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2010 Human Rights Reports: Australia

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

2010 Country Reports on Human Rights Practices

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Australia is a constitutional democracy with a federal parliamentary government. Its population was approximately 22.5 million. Citizens periodically choose their representatives in free and fair multiparty elections. On June 24, Julia Gillard replaced Kevin Rudd as leader of the governing Australian Labor Party (ALP) and as prime minister. In federal parliamentary elections held August 21, neither the ALP nor the opposition Liberal Party and National Party coalition won enough seats to form a government. Subsequently, the ALP secured the support of the Greens Party member of Parliament (MP) and three independent MPs to gain a majority of 76 seats in the 150-seat House of Representatives and formed a government with Gillard as prime minister. Security forces reported to civilian authorities.

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 persons.

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.

In June the Queensland State Crime and Misconduct Commission released a report into authorities' investigation of the 2004 death of an indigenous citizen in police custody on Palm Island. The commission's report found that the initial police investigation and subsequent internal review of that investigation were flawed and recommended that six police officers involved in the investigations face disciplinary action. On November 23, the commission found insufficient evidence for additional charges against the officer linked to the death; he had been acquitted of manslaughter in 2007.

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. 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 visits by independent human rights observers.

In December 2009 a prisoner at the Capricornia Correctional Center in Queensland State allegedly killed another prisoner. The trial for the alleged killer was pending at year's end.

Three suicides occurred in the Villawood immigration detention center in Sydney during the year (see section 2.d.).

In July the Western Australia State government provided compensation to the family of an Aboriginal elder who died in 2008 of heatstroke in a prison van, operated by a private security company, during a 220-mile drive to court to face a drunk-driving charge. No charges were filed against the two security guards involved. At year's end authorities were reviewing the case to determine whether to file charges against the security guards, the security company, and the Department of Correctional Services under the Occupational Safety and Health Act.

According to a December publication of the Australian Bureau of Statistics (ABS), as of June there were 29,700 prisoners in the country, including 2,228 female prisoners and 6,367 unsentenced prisoners. Unsentenced prisoners included pretrial detainees, convicted prisoners awaiting sentencing, and persons awaiting deportation. No further breakdown was available.

Prisoners and detainees had reasonable access to visitors and were permitted religious observance. Authorities permitted prisoners and detainees to submit complaints to government-funded legal aid offices; federal, state, and territorial ombudsmen; and judicial authorities without censorship. Authorities investigated allegations of inhumane conditions and documented the results of such investigations in a publicly accessible manner. The government investigated and monitored prison and detention center conditions. Both federal and state governments funded "juvenile diversion" programs to keep young persons out of the court and prison systems.

Federal, state, and territorial government ombudsmen can serve on behalf of prisoners and detainees to consider such matters as alternatives to incarceration for nonviolent offenders, addressing the status and circumstances of confinement of juvenile offenders, and improving pretrial detention, bail, and recordkeeping procedures.

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 court order.

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Although the law states that the maximum investigation period for which a person may be held and questioned without charge is 24 hours (unless extended by court order), it also provided that this allowable time for questioning a suspect may 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.

On November 15, Parliament passed the National Security Legislation Amendment Bill 2010, which includes new powers for police to enter premises without a warrant in emergency circumstances; addresses the "dead time" issue by establishing a seven-day limit on the amount of time a terrorism suspect can be held for questioning; expands counterterrorism laws to apply to those who incite violence on the basis of race, religion, ethnic origin, and political opinion; and extends the expiration period of regulations proscribing a terrorist organization from two to three years. It became law on November 24. Some of these provisions took effect in November and some in December.

The Parliamentary Joint Committee on Law Enforcement Bill 2010, passed on November 15 and enacted into law on November 24, created parliamentary oversight of both the Australian Federal Police Commission and the Australian Crime Commission.

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 court order must be sought.

In March Parliament passed the Independent National Security Legislation Monitor Bill, which provides for the appointment of an independent monitor to help ensure that counterterrorism laws strike an appropriate balance between protecting the community and protecting human rights. The government had not appointed a monitor by year's end.

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. 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. Individuals and groups could engage in the expression of views via the Internet, including by e-mail. Internet access was widely available to and used by citizens. In June 2009 the ABS estimated that 72 percent of households had Internet access.

Law enforcement agencies require a warrant to intercept telecommunications, including Internet communications. In emergency situations the director general of the Australia Security Intelligence Organization 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 investigation concludes the complaint is justified. The list is made available to providers of filtering software.

On July 9, the government announced suspension of plans to introduce mandatory Internet filtering, in order to review what should constitute "refused classification" material. However, three major telecommunications providers agreed to block voluntarily Web sites containing child pornography. Anticensorship groups had criticized the government's mandatory filtering plan.

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

For a complete description of religious freedom, please see the 2010 *International Religious Freedom Report* at www.state.gov/g/drl/irf/rpt/.

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's laws provide for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees. In law and practice, 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.

Unauthorized arrivals seeking asylum are processed at the Christmas Island Detention Center, located off the country's northwest coast. Under a policy in effect since 2008, following health, identity, and security checks, unauthorized arrivals are to 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 Australian Human Rights and Equal Opportunity Commission (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). Human rights groups also criticized this system as discriminatory. On November 11, the High Court ruled, in a case brought by two asylum seekers held offshore, that the two were denied "procedural fairness" in the processing of their applications, and that all refugee-status assessments, regardless of the place or manner of the asylum seeker's arrival, are subject to the provisions of the Migration Act and the decisions of the country's courts, in the context of procedural fairness.

The Department of Immigration and Citizenship provided immigration advice and assistance to persons making an initial asylum claim or application for lawful residence. There is also a statutory obligation to facilitate access to legal representation for persons in immigration detention.

The Christmas Island Detention Center remained at or near capacity throughout the year; some asylum seekers were transferred to detention centers on the mainland due to the lack of adequate capacity at the Christmas Island center. As of October 22, there were 3,781 persons in immigration detention centers, including 1,754 detained on the mainland and 2,027 detained on Christmas Island. As of October 22, there were 772 children (aged under 18 years) in immigration detention. Of these, 11 were detained in the community under residence determinations, 654 were in alternative temporary detention in the community, 47 were in immigration residential housing, and 60 were in immigration transit accommodation. On October 18, the government announced it would move hundreds of children and vulnerable families out of immigration detention facilities and into community-based accommodation by June 2011. By year's end it had begun to do so.

On September 1, 92 Afghan asylum seekers, many of whom had had their initial asylum claims denied, scaled the perimeter fence of the immigration detention center in Darwin and staged a peaceful protest outside the center seeking support for their claims. Police took the protesters into custody without incident, and four were hospitalized: two for heat exhaustion, one for chest pains, and one for a preexisting injury.

In September protests also occurred at the Villawood Detention Center in Sydney following the September 20 suicide of a Fijian detainee whose asylum claim had been denied. Two separate groups of protesters climbed onto the center's roof; both incidents were resolved peacefully. Protests broke out at the center again after an Iraqi detainee committed suicide on November 17. Several detainees climbed onto the center's roof, and some detainees set fires in the facility. These incidents also were resolved peacefully. In addition, groups of detainees at the Villawood and Christmas Island Detention Centers reportedly went on hunger strikes. Authorities opened investigations into both suicide cases. On December 8, a British detainee who had violated his visa conditions and was awaiting deportation was found dead at Villawood. That death also was ruled a suicide and was under investigation at year's end.

In September five men went on trial in Perth charged with rioting and weapons offenses allegedly committed during a violent incident at the Christmas Island Detention Center in November 2009 between groups of Afghan and Sri Lankan asylum seekers. The groups assaulted each other with tree branches, pool cues, and broom handles. On November 4, two of the men were found guilty and given six-month suspended jail sentences. Charges against the other three men were dropped.

Delays in processing asylum applications became a problem during the year, especially among a small number of asylum seekers who 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 for two years or more. As of October 22, there were 19 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.

In response to a growing number of asylum seekers arriving by boat, the government announced in April that the processing of new asylum applications for persons from Sri Lanka and Afghanistan would be suspended immediately for three and six months, respectively. In July the government announced it would resume processing of applications from Sri Lanka, citing new UN guidelines pointing to an "improved human rights and security situation in Sri Lanka." In August the

UN Committee on the Elimination of Racial Discrimination released its *Concluding Observations of the Committee on the Elimination of Racial Discrimination for Australia*. It expressed concerns with the two-tier processing arrangements for unauthorized arrivals and recommended lifting the suspension of processing of Afghan asylum seekers. In September the government resumed processing of Afghan asylum seekers.

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

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

Elections and Political Participation

In federal elections held August 21, the incumbent Australian Labor Party (ALP) government won 72 seats in the 150-seat lower house of Parliament; the opposition Liberal-National Party coalition won 73; and others won five. The ALP formed a new government with the support of one Greens Party and three independent MPs. Political parties operated without restriction or outside interference.

There are no legal impediments to public office for women or indigenous persons. Following the August elections, there were 64 women in the 226-seat federal Parliament (37 in the House of Representatives and 27 in the Senate). There were four female ministers in the 20-member federal cabinet, two women among the 10 ministers outside the cabinet, and six 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 prime minister and the governor-general were women, and there were three female judges on the seven-member High Court.

Indigenous persons generally were underrepresented among the political leadership. On August 21, an indigenous person was elected to the federal House of Representatives for the first time. There were no indigenous federal senators. There was one indigenous citizen in the Tasmania State parliament, one in the New South Wales State parliament, two in the Western Australia State parliament, and five in the Northern Territory legislative assembly. 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 provisions effectively. There were isolated reports of government corruption.

On December 16, a former Queensland State government minister, Gordon Nuttall, was sentenced to an additional five years' imprisonment for corruptly arranging government contracts for his friends. Nuttall previously was sentenced to a seven-year prison term for receiving illegal payments from businessmen.

Queensland, Western Australia, and New South Wales states 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.

Federal, state, and territorial governments have freedom of information 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, an executive body that reviews administrative decisions by government entities. An adverse Administrative Appeals Tribunal decision may be appealed to the Federal Court of Australia.

On May 31, the 2010 **Australian Information Commissioner Act** and **Freedom of Information Amendment (Reform) Act** came into effect. The former established a freedom of information commissioner, appointed on November 1, to promote and protect information rights. The latter established a framework for release of government information that included abolition of the federal government's freedom of information application fees and reduction of the period for gaining access to most Commonwealth records from 30 to 20 years.

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 often were cooperative and responsive to their views.

The HREOC, which was adequately funded by the federal government, investigates complaints of discrimination or breaches of human rights under the federal laws that implement the country's human rights treaty obligations. It enjoyed a high level of public trust, and its reports were deemed credible and reported widely by the media and nongovernmental organizations (NGOs). On October 29, the HREOC released a report on the Christmas Island immigration detention center (see section 2.d.), which recommended that the government stop holding detainees on the island and end the processing of unauthorized asylum seekers outside the provisions of the Migration Act. The government did not take up these recommendations.

In addition to the HREOC at the federal level, each state and territory has a human rights ombudsman.

In April the government released *Australia's Human Rights Framework*, its response to the September 2009 recommendations of the National Human Rights Consultation Committee established in 2008 to review how better to protect human rights in the country. As part of this framework, the government committed to establishing a new Parliamentary Joint Committee on Human Rights; requiring that each new bill be accompanied by a statement of compatibility with international human rights obligations; combining federal antidiscrimination laws into a single act to make the system more user-friendly; and creating an annual NGO Human Rights Forum. However, the government did not take up the commission's recommendation for introduction of a federal human rights act (bill of rights).

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.

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 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 with 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 the funding of numerous women's shelters. Police were trained in responding to domestic violence.

The law 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 plaintiff.

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 prenatal, obstetric, and postpartum care, and women and men had equal access to diagnosis and treatment for sexually transmitted infections, including HIV. According to indicators published by the Population Research Bureau, an estimated 85 percent of married women aged 15-49 used some form of contraception, and 75 percent used modern contraceptive methods. 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. According to a UN report on *Trends in Maternal Mortality, 1990-2008*, the country's estimated maternal mortality ratio was eight deaths per 100,000 live births.

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 is a federal Office for Women, which focuses on reducing violence against women, promoting women's economic security, and enhancing the status of women.

The HREOC received 532 complaints alleging 968 grounds of discrimination under the Sex Discrimination Act from July 2009 through June 2010. Of these, 21 percent alleged discrimination based on pregnancy, and 21 percent alleged sexual harassment. The commission resolved 568 complaints during the period, 275 by conciliation.

Women have equal status under the law, and the law provides for pay equity. According to the ABS, the pay gap between male and female full-time workers was 11 percent. 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.

In August the UN Committee on the Elimination of Discrimination against Women released its *Concluding Observations of the Committee on the Elimination of Discrimination against Women for Australia*, which praised the government's approach in several areas. It also pointed to the disadvantaged status of indigenous women, urged the government to pursue proposed reforms to the Sex Discrimination Act, and expressed concern at the persistence of violence against women.

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.

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,

carrying out 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 31,300 substantiated cases of child abuse and neglect from July 2009 to June 2010. These included physical abuse, sexual abuse, emotional abuse, and neglect.

There were reports of female genital mutilation performed on children in Muslim communities despite a law prohibiting the procedure. Hospitals conducted outreach on this matter.

There were some cases of children under age 18 engaged in prostitution. Some teenagers--primarily girls, but also some boys--were forced into prostitution by pimps. The law provides for penalties of up to 25 years' imprisonment for commercial sexual exploitation of children.

The law 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. The act prohibits citizens and residents from engaging in, facilitating, or benefiting from sexual activity with children under 16 years old overseas. 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 Australian Capital Territory, New South Wales, the Northern Territory, Victoria, and Western Australia, 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 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 is 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 \$275,000). The Australian Federal Police 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 a previous government to combat child sexual abuse in 73 Northern Territory Aboriginal communities. The measures were taken following a 2007 government report documenting widespread instances of 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 Northern Territory 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 since nonindigenous persons were not subject to such restrictions. The UN special rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who toured Northern Territory indigenous communities in August 2009, echoed these concerns in a report released in February. Effective July 1, the government extended restrictions on cash welfare payments to nonindigenous recipients in the Northern Territory.

The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international parental child abduction, please see the Department of State's annual report on compliance at http://travel.state.gov/abduction/resources/congressreport_4308.html.

Anti-Semitism

According to the 2006 census, the country's Jewish community numbered 88,832 persons. Civil-society organizations estimated the number in 2010 to be 120,000. In the 12-month period ending September 30, an annual report on anti-Semitism by the Executive Council of Australian Jewry, an NGO, recorded 394 anti-Semitic incidents, compared with 962 during the previous 12 months. The report noted that although there was a "dramatic decrease" in the total number of incidents reported, incidents involving harassment of Jewish persons on their way to or from a synagogue increased. Among the "most disturbing" incidents listed in the report were an assault on an Orthodox man on a train in Melbourne, the assault of synagogue staff in Sydney by a man who was later arrested and charged, and vandalism to synagogue buildings in Sydney and Melbourne.

Trafficking in Persons

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report* at www.state.gov/g/tip/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, or mental 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, including ensuring equal access to communications and information. 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 2009 to June 2010 annual report stated that 1,057 complaints citing 2,354 alleged grounds of discrimination were filed under the Disability Discrimination Act during that period. Of these, 36 percent were employment related, and 37 percent involved the provision of goods and services. The HREOC resolved 978 complaints during the period, 486 of them through conciliation.

National/Racial/Ethnic Minorities

According to the HREOC's July 2009 to June 2010 annual report, it received 550 complaints under the Racial Discrimination Act, citing 922 alleged grounds of discrimination. Of these, 44 percent involved employment, 18 percent involved provision of goods and services, and 19 percent alleged "racial hatred." Persons born outside the country filed 38 percent of the complaints, and Aboriginals and Torres Strait Islanders filed 39 percent. During this period 524 complaints were resolved, 245 through conciliation.

In August the UN Committee on the Elimination of Racial Discrimination released its *Concluding Observations of the Committee on the Elimination of Racial Discrimination for Australia*. It expressed concern at the absence of protection against racial discrimination in the constitution and racially motivated assaults of Indian students in the state of Victoria.

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 percent of the land in the Northern Territory 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 leaseholder rights and native title rights are in conflict, leaseholder rights prevail but do not extinguish native title rights. At year's end the Western Australia State government was continuing its efforts to negotiate a native title agreement with the Nyoogar people.

The A\$1.7 billion (approximately \$1.7 billion) Indigenous Land Corporation is a special account that provides a continuing source of funds for indigenous persons to purchase land for their use. It is separate from the National Native Title Tribunal and is not for payment of compensation to indigenous persons for loss of land or to titleholders for return of land to indigenous persons.

As part of the intervention to address child sexual abuse in Northern Territory indigenous communities (see section 6, Children), the government took control of certain indigenous communities through five-year land leases. During the year Amnesty International raised concerns about reported delays in government payment of rent to the communities for those leases. As of May the government stated it had made payments to 45 out of 64 communities; it stated it would pay rent to the Aboriginal corporations that hold the land titles in the remaining communities once they provided certain financial account information. In 2009 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; the leases subsequently were signed. (These townships are not Aboriginal land but special-purpose leases granted to local indigenous associations by the Northern Territory government.)

The government expressed a commitment to "closing the gap" on indigenous disadvantage, and since 2008 the prime minister has reported to Parliament on this at the beginning of each year. In July 2009 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. According to the ABS, during the year indigenous adults were 14 times as likely as nonindigenous adults to be imprisoned and comprised 26 percent of the prison population. According to the Australian Institute of Health and Welfare, life expectancy for indigenous persons was 67 years for men and 73 for women, compared with 77 and 82 respectively for the nonindigenous.

In March the UN special rapporteur on indigenous issues reported on the human rights of indigenous persons following an 11-day visit in August 2009, which 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 some aspects of the Northern Territory intervention were incompatible with the country's international obligations and urged the government to make the intervention compliant with the Racial Discrimination Act. In June Parliament passed legislation restoring the Racial Discrimination Act--suspended in the Northern Territory in August 2007 in connection with the intervention--effective in December.

In August the UN Committee on the Elimination of Racial Discrimination, in its *Concluding Observations of the Committee on the Elimination of Racial Discrimination for Australia*, welcomed the government's February 2008 national apology to indigenous people, its support for the UN Declaration on the Rights of Indigenous Peoples, and its commitment to "close the gap" in regard to indigenous disadvantage. It encouraged the country to increase funding for indigenous legal aid, and expressed concern at indigenous deaths in custody and the absence of "appropriate compensation payment schemes" for those forcibly removed from their parents in the past (known as the "stolen generations").

On May 2, a new national representative body for Aboriginals and Torres Strait Islanders, the National Congress of Australia's First Peoples, was formally established.

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.

Gay pride marches took place in major cities during the year; such marches were authorized by the government, and police provided sufficient protection to participants.

In August a man was charged with assault occasioning bodily harm in relation to an attack on a gay rights activist in Sydney. The victim stated that the accused had made violent homophobic comments toward him. The case was pending at year's end. On December 10, three teenagers were sentenced to prison terms for the January assault of a gay couple in the Queensland town of Maryborough.

The HREOC received 19 complaints of employment discrimination based on sexual orientation from July 2009 through June 2010.

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 May indicated that in 2009 union membership was 20 percent of the total workforce and 14 percent of the private-sector workforce--virtually identical to 2008 percentages. The ABS estimated union membership in the agricultural sector at 4 percent. Union membership was estimated at 46 percent in the public sector, 13 percent in retail, 22 percent in mining, 25 percent in manufacturing, and 20 percent in construction. Unions carried out their functions free from government or political control. Almost all unions were affiliated with the Australian Council of Trade Unions (ACTU).

In March 2009 Parliament passed the Fair Work Act, the major component of the government's workplace reforms, which replaced the Workplace Relations Act (WRA) as the country's basic labor law for private-sector workers. The Fair Work Act became fully effective 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. In New South Wales (NSW), registration of a union may be cancelled in case of a strike having a substantially adverse effect on public service or defying an order of the NSW Industrial Relations Commission. Nationally, employers and other unions have the right to challenge changes to union "eligibility rules," which essentially outline the types of employees the union may represent.

Unions and the International Confederation of Trade Unions continued to claim that the Australian Building and Construction Commission (ABCC), which has special powers to investigate industrial activity in that sector, discriminated against unions. The ABCC has the authority to interview individual workers privately in connection with its investigations, and workers may be prosecuted for refusing to comply; penalties range from a fine of up to A\$22,000 (approximately \$22,000) to a prison term of up to six months. On November 24, union member Ark Tribe was found not guilty of failing to attend an ABCC interview in 2008.

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. Strikes in essential services--such as law enforcement, air-traffic control, and sanitation--are regulated by federal and state laws.

According to the ABS, during the 12-month period ending in September, 221 industrial disputes began, 19 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 rose from 119,100 to 144,100.

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. 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 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. In addition the 2008 law directed the Australian Industrial Relations Committee to create a national safety net of minimum employment standards and industrial awards, which came into effect in 2010.

The Fair Work Act requires employers to act in "good faith" when a majority of employees want a collective agreement; gives unions greater ability to access worksites; enables low-paid workers to engage in multi-employer "good faith bargaining"; reduces the list of "prohibited content" issues that may not be included in a collective agreement; and gives stronger intervention powers to a new independent industrial relations umpire, Fair Work Australia, which assumed the functions of the Australia Industrial Relations Commission and other workplace bodies during the year. In July 2009 new provisions took effect providing unfair dismissal rights--previously removed for those in businesses with 100 or fewer

employees under 2005 amendments to the WRA known as WorkChoices--to employees in all businesses. To be eligible an employee must have served with the employer at least six months (one year in the case of an employer with fewer than 15 employees).

Under the Fair Work Act, union officials have the right to enter workplaces if they hold right-of-entry permits granted by Fair Work Australia. Written notice is generally required to enter a workplace and should be provided no less than 24 hours and no more than 14 days before the proposed visit. A permit holder may enter premises to hold discussions with one or more employees. Eligibility to enter premises is not dependent on whether a union is party to an award or enterprise agreement, but rather on whether a union covers the work of a particular employee.

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.

Also see the Department of State's annual *Trafficking in Persons Report* at www.state.gov/g/tip.

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, state, and territorial governments monitored and enforced a network of laws, which varied among jurisdictions, governing the minimum ages for leaving school, claiming unemployment benefits, and engaging in specified occupations. The ACTU also monitored adherence to these laws.

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. On June 29, Fair Work Australia, which determines minimum wage increases, increased the federal minimum award wage from A\$543.78 (approximately \$544) per week to A\$569.90 (approximately \$570), which provided a decent standard of living for a worker and family. The law makes casual and part-time workers, contractors, and the self-employed eligible for payment of up to 18 weeks of the national minimum wage. In June Parliament passed legislation establishing a taxpayer-funded, paid parental leave benefit, to go into effect in January 2011.

The Fair Work Ombudsman provides employers and employees advice about their rights and has authority to investigate employers alleged to have exploited employees unlawfully.

Under the Fair Work Act, maximum weekly hours are 38 plus "reasonable" additional hours. Industry standards or awards mandate rest periods and pay for overtime.

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 July, approximately 3.37 million persons (30 percent of the workforce) were employed as "part-time" workers, of whom 70 percent were women. Federal or state occupational health and safety laws apply to every workplace. Federal and state laws provide 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. Workers exercised these rights in practice and 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. There were some complaints, although to a lesser extent than in previous years, 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. During 2009, in response to such complaints, 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.

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