



## Australia

### Country Reports on Human Rights Practices - [2007](#)

Released by the Bureau of Democracy, Human Rights, and Labor  
March 11, 2008

Australia is a constitutional democracy with a federal parliamentary government. Its population was approximately 21.1 million. Citizens periodically choose their representatives in free and fair multiparty elections. In federal parliamentary elections held on November 24, the Australian Labor Party (ALP) defeated the governing Liberal Party and National Party coalition of Prime Minister John Howard, and on December 3, ALP leader Kevin Rudd replaced Howard as prime minister. 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. Domestic labor unions and the International Trade Union Confederation continued to criticize the 1996 Federal Workplace Relations Act and the 2005 WorkChoices law (which amended the act), particularly the laws' curbs on trade unions, restrictions on strikes, and emphasis on individual employment contracts; support for repeal of portions of WorkChoices was a major plank in the ALP's election campaign platform.

#### 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.

On June 20, a Queensland jury acquitted a police officer of manslaughter and assault in the 2004 case of an indigenous man who died in police custody after his arrest for public drunkenness on Queensland's Palm Island. In September 2006 the Queensland State coroner concluded that the man was beaten while in custody and died as a result, but the state prosecutor initially declined to prosecute the officer involved. In January a retired judge appointed by the Queensland State attorney general to review the prosecutor's decision found that there was sufficient evidence to charge the officer with manslaughter.

###### 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.

###### Prison and Detention Center Conditions

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

###### 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

Civilian authorities maintained effective control over the armed forces and the police, and the government has effective mechanisms to investigate and punish abuse and corruption. There were no reports of impunity involving the security forces during the year.

#### 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 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 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. Government-provided attorneys are available to provide legal advice to detainees who cannot afford counsel.

The 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 in 2015. The law mandates a review of these provisions after five years (in 2010). On August 2, the High Court ruled that control orders were constitutional.

On July 2, the Australian Federal Police (AFP) detained Mohamed Haneef, an Indian doctor working at a Queensland hospital on a temporary visa, under the Crimes Act for alleged links to a foiled terrorist attack in Britain. Although the act states that the maximum investigation period a person can be held without charge is 24 hours (unless extended by court order), amendments enacted in 2004 introduced a concept called "dead time," in which the allowable time for questioning of a suspect can be spread across an unspecified number of days. This enabled police to detain Haneef for 12 days before he was charged on July 14 with recklessly providing support for a terrorist group and granted bail on July 16. That day the government revoked his visa on character grounds, and he was placed in immigration detention. On July 27, he was released after the Director of Public Prosecutions dropped the charges following its examination of evidence in the case. The next day Haneef returned to India. On August 21, the Federal Court of Australia granted his appeal against the cancellation of his visa. On December 21, the full bench of the Federal Court rejected the government's appeal of the August 21 decision, and the new immigration minister stated he would accept that decision. Human rights groups, the media, and the legal profession criticized the laws under which Haneef was held and police handling of the case. The Law Council, the country's highest legal body, described the "dead time" provision as introducing "indefinite detention by stealth."

#### 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.

#### 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 are a judge and jury for serious offenses. The judge conducts the trial, and the jury decides on the facts and the verdict. Defendants have the right to an attorney, and government-funded attorneys are 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 by government departments. Generally, administrative tribunals can only review a government decision if the decision is in a category specified under a law, regulation, or other legislative instrument as subject to a tribunal's review.

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

Although the constitution does not explicitly provide for freedom of speech or of the press, the High Court has held that a right to freedom of expression is implied in the constitution, 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.

On June 25, Victoria State's County Court convicted Melbourne *Herald Sun* reporters Gerard McManus and Michael Harvey of contempt of court for refusing to name their sources for an article they published in 2004 and fined them \$6,300 (A\$7,000) each. The County Court chief judge filed the charges in 2005 after the reporters refused to give evidence or name their sources during court proceedings against a government employee charged with unauthorized release of information to the reporters. After the verdict the federal attorney general urged all states and territories to pass legislation to protect confidential communications between journalists and their sources. As of year's end, such legal protection existed only in federal, New South Wales (NSW), and Australian Capital Territory courts.

Internet Freedom

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

According to the 2006 census, the country's Jewish community numbered 88,832 persons. In the 12-month period ending September 30, an annual report on anti-Semitism in Australia written by the director of international and community affairs of the Australia/Israel and Jewish Affairs Council, a nongovernmental organization (NGO), recorded 638 anti-Semitic incidents. This was twice the previous annual average since 1989 and 8 percent higher than 2002, the previous record year. These incidents included physical assault, property damage, harassment, and offensive written and electronic media. Incidents of assault, arson attacks, face-to-face harassment, and vandalism, broadly defined as "attacks," were recorded at the highest rate on record, at nearly three times the previous annual average.

On August 20 in Melbourne, two men shouting anti-Semitic slurs assaulted a 17-year-old Jewish youth with baseball bats; the case remained under investigation at year's end. On September 12, a large swastika and "KKK" were carved into the green of a historic Jewish golf club at the Cranbourne Golf Club in Victoria; the club reported that vandals caused approximately \$4,050 (A\$4,500) in damage during the year, including another incident of anti-Semitic vandalism on a club green. Police investigated the case but had not made any arrests by year's end.

At year's end police had identified no suspects in their investigation into a September 2006 incident in which a single bullet

was fired from a stationary car into the window of a mosque in Mirrabooka, a suburb of Perth.

In February a man was convicted of harassment and fined \$1,800 (A\$2,000) plus court costs for making threatening telephone calls to two Muslim schools in Perth in October 2006.

In March police charged three members of Melbourne's Ocean Grove Football Club in the October 2006 assault of a Jewish man by club members. In subsequent trials one defendant was convicted and fined \$900 (A\$1,000), and another was convicted and fined \$675 (A\$750). The third man was fined \$900 (A\$1,000), but no conviction was recorded; the court was told he acted on "the spur of the moment" and had no prior convictions.

In December 2006 the Victoria State Supreme Court ruled in favor of 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 tribunal held had vilified Muslims. The court ordered the case back to the tribunal to be heard by a different judge. On May 31, the Islamic Council of Victoria and the pastors' organization, Catch the Fire Ministries, agreed to mediation in the matter. The council filed the complaint under Victoria's Racial and Religious Tolerance Act in 2003.

The government promoted acceptance of diversity through a number of programs, including an antiracism education campaign and ongoing public awareness programs conducted by Human Rights and Equal Opportunity Commission (HREOC). In his annual report on anti-Semitism in Australia, the director of international and community affairs of the Australia/Israel and Jewish Affairs Council praised these programs in the context of combating anti-Semitism and racism. The government's "Living in Harmony" program funded community projects that promoted tolerance. In January the government announced commitment of \$7.2 million (A\$8 million) to fund a National Centre of Excellence in Islamic Studies to be based at three universities. The government also funded a variety of interfaith forums, including the International Dialogue on Interfaith Cooperation.

For a more detailed discussion, see the [2007 International Religious Freedom Report](#).

#### d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights 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, and the government has established a system for providing protection to refugees. The government granted refugee status and asylum and facilitated local integration. In practice the government provided protection against refoulement, the return of persons to a country where there is reason to believe they feared persecution.

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

In August the immigration minister announced that the country's Offshore Humanitarian Program for 2007-8 would reduce the African portion of the program's total intake from 50 percent to 30 percent and increase the intake from the Middle East and Asia to 35 per cent each. Among reasons the minister cited for the changes were improved conditions in Africa, a commitment to resettle Burmese refugees, and problems among some groups, particularly Sudanese refugees, in adjusting quickly to the Australian way of life. With regard to the latter, a UNHCR spokeswoman commented that "[e]levating so-called integration factors as a consideration in determining refugee quotas would seem to be at odds with the purpose of a refugee resettlement program."

Noncitizens arriving at a national border without prior entry authorization are detained, and unless subsequently granted permission to remain in the country, must be removed as soon as reasonably possible. Individuals may be released pending full adjudication of their asylum claim if they meet certain criteria such as old age, ill health, or experience of torture or other trauma. Detainees were either released upon receiving asylum and an appropriate visa or removed once it was determined that they did not qualify for protection. The Department of Immigration and Citizenship (DIAC) provided immigration advice and assistance to persons making an initial asylum claim or application for lawful residence. DIAC also has a statutory obligation to facilitate access to legal representation for persons in immigration detention.

During the year some asylum seekers intercepted at sea continued to be detained in offshore processing centers in Nauru, including 82 Tamils intercepted in February. The Tamils were found to be refugees (80 by DIAC and two by the UNHCR), and the government indicated it would seek their resettlement in a third country. Subsequently the new government, which

announced it would close the Nauru facility, stated it would resettle the Tamils in Australia. In December seven Burmese asylum seekers held at the Nauru facility since September 2006 were granted refugee status and moved to Australia for resettlement. In May the human rights and equal opportunity commissioner requested access to the Nauru facility as part of his annual visits to immigration detention centers, but the then immigration minister denied the request on the basis that the commissioner had no jurisdiction over offshore processing facilities.

At year's end there were approximately 600 persons in immigration detention. Of these, approximately 300 had been detained for less than three months, and approximately 40, including all families with children, were placed in "residence determination arrangements" in the community rather than in detention centers. Approximately 180 of those detained were illegal foreign fishers, primarily from Indonesia; illegal fishers generally remained in detention for only a short period pending their removal from the country.

Although 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. The ombudsman reviews the cases of persons in detention more than two years. For the 12 months ending June 30, DIAC provided reports to the ombudsman on 367 persons who had been detained for two years or more. As of June 30, 275 were no longer in detention; 16 of these were granted Removal Pending Bridging Visas (RPBVs). The law allows the immigration minister to grant an RPBV to a person in immigration detention whose removal from the country is not practical at that time. Holders of RPBVs may work and access government services, including public health care and education.

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.

### 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 based on universal suffrage and mandatory voting.

On August 30, the High Court ruled that a 2006 federal law denying voting rights to all prisoners was unconstitutional. However, the court upheld the previous law, which denied the vote to prisoners serving sentences of three years or more. In 2006 Parliament changed the law so that voter registration is closed the day the official notice is issued for an election (typically the day the prime minister announces the election). This was criticized by nongovernment parties as making it more difficult for young people and other potential first-time voters to vote.

### Elections and Political Participation

In federal elections held on November 24, the ALP won a majority of seats in the lower house of Parliament, and on December 3, ALP leader Kevin Rudd replaced John Howard as prime minister. The ALP also won state elections held in NSW during the year.

There are no legal impediments to public office for women and indigenous people. As of December, there were 67 women in the 226-seat federal Parliament (40 in the House of Representatives and 27 in the Senate). There were four female ministers in the 20-member federal cabinet, three women among the 10 ministers outside the cabinet, and three women among the 12 parliamentary secretaries. There was one woman among the eight premiers and chief ministers of the six states and two territories. For the first time, a woman was sworn in as deputy prime minister. On September 3, a woman was sworn in as a High Court judge, bringing the number of women on that bench to two for the first time.

Aboriginals generally were underrepresented among the political leadership. There were no Aboriginals in the federal Parliament. There was one Aboriginal in the Tasmanian state parliament, one in the NSW state parliament, two in the Western Australia (WA) state parliament, and four in the Northern Territory (NT) legislative assembly. In November an Aboriginal woman became the highest ranking indigenous member of government in the country's history when she was appointed NT deputy chief minister. There was one Asian-Australian in the federal cabinet.

### Government Corruption and Transparency

The law provides criminal penalties for official corruption, and the government generally implemented these laws effectively. There were isolated reports of government corruption.

On June 1, police raided Liberal Party offices in Queensland in connection with an investigation into alleged party misuse of federal election printing allowances by three Liberal Party members of the federal Parliament. The Department of Public Prosecutions declined to press charges against any of the three Members of Parliament. In October a WA Corruption and Crime Commission reported that three public officials and three local government councilors in that state had engaged in

misconduct by concealing their links to lobbyists supporting a land development project.

Queensland, WA, and NSW have independent anticorruption bodies that can investigate alleged government corruption, and every jurisdiction has an ombudsman who can investigate and make recommendations in response to complaints about government decisions. Public officials are subject to financial disclosure laws. In March a Queensland Liberal Party federal senator--and government minister--resigned after failing to disclose share purchases as required by Senate rules. Some of these shares were directly related to his ministerial portfolio.

Federal, state, and territorial governments have freedom of information (FOI) laws that provide the public with access to government information, generally subject to both an application and a processing fee. Government information may be exempted from disclosure 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. On May 10, major media organizations launched a campaign entitled "Australia's Right to Know," calling for an "audit" of press freedom in the country. Partly in response to this, in September the government directed the Australian Law Reform Commission to examine FOI laws. The commission's review was ongoing at year's end.

#### 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 criminalizes rape, including spousal rape, and the government enforced the law effectively when cases were reported to the authorities. Penalties for rape are prescribed in the laws of the individual states and territories.

In December *The Australian* newspaper publicized the 2006 gang rape of a developmentally disabled 10-year-old indigenous girl in her community of Aurukun in the Cape York area of Queensland; none of nine defendants who pleaded guilty in the case received prison sentences. In October an Aurukun court sentenced six juveniles to one year's probation; in November the Cairns District Court gave the remaining three defendants, including a 26-year-old man with prior sex offense convictions, six-month suspended sentences. Although a minor cannot give "informed consent" under the law, the judge in Cairns justified the suspended sentences on the grounds that there was no evidence of force in the case and the prosecutor had not requested prison sentences. The Queensland premier subsequently ordered a review of all sentences handed down in sexual assault cases in Cape York over the past two years. The Queensland attorney general lodged appeals against the sentences given the nine defendants and also applied for an extension of the appeal period.

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.

Domestic violence was believed to be widely underreported in indigenous communities. In a November 2006 report entitled *Family Violence among Aboriginal and Torres Strait Islander Peoples*, which analyzed information from a number of existing studies and other data bases, the Australian Institute of Health and Welfare noted that reluctance among indigenous women to report domestic violence "may be a result of fear both of the police and the perpetrator" and that "past personal or cultural experiences...with the criminal justice system may also result in under-reporting." The report also cited the isolation of many indigenous communities as a factor. In April there were press reports on widespread domestic violence and child abuse in Aboriginal communities in WA (see section 5, Children). The federal Department of Family and Community Services and the state departments of community services had programs to both combat domestic violence and support its victims, and the federal, state, and territorial governments funded numerous women's shelters. The federal government also funded an advertising and information campaign against violence against women as part of its "Women's Safety Agenda."

Prostitution is legal or decriminalized in several states and territories, and the governments of Victoria, Queensland, NSW, and the Australian Capital Territory license brothels operating within their borders. However, some 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 ensure 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.

The Sex Discrimination Act prohibits sexual harassment. Circumstances that give rise to complaints of such harassment can also give rise to criminal proceedings or disciplinary action against the subject of the complaint and to compensation claims by the complainant. 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. There also is a federal Office for Women. In August the federal minister for women published a report, *Women in Australia 2007*, which provided an overview of progress made over the past 10 years in raising the status of women across a wide range of areas.

HREOC received 472 complaints under the Sex Discrimination Act from July 2006 through June 2007. Of these, 17 percent alleged discrimination based on pregnancy, and 19 percent alleged sexual harassment. The commission resolved 452 of the complaints, 46 percent by conciliation.

Women have equal status under the law, and the law provides for pay equity. In February the Australian Bureau of Statistics (ABS) estimated that women's full-time total average weekly earnings were 83.6 percent of those of men. The Equal Opportunity for Women in the Workplace Act requires organizations with 100 or more employees to establish a workplace program to remove the barriers to women entering and advancing in their organization.

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

#### 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 2006 was 94.5 percent, with most children completing grade 12. The student retention rate from grades seven and eight to grade 12 was 80.6 percent for girls and 69 percent for boys.

The government provided universal health insurance coverage to all citizens and lawful residents from birth on a copayment basis. Boys and girls had equal access to government-provided medical care.

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 55,921 substantiated cases of child abuse and neglect from July 2005 to June 2006, the latest period for which national statistics were available. These included physical abuse (22 percent of cases), sexual abuse (10 percent), emotional abuse (40 percent), and neglect (27 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. From January 1, 2004 through October 23, 2007, the AFP conducted 153 investigations and assessments under the act. As of June 30, there were 28 prosecutions, with 18 convictions and two cases still pending before the courts. 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 trafficked into the country during the year. In August the government allocated \$170 million (A\$189 million) for free Internet filtering and more resources to help police better protect children from online predators.

In June a board of inquiry created in August 2006 to investigate allegations of sexual abuse of children in Aboriginal communities in the NT reported that child sexual abuse was serious, widespread, and often unreported. The board found instances of sexual abuse in all 45 communities it visited and cited high rates of poverty and alcohol abuse as major contributing factors. Also in June, in response to what he called a "horrifying" report, the prime minister used the federal government's constitutional authority over the territories to take emergency measures in all the NT indigenous

communities, including emergency bans on alcohol and pornography sales, restrictions on the payment of welfare benefits in cash, linkage of support payments to school attendance, and medical examinations for all NT indigenous children under age 16. Some of the emergency measures as well as other remedial assistance for indigenous communities were codified in legislation approved by Parliament in August. The public generally welcomed the announcement; however, some lawyers and Aboriginal activists expressed concern that there was inadequate consultation and that the changes might be racially discriminatory.

In October a coroner's inquiry into whether alcohol and drugs contributed to the deaths of up to 23 indigenous persons in the Kimberley region of WA's far north found that children often went without food because their parents spent money on alcohol. Also in October, the WA government appointed the state's first commissioner for children and young persons, reporting directly to the state parliament, to act as an independent advocate and to ensure the protection of children.

#### Trafficking in Persons

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

Some women, primarily from the People's Republic of China (PRC), the Republic of Korea, and Southeast Asia, entered 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 under conditions that amounted to debt bondage or sexual servitude. There were several reports of men and women from India, the PRC, and South Korea migrating to Australia temporarily for work whose labor conditions amounted to slavery, debt bondage, and involuntary 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.

The Commonwealth Criminal Code comprehensively criminalizes "people trafficking" offenses, including sexual servitude, slavery, deceptive recruitment, debt bondage, child trafficking, and domestic trafficking. These offenses carry penalties of up to 25 years' imprisonment for slavery, debt bondage, child trafficking, and domestic trafficking; 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.

The government had a wide range of programs to combat trafficking, prosecute traffickers, and assist trafficking victims. The AFP and DIAC have lead roles in combating trafficking in persons. The AFP's Transnational Sexual Exploitation and Trafficking Teams are responsible for investigating trafficking syndicates operating in the country and abroad. State police forces worked closely with the AFP on a comprehensive policing strategy to counter trafficking in persons. From 2004 through March 1, 2007, the AFP investigated 117 cases relating to allegations involving slavery, deceptive recruiting, and sexual servitude, as well as more than 150 allegations of child sex tourism offenses. Since passage of an expanded antitrafficking law in 2005, four persons were convicted of trafficking-related offenses. At year's end three of these cases were under appeal, and eight additional trafficking cases were before the courts.

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 2006 to June 2007 annual report stated that 802 complaints were filed under the Disability Discrimination Act. Of these, 46 percent were employment related, and 29 percent involved the provision of goods and services. HREOC resolved 682 complaints, 44 percent through conciliation.

As part of its "welfare to work" reforms, the Howard government tightened eligibility for disability pensions but increased assistance for persons with disabilities seeking work and incentives for employers to hire persons with disabilities.

#### National/Racial/Ethnic Minorities

According to HREOC's July 2006 to June 2007 annual report, it received 250 complaints under the Racial Discrimination Act. Forty-two percent involved employment, 16 percent involved provision of goods and services, and 15 percent alleged "racial hatred." Persons born outside the country filed 60 percent of the complaints, and Aboriginals and Torres Strait Islanders filed 25 percent.

In May a member of a neo-Nazi group, charged together with the group's leader, Jack van Tongeren, with involvement in a 2004 conspiracy to firebomb Chinese restaurants in Perth, was convicted and sentenced to four and one-half years' imprisonment. Van Tongeren was released in December 2006 after he agreed to plead guilty to criminal damage and conspiracy to cause arson and was required to leave Western Australia.

#### Indigenous People

According to the June 2006 census, Aboriginals and Torres Strait Islanders numbered approximately 517,200 persons, approximately 2.5 percent of the total population. The government's approach toward indigenous citizens continued to emphasize "practical reconciliation" aimed at raising the health, education, and living standards of indigenous people. The National Indigenous Council, an indigenous advisory group, provided advice to the government on improving conditions for indigenous people. In April Prime Minister Howard wrote to the top 100 companies in the country urging them to support and employ more members of the indigenous community. He also instructed all government agencies to prepare detailed action plans to help bridge the gap in living standards between indigenous and nonindigenous citizens. The Howard government favored an approach promoting individual responsibility and an end to passive welfare. A wide variety of continuing government initiatives and programs sought to improve all aspects of Aboriginal and Torres Strait Islander life. The government budgeted \$2.8 billion (A\$3.1 billion) for indigenous-specific services in 2006-7 and \$3.15 billion (A\$3.5 billion) in 2007-8.

In July the Supreme Court of South Australia ruled that an Aboriginal man was treated unlawfully when he was placed with a nonindigenous foster family in 1958 at age 13 months without his parents' permission. He was placed with the foster family after being hospitalized for a stomach ailment. The court awarded the man \$473,000 (A\$525,000) in compensation. The South Australia State government stated it would not appeal the decision.

According to the government's third report on *Overcoming Indigenous Disadvantage*, released in June, the life expectancy of an indigenous person was 17 years less than that of a nonindigenous person. The report, which compared up to 10 years of available data, noted improvements in some areas, including increases in indigenous employment, home ownership, and education levels, and decreases in infant mortality rates and hospitalizations of children up to age 14 for diseases associated with poor environmental health. Despite these improvements, wide gaps remained between the indigenous and nonindigenous populations in virtually every area. The infant mortality rate was still two to three times the rate for the total population. From 2001 to 2005 there was an increase in the number of long-term health problems among indigenous people. For example, kidney disease among the indigenous population increased from five times the nonindigenous rate in 2001 to 10 times the nonindigenous rate in 2005. Older indigenous persons also had increased hospitalization rates for diseases associated with poor environmental health.

The report also found that indigenous imprisonment rates increased by 32 percent between 2000 and 2006. After adjusting for age differences, in 2006 indigenous people were 13 times more likely than the nonindigenous to be imprisoned, and indigenous juveniles were 23 times more likely to be detained.

The National Drug Research Institute reported that Aboriginals were more than twice as likely as their nonindigenous counterparts to die from alcohol abuse; researchers cited high rates of poverty and unemployment, low educational levels, and lack of adequate access to health services among Aboriginals as contributing causes, particularly in isolated communities. In October evidence in a coroner's inquiry into the role of alcohol and drugs as contributors to the deaths of up to 23 indigenous people in the Kimberley region of WA's far north prompted calls for a government commission to look into inherent poverty, child sex abuse, alcohol and drug use, and unacceptably high death rates in remote Aboriginal communities. The call came as the town of Fitzroy Crossing became bitterly divided over the introduction of a controversial

six-month ban on the sale of take-out alcohol.

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 but did not extinguish native title rights.

The \$1.26 billion (A\$1.4 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, 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 during the year 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

On June 21, HREOC presented a report to Parliament noting 58 federal laws that denied same-sex couples and their children basic financial and work-related entitlements available to heterosexual couples and their children. At year's end the new government was considering the report.

In October police reported that there were nine "sexual preference prejudice" assaults during the year around Oxford Street in Sydney, a popular gay area.

Federal and various state laws prohibit discrimination on the grounds of HIV-positive status. In the 12 months ending June 30, there were 21 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 802 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 2006 ABS survey indicated that union membership decreased over the previous 12 months from 22.4 to 20.3 percent of the total workforce, and to only 15 percent of the private-sector workforce. Unions generally 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, and limits on redress and compensation claims by dismissed employees, was substantially changed by the 2005 Workplace Relations Amendment Act (known as WorkChoices), which came into effect in March 2006. Under the WRA, as amended by WorkChoices, workers are free to join or decline to join industrial associations, and discrimination against individuals for membership or nonmembership in a union is prohibited. The Australian Council of Trade Unions (ACTU, the umbrella trade union organization), the ALP, and a number of international labor organizations criticized both the 1996 law and WorkChoices, alleging that they violate a number of worker rights provided for in several International Labor Organization conventions that the government has signed, including the right to assembly. The new government, elected in part because of public opposition to WorkChoices, stated it would introduce legislation to abolish Australian Workplace Agreements (AWAs) and amend the law to provide more protection for individual workers.

In 2005 the Department of Employment and Workplace Relations advised all federal government agencies that "leave should not be made available to cover participation in industrial action." However, on September 6, the Federal Court of Australia ruled that this directive violated the WRA because one of the act's objectives was to "ensure freedom of association."

##### 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 further from a centralized awards system to enterprise-level agreements certified by the Australian Industrial Relations Commission. The WRA also provided for the negotiation of AWAs between employers and individual workers, which were subject to fewer government regulations than awards or enterprise bargaining agreements; however, AWAs had to meet a "no disadvantage" test: a worker could not be made worse off compared to the relevant award.

WorkChoices substantially changed the WRA. 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. From March 2006, when WorkChoices was introduced, to November 30, 2007, a total of 560,758 AWAs were signed.

WorkChoices does not cover employees of unincorporated businesses, some state government employees, and sole traders and partnerships. However, employees in those categories in Victoria (which transferred its industrial relations powers to the federal government in 1997) and the territories are covered by WorkChoices.

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.

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.

According to the ABS, during the 12 months ending September 30, there were 151 industrial disputes, 105 fewer than the previous year; during the same period, total workdays lost due to strikes fell from 159,400 to 79,600. In December a curtain manufacturer reportedly threatened to dismiss its entire staff if they voted to take industrial action in pursuit of a new enterprise agreement. One worker subsequently left the union, and five others agreed to vote against industrial action. The Workplace Ombudsman was reviewing the case at year's end.

There are no export processing zones.

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

The law explicitly prohibits forced or compulsory labor, including by children; however, trafficking in persons was a limited problem.

#### 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, the minimum age to claim unemployment benefits, and the minimum age to engage in specified occupations. The ACTU also monitored adherence to these laws. Workers under age 18 require parental or guardian consent to sign an AWA.

#### e. Acceptable Conditions of Work

Although a formal minimum wage exists, most workers received higher wages through enterprise agreements or individual contracts. There are above-minimum wage classifications for individual trades and professions. In October the Australian Fair Pay Commission, which determines minimum wage increases, raised the federal minimum award wage to \$470.57 (A\$522.86) per week from \$461.34 (A\$512.60) per week. The ACTU criticized the increase as inadequate, claiming it did not keep up with inflation. According to the ABS, real wages increased by 3.1 per cent between July 1, 2006 and June 30, 2007, compared with an increase of 1.8 per cent during the previous 12 months.

In response to concerns that employees signing AWAs were being stripped of formerly mandated conditions of employment (such as higher pay for working weekends or holidays) without adequate compensation, in May the government announced it would introduce proposed legislation to establish a "fairness test" for AWAs; in June Parliament passed this provision. The Office of Employment Advocate was renamed the "Workplace Authority" and the Office of Workplace Services became the "Workplace Ombudsman." The Workplace Authority conducts the fairness test by considering both monetary and nonmonetary compensation offered under an AWA compared to what would be payable otherwise. If the fairness test is not met, an AWA is not approved. The Workplace Ombudsman provides employers and employees advice about their rights and has authority to investigate employers alleged to have unlawfully exploited employees.

As of November 30, the Workplace Authority had received 222,276 AWAs for review since the fairness test was introduced. Of the 72,859 agreements finalized, 41,273 passed the fairness test and an additional 9,139 passed following acceptance of recommendations from the Workplace Authority. The fairness test did not apply to 15,754 agreements, either because protected award conditions did not change or because the employee earned more than \$67,500 (A\$75,000) per year. The authority voided 6,693 agreements because required changes were not made.

Over the past two decades, there has been a substantial increase in the percentage of the workforce regarded as temporary workers. The ABS reported that, as of December, approximately three million persons (28.2 percent of the workforce) were employed as "part-time" workers, of whom 71 percent were women. 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. 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 complaints that some individuals entering the country to work temporarily on so-called 457 skilled-worker visas were being underpaid or charged excessive rents by their employers. There also were complaints that some employers used foreign workers as a less expensive substitute for Australian workers. In September a parliamentary committee recommended that DIAC review its entire 457 program, focus more on employer compliance with program requirements, and provide clear instructions to both employers and employees as to their rights under the program. 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.

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