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## 2009 Human Rights Reports: Australia

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

### 2009 Country Reports on Human Rights Practices

March 11, 2010

Australia is a constitutional democracy with a federal parliamentary government. Its population was approximately 21.4 million. Citizens periodically choose their representatives in free and fair multiparty elections. In federal parliamentary elections held in 2007, the Australian Labor Party (ALP) defeated the governing Liberal Party and National Party coalition, and ALP leader Kevin Rudd became prime minister. Civilian authorities generally maintained effective control of the security forces.

Problems were reported in a few areas, including domestic violence against women and children, racially based attacks on foreign students, and societal discrimination against indigenous people.

#### 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.

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 and detention center conditions generally met international standards, and the government permitted monitoring 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 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 Procedures and Treatment While in 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, the law permits 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.

Although the law states that the maximum investigation period for which a person can be held and questioned without charge is 24 hours (unless extended by court order), it also provides that this allowable time for questioning a suspect can be spread across an unspecified number of days (a concept known as "dead time")--a provision criticized by human rights groups, the media, and the legal profession. In August the government released a discussion paper on proposed changes to national security legislation that included a proposal to replace "dead time" with a seven-day limit on holding a suspect for questioning. Action had not been taken on that proposal by year's end.

A separate provision of law permits the attorney general to grant the Australian Security Intelligence Organization (ASIO) authority to detain a person for a continuous period of up to 168 hours in special circumstances, such as "reasonable grounds for believing that issuing the warrant to be requested will substantially assist the collection of intelligence that is important in relation to a terrorism offence." However, ASIO has not used this authority.

The 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.

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.

#### e. Denial of Fair Public Trial

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

##### 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.

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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. The law extends these rights to all citizens.

#### 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 may 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.

##### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government routinely monitored e-mail or Internet chat rooms. Law enforcement agencies require a warrant to intercept telecommunications, including Internet communications. In emergency situations the director general of ASIO, for example, may issue a warrant for this purpose without prior judicial authorization, but the attorney general must be informed.

The Australian Communications and Media Authority (ACMA) maintains a list of so-called "refused classification" Web site content, primarily pertaining to child pornography, sexual violence, and other activities illegal in the country, compiled as a result of a consumer complaints process. ACMA may issue a notice to the provider to remove domestically hosted "refused classification" material, or links to such material, that is the subject of such a complaint, if an ACMA investigation concludes the complaint is justified. The list is made available to providers of filtering software.

Individuals and groups engaged in the peaceful expression of views via the Internet, including by e-mail. The Internet was widely used. According to the Australian Bureau of Statistics (ABS), 72 percent of households had Internet access as of June.

##### 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 by the Australia/Israel and Jewish Affairs Council, a nongovernmental organization (NGO), recorded 962 anti-Semitic incidents, compared with 652 during the previous 12 months. According to the report's author, the overall increase resulted primarily from "new peaks" in reported incidents of harassment of Jewish citizens on the street, such as abusive remarks directed at Jewish persons walking to or from synagogue services, and in anti-Semitic e-mails and Internet postings. On the other hand, the report also noted a "marked decrease" in physical assaults against Jewish persons and property, with 27 such incidents reported compared with 58 and 46 respectively during the previous two years. Telephone threats, hate mail, and anti-Semitic graffiti also were reported at rates below the 20-year average for such incidents.

In May a Perth man was charged under Western Australia (WA) racial vilification laws for allegedly posting anti-Semitic videos on the Internet. The case remained pending at year's end.

In February the local council in Gold Coast, Queensland State, unanimously approved plans to construct an Islamic school. In June the New South Wales (NSW) Land and Environment Court upheld a decision by the local council in Camden, NSW to reject the construction of an Islamic school on planning grounds alone. Some Christian leaders in the area had claimed that the school was "incompatible with the Australian way of life."

The government promoted acceptance of diversity through a number of programs, including public awareness programs conducted by the Human Rights and Equal Opportunity Commission (HREOC) and the Department of Immigration and Citizenship (DIAC). The National Action Plan (NAP) for Social Cohesion, Harmony, and Security was developed in 2005-06 with the assistance of state governments. A particular focus of the plan was engaging the Muslim community with the broader society. The NAP's Diverse Australia Program funded projects in areas considered "hotspots" of racial and cultural tension. The 16-member Australian Multicultural Advisory Council provides the government with advice on "social cohesion issues relating to Australia's cultural and religious diversity."

For a more detailed discussion, see the *2009 International Religious Freedom Report* at [www.state.gov/g/drl/rls/irf/](http://www.state.gov/g/drl/rls/irf/).

#### 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 government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to internally displaced persons, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern.

The law does not address forced exile, but the government did not use it.

#### Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 protocol. Its laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The government provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion. The government funded refugee resettlement services such as language and employment programs.

In October the Australian customs vessel *Oceanic Viking* picked up 78 Tamil asylum seekers from Sri Lanka in Indonesia's search and rescue zone. The Tamils initially refused to disembark from the vessel unless the Australian government agreed to take them to Australia for processing. After a standoff lasting several weeks, the asylum seekers agreed to disembark for processing in Indonesia after Australian officials assured them the UNHCR would process applications and resettlement expeditiously. All had disembarked by November 18, and the government assigned a mobile team of five immigration officers to Indonesia to help process their claims. Some media commentators, opposition politicians, and asylum seekers in the country asserted that the 78 were receiving special treatment not extended to other asylum seekers; the government denied this was the case.

Unauthorized arrivals are processed at the Christmas Island detention center, located off the country's northwest coast. In 2008 the government announced major changes to the mandatory detention policy for unauthorized arrivals. Under the new policy--following health, identity, and security checks--unauthorized arrivals remain in immigration detention while their applications are being processed only if it is determined that they pose a threat to the community. However, the HREOC reported that in practice a "shortage of community-based accommodation appears to be preventing the release of some detainees from closed detention facilities into community detention." The HREOC also called for the end of the "two-tiered" system for unauthorized arrivals, whereby those who are intercepted on the mainland have more legal rights than those who arrive in a so-called "excised" offshore location (for example, Christmas Island). In September Parliament passed legislation abolishing liability of detained migrants for detention costs. (In practice most of this debt was written off.) Human rights groups welcomed the change.

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.

As of October 30, there were 1422 persons in immigration detention, including 284 on the mainland and 1138 on Christmas Island. Although delays in processing asylum applications were not a significant problem during the year, a small number of asylum seekers remained in long-term detention 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 commonwealth ombudsman reviews all cases of persons in detention two years or more.

As of September 14, there were 17 persons in immigration detention longer than two years. Detention facilities were monitored by Parliament, the ombudsman, the UNHCR, and an advisory group comprising experts in immigration and humanitarian issues.

During a visit to the country in November, Amnesty International Secretary General Irene Khan welcomed the changes made to immigration detention policy but urged the government to close the Christmas Island detention center and process unauthorized arrivals on the mainland. On November 21, violence broke out at the center between groups of Afghan and Sri Lankan asylum seekers, who assaulted each other with tree branches, pool cues, and broom handles. Approximately 150 detainees were involved in the incident; 37 persons were reported injured, including four who were transferred to a hospital in Perth. The authorities were investigating the incident at year's end. Advocates for the asylum seekers asserted that overcrowding was a contributing factor in the unrest. The center originally could accommodate

approximately 800 persons. In response to a surge in unauthorized arrivals during the year, by December the government had expanded the center's holding capacity to 1560 persons, including some tent accommodations. The facility was approaching this capacity at year's end.

### 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.

#### Elections and Political Participation

In federal elections held in 2007, the ALP won a majority of seats in the lower house of Parliament, and ALP leader Kevin Rudd became prime minister. Political parties operated without restriction or outside interference.

There are no legal impediments to public office for women or indigenous people. 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 were two women among the eight premiers and chief ministers of the six states and two territories. The deputy prime minister and the governor-general were women, and there were three female judges on the seven-member High Court.

Indigenous people generally were underrepresented among the political leadership. There were no indigenous citizens in the federal Parliament. There was one indigenous citizen in the Tasmania State parliament, one in the NSW State parliament, two in the WA State parliament, and five in the Northern Territory (NT) legislative assembly. The NT deputy chief minister was an indigenous woman. There was one Asian-Australian in the federal cabinet.

### Section 4 Official Corruption and Government Transparency

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

Queensland, WA, and NSW have independent anticorruption bodies that investigate alleged government corruption, and every jurisdiction has an ombudsman who investigates and makes recommendations in response to complaints about government decisions. Public officials are subject to financial disclosure laws. In July a former Queensland government minister was sentenced to seven years' imprisonment for receiving secret payments from two businessmen. Also in July, the Queensland Crime and Misconduct Commission released a report into police misconduct, much of it relating to improper relationships with criminal informants. The report implicated 25 officers, recommending that disciplinary action be considered against 17 and that a further six receive managerial guidance. Of the latter six, five were given managerial guidance. Among the remaining 17, five resigned or retired before charges were heard, six received managerial guidance, and misconduct was proven against three. Of those three, one officer was dismissed, one resigned, and one applied for medical retirement. Three officers (including two of the 17) were charged with perjury; those cases were pending at year's end.

Federal, state, and territorial governments have freedom of information (FOI) laws that provide the public with access to government information, 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 March 24, Australia's Right to Know Coalition, an organization composed of 12 major media outlets, held a conference in Sydney to voice concerns about what the group called a lack of transparency on the part of government officials, and to call for reform of the country's FOI and secrecy laws to provide for greater public access, including media access, to government information. The government announced proposed changes to the laws in response to expressed concerns, but the proposals were not implemented by year's end.

#### Section 5 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.

The government cooperated with international governmental organizations and permitted visits by UN representatives and other organizations.

In April the UN Human Rights Committee released its *Concluding Observations on Australia*. It welcomed the government's National Human Rights Consultation Process (NHRCP), which was reviewing human rights protections (see section 6), and the 2008 apology to the "stolen generations" of indigenous people. It also made a number of recommendations, among them that the country ensure that its antiterrorism laws and practices were in conformity with the International Covenant on Civil and Political Rights; consider abolishing the remaining elements of its mandatory immigration detention policy (see section 2.d.); implement the recommendations made in the committee's *Immigration Detention Report* of 2008; consider closing down the Christmas Island detention center; enact in legislation a comprehensive immigration framework in compliance with the covenant; and increase its efforts for effective consultation with indigenous people in decision making that impacted their rights. The government was asked to provide relevant information to the committee within a year on its implementation of the recommendations. The government had not yet issued its reply by year's end.

UN special rapporteurs on health and indigenous issues also visited the country during the year and issued reports (see section 6).

#### Section 6 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 HREOC investigates complaints of discrimination or breaches of human rights under the federal laws that implement the country's human rights treaty obligations. In December 2008 the government launched a National Human Rights Consultation Process (NHRCP) to seek the public's views on how to better protect human rights. In this connection the government noted that "the options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights." On September 30, the NHRCP committee released its report. Recommendations included an audit of legislation to determine compliance with international obligations, establishment of a joint parliamentary committee on human rights, adoption of a human rights act, and a national human rights education campaign.

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.

The law prohibits violence against women, including domestic abuse, and the government enforced the law. Nonetheless, violence against women remained a problem, particularly in indigenous communities.

According to the ABS, approximately one in three Australian women experienced physical violence during their lives, and almost one in five experienced sexual violence. Aboriginal women were 40 times more likely to be victims of family violence compared to other women. Domestic violence was believed to be widely underreported in indigenous communities; among reasons cited for this were cultural factors and the isolation of many indigenous communities. The federal and state governments funded programs to combat domestic violence and support victims, including funding of numerous women's shelters. Police were trained in responding to domestic violence.

Prostitution is legal or decriminalized in several states and territories, and the governments of Victoria, Queensland, NSW, and the Australian Capital Territory (ACT) 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, unlicensed brothels. Some women, primarily from Asia, were trafficked for prostitution. The Australian Federal Police (AFP), state police, and DIAC worked together to identify and close down illegal brothels.

The Sex Discrimination Act prohibits sexual harassment. Complaints of such harassment can give rise to criminal proceedings or disciplinary action against the subject of the complaint and to compensation claims by the complainant.

Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children. State and territorial governments provided comprehensive sex education and sexual health and family planning services. Women had access to contraception and skilled medical care, including essential obstetric and postpartum care, and women and men had equal access to diagnosis and treatment for sexually transmitted infections, including HIV. Indigenous persons in isolated communities had more difficulty accessing such services than the population as a whole. Cultural factors and language barriers also inhibited use of sexual health and family planning services by indigenous persons, and rates of sexually transmitted diseases and teenage pregnancy among the indigenous population were higher than among the general population.

The independent federal sex discrimination commissioner, who is part of the HREOC, undertakes research, policy, and educational work designed to eliminate discrimination between men and women. There also is a federal Office for Women.

The HREOC received 547 complaints alleging 964 grounds of discrimination under the Sex Discrimination Act from July 2008 through June 2009. Of these, 22 percent alleged discrimination based on pregnancy, and 22 percent alleged sexual harassment. The commission resolved 542 of the complaints, 246 by conciliation.

Women have equal status under the law, and the law provides for pay equity. The law requires organizations with 100 or more employees to establish a workplace program to remove 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

Citizenship is not derived by birth in the country. Children are citizens if at least one parent was a citizen or permanent resident at the time of the child's birth. Children born in the country to parents who are not citizens or permanent residents acquire citizenship on their tenth birthday if they have lived most of their life in the country.

Through the welfare system, the government provides a financial "baby bonus" to assist families with the cost of new children.

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 55,120 substantiated cases of child abuse and neglect from July 2007 to June 2008, the latest period for which national statistics were available. These included physical abuse, sexual abuse, emotional abuse, and neglect. 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 year the government continued its awareness campaign to deter child sex tourism through the distribution of materials to citizens and residents traveling overseas.

The legal age for consensual sex is 16 in the ACT, NSW, NT, Victoria, and WA, and 17 in Tasmania and South Australia. In Queensland the age of consent for anal sex is 18, while the age of consent for all other sexual behavior is 16. Maximum penalties for violations vary across jurisdictions. Defenses include reasonable grounds for believing that the alleged victim was above the legal age of consent and situations in which the two persons are close in age.

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. All states and territories criminalize the possession, production and distribution of child pornography. Maximum penalties for these offenses range from four to 21 years' imprisonment. Federal laws criminalize using a "carriage service" (for example, the Internet) for the purpose of possessing, producing, and supplying child pornography. The maximum penalty for these offenses is 10 years' imprisonment and/or a fine of A\$275,000 (approximately \$245,540).

The AFP worked with its international partners to identify and charge persons involved in the online exploitation of children, and the government increased the number of staff dedicated to online child protection.

The government largely continued federal emergency intervention measures initiated by its predecessor to combat child sexual abuse in 73 NT Aboriginal communities. The measures were taken following a 2007 government report of widespread such abuse. These measures included 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. While public reaction to the intervention remained generally positive, some Aboriginal activists asserted that there was inadequate consultation and that the measures were racially discriminatory. The UN special rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who toured NT indigenous communities in August, echoed these concerns. An Australian Institute of Health and Welfare report released in December suggested the intervention had significantly improved health outcomes for indigenous children, although the report also noted that continuing follow-up services would be needed because of the chronic nature of many of the children's medical problems.

In November the prime minister apologized on behalf of Parliament to individuals abused as children in orphanages and foster care. Some had been sent from the United Kingdom to help populate Australia; this occurred until the early 1970s.

#### 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 (ROK), 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. Some men and women from several Pacific islands, India, the PRC, the ROK, the Philippines, and Ireland recruited to work temporarily in Australia subsequently were subjected to conditions of forced labor. Child protection NGOs raised community awareness of child trafficking. There were no reports of children trafficked into the country during the year. Some minor indigenous girls were subjected to forced prostitution at rural truck stops.

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 law 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. It is an offense for citizens or residents to travel abroad to engage in sex with minors under age 16.

In September two men were sentenced to 14 and 10 years' imprisonment respectively for involvement in a sex slavery scheme that brought Thai women to Melbourne brothels. The court was told the women had to service up to 750 clients before their "debt" was paid.

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. According to a report published in October by the Australian Institute of Criminology, between January 2004 and December 2008, the AFP conducted 210 trafficking investigations, charged 34 persons, and recorded seven convictions, while 113 persons received assistance from the government's victim support program.

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. 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 investigation 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. In June the government announced changes to improve victims' ability to access this assistance, including offering such support regardless of whether a victim was willing to assist police, reducing the time needed to qualify for a permanent visa, and enabling family members outside the country to be included in a visa application. Between July 1, 2008 and June 30, 2009, DIAC granted 77 visas under the "people trafficking" visa framework.

In March the government established guidelines to assist NGOs that were often the first point of contact for trafficking victims. Counseling, temporary shelter, and other assistance were available to all trafficking victims.

The Department of State's annual *Trafficking in Persons Report* can be found at [www.state.gov/g/tip/](http://www.state.gov/g/tip/).

#### Persons with Disabilities

The law prohibits discrimination against persons with disabilities in employment; education; access to premises; provision 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. The government effectively enforced the law.

The disability discrimination commissioner, who is part of the 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 to buildings and otherwise protect the rights of persons with disabilities. The law also provides for mediation by the HREOC of discrimination complaints, authorizes fines against violators, and awards damages to victims of discrimination.

The HREOC's July 2008 to June 2009 annual report stated that 980 complaints citing 1,474 alleged grounds of discrimination were filed under the Disability Discrimination Act during that period. Of these, 40 percent were employment related, and 35 percent involved the provision of goods and services. The resolved 1,117 complaints, 518 of them through conciliation.

During the year the government began development of a national disability strategy.

#### National/Racial/Ethnic Minorities

According to the HREOC's July 2008 to June 2009 annual report, it received 396 complaints under the Racial Discrimination Act (RDA), citing 617 alleged grounds of discrimination. Of these, 54 percent involved employment, 23 percent involved provision of goods and services, and 10 percent alleged "racial hatred." Persons born outside the country filed 45 percent of the complaints, and Aboriginals and Torres Strait Islanders filed 42 percent. Of the 396 complaints, 392 were resolved, 206 through conciliation.

During 2008 and 2009, there were a number of incidents of possibly racially motivated assaults against Indian and Chinese students. In late May and early June, Indian students in Melbourne and Sydney held rallies protesting violent attacks some claimed were racially motivated. Subsequently, the government formed a taskforce headed by the prime minister's national security adviser and discussed the issue with the Indian government. Victoria police also increased their presence in neighborhoods where many Indian students resided.

#### Indigenous People

According to the 2006 census, Aboriginals and Torres Strait Islanders numbered approximately 517,200 persons, approximately 2.5 percent of the total population.

Indigenous ownership of land is predominately in non-urban areas; the land was previously government owned. The 1976 Federal Aboriginal Land Rights (Northern Territory) Act transferred almost 50 per cent of land in the NT to indigenous ownership. 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. In 2002 the High Court ruled that native title rights do not extend to mineral or petroleum resources and that, in cases where leasehold rights and native title rights are in conflict, leaseholder rights prevail but do not extinguish native title rights. As of year's end, the WA government was attempting to negotiate an out-of-court native title agreement with the Nyoongar people, a development that the HREOC characterized as "long-awaited good news." In 2008 the Federal Court had overturned on technical grounds a 2006 federal court judge's decision recognizing Nyoongar native title to the land in question and referred the case back for another hearing on the merits.

The A\$1.7 billion (approximately \$1.5 billion) Indigenous Land Corporation is a special account that provides a continuing 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.

As part of the NT intervention to address child sexual abuse in NT indigenous communities (see section 6, Children), the government took control of certain indigenous communities through five-year land leases. However, the government warned it would permanently acquire some townships in Alice Springs unless the townships relinquished control of services and signed 40-year leases with the government. (These townships are not Aboriginal land but special-purpose leases granted to local indigenous associations by the NT government.)

The government expressed a commitment to "closing the gap" on indigenous disadvantage, and in 2008 the prime minister undertook to report to Parliament on this at the beginning of each year. The government budgeted A\$4.3 billion (approximately \$3.8 billion) for indigenous-specific services in 2008-09 and A\$4.8 billion (approximately \$4.3 billion) in 2009-10.

In July the Productivity Commission reported improvements among the indigenous population in key indicators such as income, employment, home ownership, infant mortality, and completion of secondary school. However, significant gaps remained between indigenous and nonindigenous citizens in these and other key areas. The imprisonment rate for indigenous citizens worsened between 2000 and 2008. Indigenous adults were 13 times as likely as nonindigenous adults to be imprisoned in 2008, compared with 10 times as likely in 2000. According to the Australian Institute of Health and Welfare, life expectancy for indigenous persons was 59 years for males and 65 for females, compared with 77 and 82 respectively for the nonindigenous.

A UN special rapporteur on health visited the country between November 24 and December 4 and met with senior officials. He praised the government's additional investment in indigenous health services but expressed concern about inadequate access to such services, "often due to direct discrimination and culturally inappropriate services being provided." The indigenous health minister noted that the government had increased the indigenous health budget by 57 percent in two years.

During the year a former NT minister for indigenous affairs criticized the NT government's handling of a two-year-old A\$672 million (approximately \$600 million) indigenous housing and infrastructure program, noting that no houses had been built yet. The program was part of the broader NT intervention program.

In August the UN special rapporteur on indigenous issues reported on the human rights of indigenous people following an 11-day visit that included a meeting with the indigenous affairs minister. While praising efforts to address indigenous disadvantage and moves to establish a national indigenous representative body, the report asserted that the NT intervention was incompatible with the country's international obligations and urged the government to make it compliant with the RDA. The minister stated that the government was consulting with indigenous people and was seeking to make the intervention compliant with the RDA.

On November 22, the government announced the establishment of a new national representative body for Aboriginals and Torres Strait Islanders, to be known as the National Congress of Australia's First Peoples. It was expected to be fully operational by January 2011.

Indigenous NGOs included groups working on native title issues, reconciliation, deaths in custody, and indigenous rights in general. International NGOs, such as Amnesty International, also monitored and reported on indigenous issues and rights. The HREOC has an Aboriginal and Torres Strait Islander social justice commissioner.

#### Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

In 2008 and 2009, the government amended 84 laws to eliminate discrimination against same-sex couples and their children in a wide range of areas, including taxes, child support, immigration, pensions, and social security. A large number of these reforms came into effect on July 1.

A number of gay, lesbian, bisexual, and transgender NGOs were openly active in the country, and gay pride marches took place in major cities; police provided sufficient protection to participants.

The HREOC received 17 complaints of employment discrimination based on sexual orientation from July 2008 through June 2009.

#### Other Societal Violence or Discrimination

Federal and various state laws prohibit discrimination on the grounds of HIV-positive status. The HREOC reviews complaints of discrimination on the grounds of HIV/AIDS status under the category of disability-related complaints, but a specific breakdown of HIV/AIDS-related cases was not available. There were no reports of violence against persons based on HIV/AIDS status.

#### Section 7 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. An ABS survey released in April indicated that in 2008, union membership was 19 percent of the total workforce and 13.6 percent of the private-sector workforce--virtually identical to 2007 percentages. Unions carried out their functions free from government or political control.

In March Parliament passed the Fair Work Act, the major component of the government's workplace reforms, which replaced the Workplace Relations Act as the country's basic labor law. Some provisions of the Fair Work Act became effective during the year, while others were scheduled to go into effect in 2010.

Under the law 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 law provides for the right to strike but 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. The law subjects strikers to penalties for taking industrial action during the life of an agreement and contains secondary-boycott provisions. Industrial action must 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-month period ending September 30, 2012 industrial disputes began, 33 more than during the previous 12 months. (Industrial disputes include both strikes and employer-initiated work stoppages, such as lockouts.) During the same period, total workdays lost due to industrial disputes fell from 189,800 to 119,100.

#### 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 (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.

Transitional amendments to the WRA in March 2008 abolished the signing of new AWAs and established a new "no disadvantage" test for future workplace agreements designed to ensure that they contain basic worker protections. Existing AWAs may continue until their expiration, and businesses that had staff on AWAs before December 1, 2007 could continue to sign individual contracts, known as Individual Transitional Employment Agreements (ITEAs), provided these passed the "no disadvantage" test. To do so, an ITEA must not disadvantage an employee as compared to an applicable collective agreement or to an industry-standard award if there is no collective agreement. ITEAs could only run until December 31, 2009. In addition, the 2008 law directed the AIRC to create a national safety net of minimum employment standards and industrial awards, which is scheduled to come into effect in 2010.

On July 1, new collective bargaining provisions came into effect under the Fair Work Act that require employers to act in "good faith" when a majority of employees want a collective agreement; give unions greater ability to access worksites; enable low-paid workers to engage in multi-employer "good faith bargaining"; reduce the list of "prohibited content" issues that may not be included in a collective agreement; and give stronger intervention powers to a new independent industrial relations umpire, Fair Work Australia, which was scheduled to assume the functions of the AIRC and other workplace bodies in 2010. Also on July 1, new provisions took effect providing unfair dismissal rights--previously removed under 2005 amendments to the WRA known as WorkChoices--to employees in small businesses.

There are no export processing zones.

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

The law explicitly prohibits forced or compulsory labor; 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 ages for leaving school, claiming unemployment benefits, and engaging in specified occupations. The Australian Council of Trade Unions also monitored adherence to these laws. Workers under age 18 required parental or guardian consent to sign an ITEA.

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 July the Australian Fair Pay Commission, which determines minimum wage increases, maintained the federal minimum award wage at A\$543.78 (approximately \$485) per week, citing deteriorating economic conditions. The Fair Work Ombudsman provides employers and employees advice about their rights and has authority to investigate employers alleged to have exploited employees unlawfully.

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 3.27 million persons (30 percent of the workforce) were employed as "part-time" workers, of whom 70 percent were women. Labor force "underutilization" was 13.5 percent as of November. 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 order remedial action.

Labor law protects citizens, permanent residents, and migrant workers. Migrant worker visas require that employers respect these protections and provide bonds to cover health insurance, worker's compensation insurance, unemployment insurance, and other benefits. However, there were complaints that some individuals on so-called "457" employer-sponsored, skilled-worker visas were being underpaid and used as a less expensive substitute for Australian workers. In response, during the year the government tightened eligibility requirements for 457 visas, including increasing minimum salary levels to "market rates" and increasing English language requirements. 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.