was a significant improvement over the previous 5 years.

Although Aboriginal adults represented only 2.2 percent of the adult population, according to the ABS they accounted for approximately 21 percent of the total prison population and were imprisoned at 11 times the rate of nonindigenous persons as of June 2004, down from 15 times the nonindigenous rate in 2002. More than 45 percent of Aboriginal men between the ages of 20 and 30 years had been arrested at some time in their lives. In 2003 Aboriginal juveniles accounted for 47 percent of those between the ages of 10 to 17 in juvenile correctional institutions. Human rights observers noted that socioeconomic conditions gave rise to the common precursors of indigenous crime, including unemployment, homelessness, and boredom.

Indigenous groups charged that police harassment of indigenous people, including juveniles, was pervasive and that racial discrimination by police and prison custodians persisted. Human rights groups and indigenous people alleged a pattern of mistreatment and arbitrary arrests occurring against a backdrop of unofficial yet systemic discrimination.

In November 2004 hundreds of residents on Queensland's Palm Island rioted after government officials released the postmortem results on an indigenous man who had died in police custody after being detained for public drunkenness. The coroner's report had cleared the police of responsibility in the man's death; a separate investigation by the Crime and Misconduct Commission, requested by the Queensland State government, was ongoing at year's end.

The National Native Title Tribunal resolves native land title applications through mediation. The tribunal also acts as an arbitrator in cases where the parties cannot reach agreement about proposed mining or other development of land. The 1993 Native Title Act removed the time limit previously in effect for lodging native title claims, but Aboriginal leaders expressed deep concern about the weakening of Aboriginal rights to negotiate with non-Aboriginal leaseholders over the development of rural property. Aboriginal groups continued to express concern that the amended act limited the future ability of Aboriginal people to protect their property rights. In 2002 the High Court ruled that native title rights did not extend to mineral or petroleum resources and that, in cases where leasehold rights and native title rights were in conflict, leaseholder rights prevailed.

The \$968 million (A\$1,290 million) indigenous land fund is a special account that provides an ongoing source of funds for indigenous people to purchase land for their use. It is separate from the Native Title Tribunal and is not for payment of compensation to indigenous people for loss of land or to titleholders for return of land to indigenous people.

The NGO Aboriginal Tent Embassy in Canberra was set up in a small structure on public land opposite the old parliament building over 30 years ago and worked to publicize Aboriginal grievances. The tent embassy, which also encompassed an itinerants' camp, still existed at year's end, despite fire damage in 2003 and again in August 2004. It remained in the same location despite continued efforts to relocate it by the government and some local indigenous groups who asserted that it was not representative of the entire indigenous community. Other Aboriginal NGOs included groups working on native title issues, reconciliation, deaths in custody, and Aboriginal rights in general. International NGOs, such as Amnesty International, also monitored and reported on indigenous issues and rights.

Other Societal Abuses and Discrimination

In December 2003 the NSW government released a study of violence against homosexuals, which found that more than half of the survey participants had experienced one or more forms of abuse, harassment, or violence in the previous 12 months. The report also found that two or more persons who were unknown to the victim perpetrated most incidents of harassment or violence and that homosexuals of Middle Eastern background suffered exclusion, assaults, and stalking from family or community members.

Federal and various state laws prohibit discrimination on the grounds of HIV positive status. In the 12 months ending June 30, there were 9 discrimination complaints lodged with the federal disability discrimination commissioner, which is part of HREOC, on the grounds of HIV/AIDS status. These complaints also were included in the total of 523 disability-related complaints to HREOC.

According to HREOC's July 2004 to June annual report, during that period there were 78 reported cases of age discrimination; 73 percent involved employment, and 18 percent involved provision of goods, services, and facilities. Persons aged 45 and older filed 62 percent of the complaints.

Section 6 Worker Rights

a. The Right of Association

The law provides workers, including public servants, the right of association domestically and internationally and protection against antiunion discrimination, and workers exercised these rights in practice. A 2004 ABS survey indicated that union membership had decreased slightly over the previous 12 months to 22.7 percent of the workforce.

Unions carried out their functions free from government or political control.

The 1996 Federal Workplace Relations Act (WRA) contains curbs on union power, restrictions on strikes (see section 6.b.), and limits on redress and compensation claims by dismissed employees. The umbrella trade union organization, the Australian Council of Trade Unions (ACTU), has objected to the law, alleging that it violates the right to assembly provided for in several International Labor Organization (ILO) conventions that the government has signed, including ILO Convention 87 on the Freedom of Association and Protection of the Right to Organize. The primary curb on union power is the abolition of closed shops and union demarcations. This provision in theory could create

many small and competing unions at the enterprise level, but thus far there have been few changes in existing union structures.

b. The Right to Organize and Bargain Collectively

Federal, state, and territorial laws provide workers with the right to organize and bargain collectively, and workers exercised this right in practice.

Under the WRA, negotiation of contracts covering wages and working conditions shifted from the centralized awards system of the past to enterprise-level agreements certified by the Australian Industrial Relations Commission (AIRC). The WRA provides that the AIRC may certify multibusiness agreements only if they are in the "public interest." In the 12-month period ending June 30, the AIRC certified 5,197 enterprise agreements, a decrease of 39 percent from the number certified in the previous 12 months. The WRA also provides for the negotiation of Australian Workplace Agreements (AWAs) between employers and individual workers, which are subject to fewer government regulations than awards or enterprise bargaining agreements; however, AWAs must improve upon the basic working conditions contained in a relevant same-sector award. The Office of the Employment Advocate approved 205,865 AWAs during the 12-month period ending June 30, an increase of 36 percent compared with the previous 12 months. As of June 30, AWAs covered approximately 460 thousand employees. AWAs were most prevalent in the accommodation and restaurant industries, where an estimated 76 percent of workers covered by a federally registered agreement were covered by AWAs. There also was significant AWA coverage of workers in mining (60 percent) and property and business services (58 percent).

Federal law first recognized an implicit right to strike in 1994. The WRA significantly restricts this right; it subjects strikers to heavy fines for taking industrial action during the life of an agreement and contains tougher secondary-boycott provisions. The WRA confines strikes to the period when unions are negotiating a new enterprise agreement and specifies that strikes must concern matters under negotiation. This is known as "protected action." Protected action provides employers, employees, and unions with legal immunity from claims of losses incurred by industrial action. In 1999 a union successfully challenged the WRA's restriction on strike action in federal court. The court refused to grant an injunction against the union for taking industrial action outside of a bargaining period because the action was in support of maintaining existing wages and conditions. In June the union movement organized a "national week of action" campaign involving stop-work meetings to protest the government's announced agenda for workplace reforms.

On November 2, the government introduced in Parliament a package of proposed changes to the WRA that, among other things, replaces the country's state labor relations systems with a single set of federal labor relations rules and places additional limits on industrial actions. It permits the government to stop strikes if they are judged to have an "adverse effect" on the employer or damage third parties. On November 15, an estimated 250 thousand workers demonstrated against the proposed legislation in nationwide protests organized by the ACTU. Parliament passed the legislation on December 7, but most of its provisions were not scheduled to go into effect until 2006. Unions, the ALP, and a number of international labor organizations criticized the legislation as violating workers' rights.

The Bureau of Statistics reported 567 industrial disputes for the 12 months ending June 30, a decrease of nearly 21 percent from the previous year; during the same period, total workdays lost due to strikes fell by 56 percent to 241,900.

There are no export processing zones.

c. Prohibition of Forced or Compulsory Labor

The law does not explicitly prohibit forced or compulsory labor, including by children; however, there were no reports that such practices occurred. Trafficking in women was a limited problem (see section 5).

d. Prohibition of Child Labor and Minimum Age for Employment

There is no federally mandated minimum age of employment, but state-imposed compulsory educational requirements, enforced by state educational authorities, effectively prevented most children from joining the work force full time until they were 15 or 16 years of age. Federal and state governments monitored and enforced a network of laws, which varied from state to state, governing the minimum school-leaving age (see section 5), the minimum age to claim unemployment benefits, and the minimum age to engage in specified occupations. The ACTU also monitored adherence to these laws.

e. Acceptable Conditions of Work

Although a formal minimum wage exists, it has not been directly relevant in wage agreements since the 1960s, since most workers received higher wages through enterprise agreements or individual contracts. In June the AIRC increased the federal minimum award wage by \$12.72 (A\$17) to \$362.35 (A\$484.40) per week. Differing minimum wages for individual trades and professions covered approximately 80 percent of all workers; all rates provided a decent standard of living for a worker and family. Legislation passed in December established a new statutory agency, the Australian Fair Pay Commission, to determine future minimum wage increases.

Most workers were employees of incorporated organizations. A complex body of applicable 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). In 2002 the AIRC refused the ACTU's request to set a standard for "reasonable working hours" but allowed workers to refuse

without penalty "unreasonable" overtime.

Over the past two decades, there has been a substantial increase in the percentage of the workforce regarded as temporary workers. In 2003-04 there were 2.7 million persons (28 percent of the workforce) employed as casual or temporary workers. Such employees were not entitled to certain employment benefits such as sick leave or annual leave but were paid at a higher hourly wage rate.

Federal or state occupational health and safety laws apply to every workplace. The law provides federal employees with the right to cease work without endangering their future employment 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 investigate complaints and demand remedial action.

Labor law protects citizens, permanent residents, and migrant workers alike. Migrant worker visas require that employers respect these protections and provide bonds to cover health insurance, worker compensation insurance, unemployment insurance, and other benefits. There were no reports of worker rights abuses in any of the country's five dependent territories of Macquarie and Heard Islands, Christmas Island, Cocos (Keeling) Island, and Norfolk Island.

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