



## Australia

### Country Reports on Human Rights Practices - 2006

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Australia is a constitutional democracy with a federal parliamentary government. Its population was approximately 20.7 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. Problems were reported in a few areas, including domestic violence against women and children, particularly in Aboriginal communities, and societal discrimination against Aboriginal people. During the year some Muslim leaders claimed that anti-Muslim sentiment in the country was increasing. There was continuing criticism by domestic labor unions and the International Trade Union Confederation of the 2005 WorkChoices law and the 1996 Federal Workplace Relations Act, particularly in regard to the laws' curbs on trade unions, restrictions on strikes, and emphasis on individual employment contracts.

#### 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, in September the Queensland State coroner found that a man detained on Palm Island in 2004 had been beaten by the police while in custody and had died as a result. In December, after the Queensland State prosecutor declined to prosecute the police officer involved, the Queensland premier appointed an independent investigator to review the prosecutor's decision (See section 5).

###### 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, and the government generally respected these provisions in practice. 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).

##### Prison and Detention Center Conditions

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

According to the Australian Institute of Criminology's annual report on prison deaths, 34 persons died in prison custody in 2005. Eighteen persons died of natural causes, and 16 deaths were self inflicted.

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. Since July 2005 children in immigration detention have been housed in the community under "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.

The police forces generally were effective; however, two independent investigations into the assaults and rioting between white and ethnic Arab youths in the Sydney area in December 2005, the results of which were released in October, criticized the New South Wales police for inadequate resources, training and communication.

#### 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 2005 permits the police to hold individuals in preventive detention for up to 24 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." Individuals may be detained for an additional 24 hours under an extension of the initial court order. 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.

The December 2005 antiterrorism law permits a judge to authorize "control orders" on individuals suspected of involvement with terrorism-related activities. These orders may include a range of measures, such as monitoring of suspects and house arrest, and may be in effect for up to a year without the filing of criminal charges. If a control order is still warranted after one year, a new order must be sought from a court. Both the preventive detention and control order provisions of the antiterrorism legislation expire after 10 years.

In August the government withdrew legislation that would have required all unauthorized asylum seekers who arrive in the country by boat to be detained offshore while their asylum claims were processed (see section 2.d.). In 2004 the High Court ruled that the government had the authority to detain asylum seekers indefinitely.

#### e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected judicial independence 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 and Detainees

There were no reports of political prisoners or detainees.

#### Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters. There is also an administrative process at the state and federal levels to seek redress for alleged wrongs.

#### 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. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and of the press.

In October the state of Victoria supreme court ruled that it would pursue a case of contempt of court against Melbourne Herald Sun reporters Gerard McManus and Michael Harvey for refusing to reveal their sources for an article published in February 2004 on government plans to cut veterans' benefits. (Under a rule of practice called the "Newspaper Rule," courts may exercise their discretion in ruling whether disclosure of journalists' sources of information is necessary in a particular case "in the interest of justice.") The court was scheduled to hear the case in February 2007. At year's end the two journalists were still working as political reporters for the Herald Sun. In October 2005 the chief judge of the state of Victoria county court filed the contempt charges against the two reporters after they refused to give evidence or name their sources during court proceedings against a government employee charged with "unauthorized communication of a document" in the release of the information to the reporters.

#### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chatrooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by electronic mail. Internet access was widely available and used by citizens.

#### Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

#### 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 September 29, a single bullet was fired from a stationary car into the window of a mosque in Mirrabooka, a suburb of Perth, during evening prayers. No one was injured, but the bullet narrowly missed some of the worshippers. Following the incident the state government announced that it would work with local officials and police to increase safety at all mosques in the state. At year's end the police had no suspects or leads in their investigation into the shooting.

In October two Muslim schools in Perth received threatening telephone calls following controversial remarks by a Muslim cleric implying that immodestly dressed women were responsible for rape (see section 5). Police arrested a suspect and charged him with making the calls; the case was pending at year's end.

Some Muslim leaders claimed that anti-Muslim sentiment in the country was increasing in the wake of public debate about the integration of Muslim immigrants into Australian society.

The country's Jewish community numbered approximately 84,000 persons. In the 12-month period ending September 30, the Executive Council of Australian Jewry recorded 440 anti-Semitic incidents. This was a 32.5 percent increase from the number recorded in the previous 12 months and the same as the number recorded for the October 2003 to September 2004 period. Although the overall total was lower than the record set in the year ending September 2002, it was 47 percent higher than the average annual total since reports were first compiled in 1989. These incidents ranged from physical assault and/or property damage to harassment and offensive written and electronic media. In November a delegation from the Executive Council of Australian Jewry briefed 38 university vice chancellors in Sydney as part of a discussion of the ongoing problem of anti-Semitism on university campuses.

On October 14, a group of approximately 20 members of the Australian Ocean Grove Football Club in Melbourne yelled racial epithets at an Orthodox Jewish man as he walked by their bus with his two children, and punched him in the face. Witnesses surrounded the bus until police arrived. No charges were filed; however, the club subsequently apologized and agreed to visit Melbourne's Holocaust Museum.

At year's end the police investigation was ongoing in a December 2005 incident in which shots were fired at parked cars of Catholic parishioners attending a church service in the Sydney suburb of Auburn.

In December the leader of a neo-Nazi group was released from custody after reaching a plea agreement on charges of criminal damage relating to, among other things, the vandalizing of a Perth synagogue in 2004 (see section 5). Under the agreement he pled guilty to the charges and agreed to leave the state of Western Australia. A codefendant was free on bail at year's end pending a court hearing scheduled for early 2007.

At year's end the state of Victoria court of appeal had not ruled on an appeal by two Christian pastors of the Victoria civil and administrative tribunal's 2004 ruling that they publish apologies, via newspaper advertisements, for comments that the court held had vilified Muslims. The

Islamic Council of Victoria filed the complaint under Victoria's Racial and Religious Tolerance Act in 2003.

The government had a number of programs to promote anti-bias and tolerance education, including an antiracism education campaign and ongoing public awareness programs conducted by HREOC. In its annual report the Executive Council on Australian Jewry cited these programs as encouraging initiatives in responding to anti-Semitism and racism. The government also had a national action plan, developed in coordination with a Muslim advisory group, to help bring law enforcement agencies and Muslim communities together to resolve issues of conflict and discrimination.

For a more detailed discussion, see the [2006 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 forced exile, but the government did not use it in practice.

#### 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 and facilitated local integration.

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

The government sets an annual quota on the number of refugee and humanitarian visa grants it makes. In the period July 2005 through June, a total of 14,144 visas were granted under the country's refugee and humanitarian grant program. These included 12,758 visas for persons overseas and 1,386 visas for persons already in the country. Of the latter, 1,272 were initial protection visas. A further 14 temporary humanitarian concern visas also were granted.

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. During the year some asylum seekers who had been intercepted at sea continued to be housed in offshore detention centers in Nauru. In August one of the two remaining detainees in Nauru was transferred to Australia for psychiatric evaluation. In December a third country agreed to accept the second of the two for resettlement. In September six additional asylum seekers were sent to Nauru for processing of their claims and remained detained there at year's end.

As of December 15, there were 638 persons in immigration detention, including 62 in residence determination arrangements in the community. Of these 638 persons, approximately half had been detained for less than three months.

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. 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 2004 the High Court overturned the Federal Court of Australia's 2003 ruling that the indefinite detention of asylum seekers was unlawful. In May 2005 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.

Under a 2005 law children may be detained only as a last resort, and no children were held in immigration detention centers during the year. Instead, "residency determination arrangements" were made with NGOs to place families with children in the community and assist them with housing and living expenses until their immigration status was resolved, subject to reporting requirements and a commitment to remain available to the immigration department.

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 August the government withdrew proposed legislation from Parliament that would have required all unauthorized boat arrivals in the country to have their asylum claims processed offshore. The UNHCR had expressed concern about the offshore processing proposal, noting that it did not provide for all the protections and benefits available to asylum seekers processed within the country.

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 2003 for New South Wales (NSW); 2004 for the Australian Capital Territory; 2005 for Western Australia (WA) and the Northern Territory (NT); and during the year for Victoria, South Australia, Queensland, and Tasmania.

Individuals and parties could freely declare their candidacy and stand for election.

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 October there were 64 women in the 226 seat Federal Parliament, three female ministers in the 17 member federal government cabinet, and five female ministers in the 30 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. In 2005 a woman was appointed to the High Court 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, 2005. No Aboriginals were elected to the Federal Parliament in 2004. There was one Aboriginal in the Tasmanian state parliament, one in the NSW state parliament, two in the WA state parliament, and four in the NT legislative assembly. The national president of the ALP, Warren Mundine, is an Aboriginal.

#### 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.

The Australian Press Association and others have criticized the FOI application process as unduly lengthy and costly, particularly with regard to requests for non-personal information. In September the High Court upheld a 2005 federal court ruling that a government minister properly withheld information about application of certain tax laws, on the basis of the minister's certification that disclosure could compromise the confidentiality of government decision making. The court ruled that the government need only show that the specific public interest ground raised for withholding information was reasonable, "even though there may be reasonable grounds the other way." The Australian newspaper had brought the case after the government denied its request for the information. The media expressed concern that the decision could allow the government to deny public access to virtually any information held by the executive on the basis of broad claims of possible harm.

### 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. The Human Rights

and Equal Opportunity Commission (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 domestic 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 \$6.3 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.

In April there were press reports on widespread domestic violence and child abuse in Aboriginal communities in Western Australia (see section 5, Children). In May the NT state prosecutor reported hundreds of cases of domestic violence and sexual abuse of women and children in Aboriginal communities in the NT. The prosecutor noted that child sexual assault in central Australia was happening at much higher rates than was currently being reported to police, as was violence against Aboriginal women and children. She also noted that the NT had no mandatory reporting law for such crimes, and that many victims were frightened of retribution within their communities if they reported the abuse to police. Federal and territorial agencies acknowledged that such abuses and the failure to report them were issues that needed to be addressed, and they also launched investigations into specific allegations.

In June the federal minister for indigenous affairs convened an intergovernmental summit on domestic violence and child abuse in indigenous communities. The summit participants agreed on the need for a comprehensive approach and proposed a package of measures, with funding of \$100.8 million (A\$130 million). In July the Council of Australian Governments approved the package and funding. Key components of the plan included improved policing in remote areas, community legal education, aiding the creation of indigenous support networks, more alcohol and drug treatment programs, and a national unit to monitor school attendance records of Aboriginal children.

The law criminalizes rape, including spousal rape, and the government enforced the law effectively when cases were reported to the authorities.

In October a senior Muslim cleric in Sydney made statements in a sermon implying that immodestly dressed women, whom he compared to "uncovered meat," invited rape. Many other Muslim leaders, as well as the government, opposition politicians, and human rights advocates, condemned the remarks. The cleric stated that his remarks were taken out of context, but he issued a formal apology and stated that he did not condone rape.

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 seven 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.

The HREOC received 347 sex discrimination complaints from July 2005 through June. Twenty percent of the complaints alleged discrimination based on pregnancy and 19 percent alleged sexual harassment. The commission resolved 314 of the complaints, 44 percent by conciliation.

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 80.6 percent of those of men.

## 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 six and 15 years of age are entitled to nine to 10 years of compulsory and free education. An ABS survey issued in February found that the full time school participation rate for 15 year olds as of August 2005 was 94.7 percent, with most children completing grade 12. The student retention rate from grades seven and eight to grade 12 was 81 percent for girls and 75.3 percent for boys. The government provided universal health insurance coverage to all citizens and lawful residents from birth on a co-payment 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 46,154 substantiated cases of child abuse and neglect from July 2004 to June 2005, the latest period for which national statistics were available. These included physical abuse (24 percent of cases), sexual abuse (10 percent), emotional abuse (33 percent), and neglect (33 percent).

In April the press reported on widespread alcoholism and physical and sexual abuse of children among remote indigenous communities in Western Australia. As a result a number of Western Australian Aboriginal elders supported a plan proposed by one of the elders to separate children from their parents and place them in hostels in an attempt to break the cycle of alcoholism and abuse. However, some other Aboriginal leaders opposed the proposal. While the state of Western Australia indicated tentative support for the plan, its immediate response was to allocate \$9.3 million (A\$12 million) to build new housing and provide more social services to the Aboriginal community.

In May the NT state prosecutor reported many cases of domestic violence and child abuse in NT Aboriginal communities (see section 5, Women).

In July the attorney general of NSW released a report he had commissioned entitled *Breaking the Silence: Creating the Future--Addressing Child Sexual Assault in Aboriginal Communities in New South Wales*. The report found that sexual assault of children was a significant issue in all 29 indigenous communities visited by researchers. The report found that in Aboriginal communities sexual assault was not well understood to be a criminal offense and seldom was reported. In response to these findings the NSW government announced it was implementing 88 recommendations that flowed from the report.

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 conducted 57 investigations. There were 26 prosecutions, with 14 convictions and five cases still pending before the courts at the end of the fiscal year. 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).

#### 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.

Some women, primarily from the People's Republic of China, the Republic of Korea, 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. The Australian Crime Commission reported that deceptive practices in contract terms and conditions, which often masked debt bondage, appeared to be increasing among women in prostitution, while deceptive recruiting practices appeared to be decreasing. 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.

The Commonwealth Criminal Code comprehensively criminalizes "people trafficking" offenses, including sexual servitude, slavery, and deceptive recruitment. These offenses carry penalties of up to 25 years' imprisonment for slavery, 15 years for sexual servitude, and seven years for deceptive recruitment. 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 June 2005 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 2005 ratified the UN Trafficking Protocol.

The AFP and the Department of Immigration and Multicultural Affairs 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. Since 2004 the AFP has opened 112 investigations and charged 22 persons for people trafficking offenses. During the year the courts convicted four persons of trafficking offenses and sentenced them to prison terms of up to 10 years.

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.

#### 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 2005 to June 2006 annual report stated that 561 complaints of discrimination based on disability were filed during the reporting period. Of these, 58 percent were employment related and 17 percent involved the provision of goods and services. The HREOC resolved 512 complaints, 46 percent through conciliation.

#### National/Racial/Ethnic Minorities

During the year leaders in the ethnic and immigrant communities continued to express concern about incidents of vilification and discrimination directed against immigrants and minorities.

In December 2005, 31 persons were injured in assaults and rioting between mostly white and ethnic Arab youths in the Sydney area. Two independent investigations released in October indicated that inadequate police resources, training, and communication were key factors in the incidents (see section 1.d.).

In December the leader of the neo-Nazi Australian Nationalist Movement, Jack Van Tongeren, was released under a plea agreement after he agreed to plead 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. Under the plea agreement he also was required to leave Western Australia.

According to HREOC's July 2005 to June annual report, the number of racial discrimination complaints received rose to 259. Of the 259 reported cases, 48 percent involved employment, 18 percent involved provision of goods and services, and 17 percent alleged "racial hatred." Persons born outside the country filed 62 percent of the complaints, and Aboriginals and Torres Strait Islanders filed 23 percent.

#### Indigenous People

In March 2005, after a Senate inquiry criticized the government's handling of Aboriginal affairs, Parliament passed legislation abolishing the Aboriginal and Torres Strait Islander Commission (ATSIC) and its subordinate regional entities; the National Indigenous Council, a government-appointed advisory council established in 2004, 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 expended \$2.4 billion (A\$3.1 billion) on services to indigenous people and in 2006-07 budgeted \$2.6 billion (A\$3.3 billion) for indigenous programs. The government initiated 24 programs in six different program areas to improve the ability of indigenous people to access the same opportunities as other citizens. These initiatives included access to better food from special stores, better-quality education through boarding school programs, and access to telecommunication and Internet services.

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 in 2005, 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. A joint study by the ABS and the Australian Institute of Health and Welfare, released in August 2005, reported that Aboriginals and Torres Strait Islanders were twice as likely to be hospitalized as other citizens. Much of the difference was found to be a result of potentially preventable chronic conditions. On the other hand, the report also noted that there were steady increases in indigenous primary and secondary school enrollments between 1996 and 2004. Over the same period the proportion of working-age indigenous people who were employed rose from 31 to 38 percent.

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 2004 Aboriginal juveniles accounted for approximately 34 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 September the Queensland State coroner found that in 2004 an indigenous man detained for public drunkenness on Queensland's Palm Island had been beaten by a police officer while in custody and had died as a result. The coroner reported that the police failed to investigate the death properly and that the man never should have been arrested. She referred the matter to the Queensland Department of Public Prosecutions (DPP) to decide whether the police officer should be charged in relation to the death. The DPP declined to prosecute the officer. In December, in response to an ensuing public outcry, the Queensland attorney general appointed a retired NSW chief judge to review the DPP's decision. The review was pending at year's end. In November 2004 hundreds of Palm Island residents rioted after government officials released the initial coroner's report in the case, which had cleared the police of responsibility in the man's death. The Crime and Misconduct Commission, requested by the Queensland State government to investigate the case, subsequently agreed to join the investigation by the Queensland State coroner.

The National Native Title Tribunal resolves native land title applications through mediation and 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, and 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.

On September 19, a federal court judge upheld a native title claim by the Nyoongar Aboriginal community over a large portion of the southwestern part of the state of Western Australia, including the Perth area. The ruling allows the Nyoongar people to conserve and use the area's natural resources but does not include land privately owned or leased and areas where native title had already been extinguished. The state of Western Australia and the federal government both appealed the decision; the appeal was pending at year's end.

The one-billion-dollar (A\$1.29 billion) 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, which was set up in a small structure on public land opposite the old parliament building more than 30 years ago, worked to publicize Aboriginal grievances. The tent embassy, which also encompassed an itinerants' camp, 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 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. Although no more recent studies were available on the subject, there were anecdotal media reports that such problems continued.

Federal and various state laws prohibit discrimination on the grounds of HIV positive status. In the 12 months ending June 30, there were 12 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 561 disability-related complaints to HREOC.

#### 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 2005 ABS survey indicated that union membership had decreased slightly over the previous 12 months to 22.4 percent of the workforce.

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

The 1996 Federal Workplace Relations Act (WRA), which contained curbs on union power, restrictions on strikes (see section 6.b.), and limits on redress and compensation claims by dismissed employees, was substantially changed in December 2005 by the Workplace Relations Amendment Act of 2005 (known as WorkChoices), which came into effect in March. WorkChoices encourages the individualization

of employment relations at the expense of trade unions and industrial tribunals and reduces the scope and significance of the traditional arbitration system. The WRA and WorkChoices state that workers are free to join or decline to join industrial associations and they prohibit discrimination against individuals for membership or nonmembership in a union. The umbrella trade union organization, the Australian Council of Trade Unions (ACTU), objected to the 1996 law and WorkChoices, alleging that they violate the right to assembly provided for in several International Labor Organization (ILO) conventions that the government has signed.

#### 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 also provided for the negotiation of Australian Workplace Agreements (AWAs) between employers and individual workers, which were subject to fewer government regulations than awards or enterprise bargaining agreements; however, AWAs had to improve the basic working conditions contained in a relevant same-sector award.

WorkChoices substantially changed the WRA. It replaced the country's state labor relations systems with a single set of federal labor relations rules. The law provides for five minimum standards of employment: a minimum wage, annual leave, sick leave, unpaid parental leave, and maximum working hours. All other workplace conditions are negotiable, preferably at the workplace or enterprise level. The law provides for collective workplace agreements as well as AWAs, although by providing that an employer may require new employees to sign AWAs as a condition of employment, the law favors this type of employment agreement. Once an AWA is in force it cannot be displaced by a collective agreement, but a collective agreement may be overridden by an AWA.

Unions criticized as adversely affecting collective bargaining rights Workchoices' provisions on "prohibited content," which are matters that the law prohibits from inclusion in workplace agreements; such prohibitions include, for example, mandatory union involvement in dispute settlement and remedies for unfair dismissal. The law also provides for imposition of fines for violation of the "prohibited content" provisions. The government took the position that the "prohibited content" provisions were justified on the ground that industrial agreements should relate only to the terms and conditions of the employment itself. Although mandatory union involvement in dispute settlement is "prohibited content," the law permits employees to appoint a bargaining agent, including a trade union representative, to assist them in reaching a work agreement with the employer, including an AWA.

The Office of the Employment Advocate approved 96,508 AWAs during the three-month period ending December 31, an increase of 24 percent compared with the previous three months. Of the 862,800 AWAs approved from March 1997 through March 2006, 16 percent were in the retail sector, 12 percent in manufacturing, 12 percent in property and business services, 11 percent in accommodations, cafes and restaurants, and the remainder in other sectors.

Under WorkChoices unions can enter certain workplaces to investigate a suspected breach of the WRA or hold discussions with employees. However, unions may only enter a workplace to investigate a breach of an award or collective agreement if a union member is carrying out work at the premises and the suspected breach affects a union member. If all employees are on AWAs or there is a collective agreement to which the union is not a party, a union does not have a right of entry for discussion purposes.

Federal law first recognized an implicit right to strike in 1994. The WRA significantly restricted this right. The law, as amended by WorkChoices, subjects strikers to heavy fines for taking industrial action during the life of an agreement and contains tough secondary boycott provisions. The law 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. WorkChoices requires industrial action to be authorized by a secret ballot of employees; unions complained that this requirement was unduly time consuming and expensive to implement. The law permits the government to stop strikes if they are judged to have an "adverse effect" on the employer or damage third parties, but this provision was not used during the year.

Unions, the ALP, and a number of international labor organizations have criticized both the 1996 WRA and WorkChoices as violating workers' rights. Shortly after WorkChoices was enacted in December 2005, the state governments and several unions filed a legal challenge to it, arguing that the federal government's constitutional authority to regulate corporations could not be used to establish a nationwide industrial relations policy superseding the states' labor laws. (Previous federal labor legislation had been based on the federal government's constitutional power of conciliation and arbitration.) On November 14, the High Court dismissed the challenge and upheld the federal government's claim that its constitutional power to make laws with respect to corporations allows it to regulate workplace relations. On November 30, labor unions and their supporters held a number of rallies around the country to protest WorkChoices.

The Bureau of Statistics reported 352 industrial disputes for the 12 months ending June 30, a decrease of more than 38 percent from the previous year; during the same period, total workdays lost due to strikes fell by 23 percent to 187,100.

There are no export processing zones.

#### c. Prohibition of Forced or Compulsory Labor

Legislation enacted in 2005 explicitly prohibits forced or compulsory labor, including by children, and 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. On December 19, the country ratified ILO Convention 182 on the worst forms of child labor.

#### 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. 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. WorkChoices created a new statutory agency, the Australian Fair Pay Commission (FPC), to determine future minimum wage increases. In October the FPC raised the federal minimum award wage to \$396.79 (A\$511.86) per week from \$375.50 (A\$484.40) per week. An ACTU spokesperson stated that they were pleased with the increase.

Over the past two decades, there has been a substantial increase in the percentage of the workforce regarded as temporary workers. As of September 30, there were 2.9 million persons (28.5 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. However, there were reports that some employers violated these protections. For example, in February the Liquor, Hospitality and Miscellaneous Workers' Union filed three cases with HREOC involving migrant workers. The union alleged that some employers were exploiting their foreign migrant workers, underpaying them, and threatening to deport them if they complained. In October the immigration minister ordered an investigation into allegations by the Australian Manufacturing Workers Union that Filipino workers employed by a Queensland company were underpaid and charged excessive rent for their accommodations, and that three of the workers were dismissed after they joined the union and sought better working conditions.

There were no reports of worker rights abuses in the country's three inhabited dependent territories of Christmas Island, Cocos (Keeling) Island, and Norfolk Island.