

AUSTRALIA

EXECUTIVE SUMMARY

Australia is a constitutional democracy with a freely elected federal parliamentary government. In free and fair federal parliamentary elections held in August 2010, neither the Australian Labor Party (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 Julia Gillard as prime minister. Security forces reported to civilian authorities.

There were no widespread human rights violations, although problems were reported in a few areas. The principal problem areas included domestic violence against women and children, particularly in indigenous communities; discrimination against indigenous people; and lengthy detention of some asylum seekers.

Other concerns included a high-profile press freedom case involving a newspaper columnist found guilty of violating an antidiscrimination law in two published columns.

The government took steps to prosecute officials accused of abuses, and ombudsmen, human rights bodies, and internal government mechanisms responded effectively to complaints.

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 March the Queensland Police Service (QPS) determined not to pursue disciplinary action recommended by the state's Crime and Misconduct Commission against six officers involved in the death in custody of an indigenous citizen on Palm Island in 2004. Following this decision the Queensland government ordered an independent review of the QPS discipline, complaints, and misconduct system, and in May the review panel found the system "dysfunctional

and unsustainable.” In August the Queensland government released its response to the review, supporting 56 of the report’s 57 recommendations.

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 asserted that police harassment of indigenous people and racial discrimination by some police and prison custodians persisted.

Prison and Detention Center Conditions

Prison and detention center conditions generally met international standards, including access to potable water, and the government permitted visits by independent human rights observers.

In a 2011 press release, the Australian Institute of Criminology reported that deaths in prisons were less prevalent than in the general population, noting that in 2008 the death rate was six per 1,000 for the general population, 1.3 per 1,000 indigenous prisoners, and 2.2 per 1,000 nonindigenous prisoners. In August a prisoner at the Capricornia Correctional Center in Queensland State was convicted of the 2009 killing of another prisoner and sentenced to an additional nine years’ imprisonment. During the year there were at least two suicides and reports of other self-harm among asylum seekers in immigration detention centers (see section 2.d.).

In January the Western Australia State government charged a private security company, its guards, and the Department of Correctional Services with violations under the Occupational Safety and Health Act for the death of an Aboriginal elder who died in 2008 from heatstroke in a prison van, operated by the security company, during a 220-mile drive to court to face a drunk-driving charge. However, no one was charged with manslaughter. The security company, the two guards involved, and the Department of Correctional Services all pled guilty. The security company was fined A\$285,000 (\$290,700) and the guards were fined

A\$9,000 (\$9,180) and A\$11,000 (\$11,220) respectively. The state government also made an A\$3.2 million (\$3.26 million) ex-gratia payment to the family of the deceased.

According to a December publication of the Australian Bureau of Statistics (ABS), as of June there were 29,106 prisoners in the country, including 2,028 female prisoners and 6,723 unsentenced prisoners. Unsentenced prisoners included pretrial detainees, convicted prisoners awaiting sentencing, and persons awaiting deportation. The median time spent in custody by unsentenced prisoners was 2.8 months. In December the Corrective Services Union claimed there was overcrowding at Arthur Gorrie Correctional Center in Queensland; the Queensland government indicated that the system was under capacity.

Prisoners and detainees had 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 people 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 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.

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”), which human rights groups, the media, and the legal profession criticized. A 2010 law addressed the “dead time” issue by establishing a seven-day limit on the amount of time a terrorism suspect can be held for questioning; expanded counterterrorism laws to apply to those who incite violence on the basis of race, religion, ethnic origin, and political opinion; and extended the expiration period of regulations proscribing a terrorist organization from two to three years.

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.” ASIO, however, 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.

A 2010 law 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. In April the government appointed a monitor. By law both the Australian Federal Police Commission and the Australian Crime Commission are subject to parliamentary oversight.

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. All asylum seekers held in detention centers are eligible for free legal assistance. This assistance ceases when a decision is made on an asylum claim by both the Department of Immigration and Citizenship and the relevant review tribunal.

e. Denial of Fair Public Trial

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

Trial Procedures

The law provides for the right to a fair public trial, and an independent judiciary 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 renders 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 witnesses and evidence on the defendant's behalf, and access relevant government-held evidence. Defendants enjoy the presumption of innocence and have the right to appeal the court's decision or the sentence imposed.

Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters. There is also an administrative process at the state and federal levels to seek redress for alleged wrongs by government departments. 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 effectively enforced these prohibitions in practice. Police have authority to enter premises without a warrant in emergency circumstances.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

Status of Freedom of Speech and Press

Although the constitution does not explicitly provide for freedom of speech or 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 press.

Freedom of Press: On September 28, the Federal Court found the *Herald and Weekly Times* newspaper and columnist Andrew Bolt in violation of the Racial Discrimination Act for publishing two columns in 2009 asserting that fair-skinned Australians "with some Aboriginal descent" were not genuinely identifiable as Aboriginal. The case was launched by complaints from nine fair-skinned Aboriginals about the articles. The court ordered the parties to negotiate a public correction or apology. Prominent public figures, as well civil liberties groups, criticized the ruling as having disturbing implications for freedom of speech and press.

In October the Department of Immigration and Citizenship (DIAC) issued new regulations governing media access to immigration detention centers. The regulations require members of the media to be accompanied by a DIAC official and submit media content to DIAC for review to ensure the privacy of asylum seekers is protected. Some journalists and media organizations criticized the measures as overly restrictive.

Internet Freedom

There were no government restrictions on access to the Internet or credible 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.

Law enforcement agencies require a warrant to intercept telecommunications, including Internet communications. In emergency situations the director general of the Australian 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.

Since 2010 three major telecommunications providers have voluntarily blocked Web sites on Interpol’s list of child abuse links. A government plan for mandatory Internet filtering, suspended in July 2010 pending additional government review, remained suspended and under review at year’s end. Anticensorship groups had criticized the proposal.

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

See the Department of State’s *International Religious Freedom Report* at www.state.gov/j/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.

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

Protection of Refugees

Access to Asylum: 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.

Unauthorized arrivals seeking asylum are processed at the Christmas Island Detention Center, located off the country's northwest coast. 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 number of asylum seekers arriving by sea has increased dramatically in recent years, putting pressure on the detention center capacity at Christmas Island as well as on processing times. There were 4,940 such arrivals recorded in the 2010-11 fiscal year, compared with 25 in 2007-08. In June the government rejected a UN recommendation to change the mandatory detention framework for asylum seekers. In July the Australian Human Rights Commission (HRC) asserted that this policy breached Australia's human rights obligations and in practice resulted in indefinite detentions.

The HRC called for an end to 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 November 2010 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 seekers' arrival, are subject to the provisions of the Migration Act and the decisions of the country's courts, in the context of procedural fairness. In November 2011 the government announced that beginning

in 2012, unauthorized maritime arrivals would be granted the same access to the Refugee Review Tribunal as other asylum seekers.

DIAC 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. On June 29, the government reported that 767 children in immigration detention had been moved into community-based accommodation since October 2010.

In March an Afghan asylum seeker committed suicide at the Curtin Detention Center in Western Australia and another Afghan asylum seeker committed suicide at the Scherger Detention Center in Queensland. In May the Australian Medical Association's Northern Territory president claimed that detainees under 10 years of age had attempted self-harm. In late July the Commonwealth ombudsman launched an inquiry into the rising rate of self-harm by asylum seekers in immigration detention. According to the ombudsman, in the first week of July there were 50 such incidents.

In March, June, and July, there were riots at the Christmas Island Detention Center. In March there was a protest at the Villawood Detention Center in Sydney during which asylum seekers set fires that destroyed or damaged nine buildings. Subsequently, in July Parliament amended the Migration Act so that asylum seekers would fail the character test for receiving a permanent visa if convicted of any offense committed while in immigration detention. In July up to 80 asylum seekers participated in a hunger strike at the Scherger Detention Center.

An HRC investigation into the Villawood center, released in May, found its design "places considerable strain on detainees, staff and managers." In response DIAC stated that the company managing the center had already prepared a proposal to upgrade facilities prior to the fires. During the year the Department of Finance and Deregulation and DIAC jointly oversaw an A\$186.7 million (\$190.43 million) government-funded project to upgrade the facilities, and restoration work began in preparation for the redevelopment.

On July 25, the government signed an agreement with Malaysia involving transfer to Malaysia of up to 800 maritime asylum seekers in return for Australia accepting 1,000 confirmed refugees each year for the next four years. Transferees would be provided exemptions under Malaysian immigration law and have access to work, education, and health care. The HRC was concerned, however, because Malaysia was not a signatory to the UN Refugee Convention; it urged the government not to send unaccompanied minors, families with children, and torture and trauma survivors to Malaysia. On August 31, Australia's High Court declared the agreement illegal, finding that "Malaysia is not legally bound to provide the access and protections the Migration Act requires for a valid declaration." This decision also called into question the legality of the off-shore processing of asylum seekers generally. In the wake of the High Court decision, in November the government announced a change in its immigration detention policy and released 27 detainees on temporary "bridging" visas that allowed them to live with friends or relatives in the country and to work, pending decisions on their asylum claims. The government stated the intention to release additional detainees under bridging visas over the next few months. It noted that decisions on which detainees to release would take into account time spent in detention and suitability for community placement based on an assessment process including identity, security, and behavior checks.

Delays in processing asylum applications continued to be 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 June 14, there were seven persons in immigration detention longer than two years.

Detention facilities were monitored by Parliament, the ombudsman, the UNHCR, and an advisory group composed of experts in immigration and humanitarian issues.

Nonrefoulement: 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. In November the Federal Magistrate's Court issued a temporary injunction against the deportation to Afghanistan of an unsuccessful Afghan Hazara asylum seeker, pending a further hearing on the case.

Durable Solutions: The government accepted refugees for resettlement from third countries and funded refugee resettlement services, such as language and employment programs.

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

Recent Elections: In federal elections held in August 2010, the incumbent 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 government with the support of one Greens Party and three independent MPs.

Participation of Women and Minorities: There are no legal impediments to public office for women or indigenous persons. Following the August 2010 elections, there were 64 women in the 226-seat federal Parliament (37 in the House of Representatives and 27 in the Senate). There were five female ministers in the 21-member federal cabinet, two women among the 10 ministers outside the cabinet, and four 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. In August 2010 an indigenous person was elected to the federal House of Representatives for the first time. 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, five in the Northern Territory legislative assembly, and one in the Australian Capital Territory legislative assembly. There was an 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 July 1, the Australian Federal Police (AFP) initiated bribery-related charges against six men in connection with efforts from 1999 to 2005 to secure banknote contracts in Malaysia, Indonesia, and Vietnam on behalf of a company then half-owned by the Reserve Bank of Australia (RBA). On August 10, charges were initiated against a seventh man. The AFP stated that the company and the RBA assisted the authorities during the investigation. The cases were still pending at year's end.

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; some charge application and processing fees. The federal government does not charge application fees. 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.

There is a freedom of information commissioner responsible for promoting and protecting information rights.

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 operated without government restriction, investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

Government Human Rights Bodies: The HRC, 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).

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

In November Parliament passed the Human Rights (Parliamentary Scrutiny) Act 2011, to take effect January 4, 2012. It requires that each new bill be accompanied by a statement of compatibility with international human rights obligations and establishes a new Parliamentary Joint Committee on Human Rights.

Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

Federal laws prohibit discrimination based on gender, disability, race, color, descent or national or ethnic origin, marital status, and age. An independent judiciary and a network of federal, state, and territorial equal opportunity offices effectively enforced the law.

Women

Rape and Domestic Violence: 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, one in three Australian women has experienced physical violence since the age of 15, and almost one in five has experienced sexual violence. The ABS reported that during 2010 police recorded 17,757 victims of sexual assault, 85 percent of whom were female.

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. Federal, state, and territorial governments collaborated on the National Plan to Reduce Violence Against Women and their Children 2010-2022, which is

the first effort to coordinate action at all levels of government to reduce the levels of violence against women.

Sexual Harassment: The law prohibits sexual harassment. Complaints of such harassment can give rise to criminal proceedings or disciplinary action against the defendant and compensation claims by the plaintiff. In May Parliament passed changes to the Sex Discrimination Act that strengthen protections against sexual harassment in workplaces and schools and prohibit use of new technologies for sexual harassment.

Reproductive Rights: 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. 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.

Discrimination: The independent federal sex discrimination commissioner, who is part of the HRC, undertakes research, policy, and educational work designed to eliminate gender discrimination. There also 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 HRC received 459 complaints under the Sex Discrimination Act from July 2010 to July 2011. Of the 448 finalized complaints, 142 were terminated, 185 resolved by conciliation, 87 discontinued or withdrawn, and 34 administratively closed for other reasons.

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. In May Parliament passed laws prohibiting discrimination against employees on the basis of family responsibilities and establishing breastfeeding as a separate ground of discrimination under the Sex Discrimination Act.

In April the government directed the sex discrimination commissioner to lead an HRC review of the treatment of women in the Australian Defense Force Academy and the Australian Defense Force. There were highly organized and effective private and public women's rights organizations at the federal, state, and local levels.

Children

Birth Registration: 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. Births generally were registered promptly.

Child Abuse: 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 31,527 substantiated cases of child abuse and neglect from July 2010 to June 2011. These included physical abuse, sexual abuse, emotional abuse, and neglect.

Harmful Traditional Practices: Both the law and medical policy prohibit female genital mutilation (FGM). While the number of Australian residents born in countries where the practice is common is growing, there were no known reports of FGM during the year.

Child Sexual Exploitation: The law provides for penalties of up to 25 years' imprisonment for commercial sexual exploitation of children. 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. In October 2010 the Australian Capital Territory (ACT) parliament launched a review of the ACT Prostitution Act. In March the ACT chief police officer stated that greater powers were needed to identify children working in the sex industry.

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 age 16 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 ACT, 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 acts 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.

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 (\$280,500). Federal law allows suspected pedophiles to be tried in the country regardless of where the crime is committed. 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 in 2007 to combat child sexual abuse in 73 Northern Territory Aboriginal communities. 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. On June 5, the indigenous affairs minister stated there had been improvements in provision of food and clothing, school attendance, policing, and the level of violent crime.

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 in the Northern Territory were not initially subject to such restrictions.

International Child Abductions: The country is a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information see the Department of State's report on compliance at http://travel.state.gov/abduction/resources/congressreport_4308.html as well as country-specific information at http://travel.state.gov/abduction/country/country_3781.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 517 anti-Semitic incidents, compared with 394 during the previous 12 months. The increase of incidents by more than 30 percent was largely due to a proliferation of "hate e-mail." There were some incidents of physical assault and anti-Semitic vandalism, including the July assault of an elderly man entering a synagogue in Sydney's eastern suburbs and incidents in which eggs were thrown at Jewish persons and anti-Semitic graffiti was painted on buildings and vehicles in Melbourne and Sydney.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/.

Persons with Disabilities

The law prohibits discrimination against persons with physical, sensory, intellectual, and 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 HRC, 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 HRC of discrimination complaints, authorizes fines against violators, and awards damages to victims of discrimination.

The HRC's annual report stated that 823 complaints citing 2,176 alleged grounds of discrimination were filed under the Disability Discrimination Act from July 2010 to June 2011. Of these, 31 percent were employment related, and 35 percent involved the provision of goods and services. The HRC resolved 961 complaints during the period, 465 through conciliation. In August the government stated it would develop a National Disability Insurance Scheme (NDIS) with the states and territories, following the release of the Productivity Commission's final report on the issue. In December the government announced the establishment of a new agency to design and implement the NDIS.

National/Racial/Ethnic Minorities

According to the HRC's July 2010 to June 2011 annual report, it received 422 complaints under the Racial Discrimination Act, citing 826 alleged grounds of discrimination. Of these, 35 percent involved employment, 27 percent involved provision of goods and services, and 16 percent alleged "racial hatred." Persons born outside the country filed 44 percent of the complaints, and Aboriginals and Torres Strait Islanders filed 34 percent. During this period the HRC resolved 472 complaints, 208 through conciliation.

Indigenous People

According to the 2006 census, Aboriginals and Torres Strait Islanders numbered approximately 517,200 persons, roughly 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. In 2009 indigenous-owned or controlled land comprised 17.3 percent of the country's area (excluding native title lands). 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. In June native title agreements were reached between Rio Tinto Iron Ore and traditional owner groups in the Pilbara Region of Western Australia; the government praised their commitment to “best practice” native title negotiating.

The approximately A\$1.7 billion (\$1.73 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 receives a minimum federal government payment of A\$45 million (\$45.9 million) each year. 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. In May the government reported it was paying rent to 48 of the 64 affected communities as of December 2010 and was negotiating with the remaining communities. All rent payments are backdated to the commencement date of the leases and the payments are scheduled to continue until the leases expire in August 2012.

In August Amnesty International (AI) released a report criticizing certain policies of the Northern Territory government with regard to Aboriginal communities. The report asserted that the government’s policy of establishing, and directing most indigenous-specific funding toward, a number of larger, more centralized “growth towns” was making it increasingly difficult for indigenous residents of smaller, more remote communities located on their traditional lands (“homelands” communities) to access needed social services. AI reported that many such communities suffered from substandard, overcrowded housing and poor sanitation, and inadequate resources for necessary maintenance and improvements. In October AI’s secretary general met with the indigenous affairs minister and toured indigenous communities in the Northern Territory.

The government expressed a commitment to “closing the gap” on indigenous inequalities and since 2008 the prime minister has reported to Parliament the progress on this effort at the beginning of each year. In August the Productivity Commission released a report that noted improvements in 13 areas of indigenous well-being but worsening or no change in 17 areas. It found that infant and child mortality rates had “improved significantly” since the early 1990s; median household income had increased from 2002-2008; school retention to year 10 had increased from 83 to 96 percent from 1998-2010; and there were improvements in

employment. However, “virtually all the indicators in this report” showed wide gaps between indigenous and other Australians. A February 2010 Department of Finance document, obtained by the media through a freedom of information request, found “dismally poor returns” from indigenous-specific spending.

According to the ABS, in 2010 indigenous adults were 14 times as likely as nonindigenous adults to be imprisoned and comprised 26 percent of the prison population. Life expectancy for indigenous men was estimated to be 67.2 years, compared with 78.7 years for nonindigenous men; life expectancy for indigenous women was estimated to be 72.9 years, compared with 82.6 years for nonindigenous women; and the indigenous unemployment rate was 18 percent, compared with 5 percent for the nonindigenous population.

With the intervention to address child abuse in Northern Territory indigenous communities scheduled to conclude in mid-2012, the government held more than 470 consultation meetings between June and August with indigenous people and other stakeholders in more than 100 communities and town camps in the Northern Territory to develop further steps for improving the lives of indigenous people.

The National Congress of Australia’s First Peoples, established in May 2010, is the national representative body for Aboriginals and Torres Strait Islanders. It was designated to receive A\$29.2 million (\$29.7 million) over five years from the federal government. The HRC has an Aboriginal and Torres Strait Islander social justice commissioner.

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

Discrimination on the basis of sexual orientation is prohibited by law in a wide range of areas, including in family law, taxes, child support, immigration, pensions, and social security.

The HRC received 17 complaints of employment discrimination based on sexual orientation from July 2010 through June 2011.

Other Societal Violence or Discrimination

Federal and various state laws prohibit discrimination on the grounds of HIV-positive status. The HRC 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. Freedom of Association and the Right to Collective Bargaining

The law provides workers, including public servants, the right to associate freely domestically and internationally and also protects against antiunion discrimination. Federal, state, and territorial laws provide workers with the right to organize, conduct legal strikes, and bargain collectively. Labor laws protect citizens, permanent residents, and migrant workers.

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. 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.

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. Strikes in essential services--such as law enforcement, air-traffic control, and sanitation--are regulated by federal and state laws. The law permits the government to stop strikes judged to have an “adverse effect” on the employer or damage third parties. 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 Fair Work Act, which replaced the Workplace Relations Act as the country’s basic labor law for private-sector workers, became fully effective in 2010. The act promotes freedom of association by giving unions greater ability to access worksites. In terms of collective bargaining, it requires employers to act in “good faith” when a majority of employees want a collective agreement and enables low-paid workers to engage in multi-employer “good faith bargaining.” It also reduces the list of “prohibited content” issues that may not be included in a collective agreement. Finally, the act gives stronger intervention powers to Fair Work

Australia, an independent industrial relations management institution that assumed the functions of the Australia Industrial Relations Commission (AIRC) and other workplace bodies upon its establishment in 2009. Final industrial awards created by the AIRC, as well as a national safety net of minimum employment standards, came into effect in 2010.

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.

In practice unions carried out their functions free from government or political control. Almost all unions were affiliated with the Australian Council of Trade Unions (ACTU). Workers exercised the right to associate freely with generally few constraints, but some obstacles remained. For example, in New South Wales (NSW), registration of a union may be cancelled if a strike has a substantially adverse effect on public service or defies an order of the NSW Industrial Relations Commission. Unions and the International Confederation of Trade Unions criticized the Australian Building and Construction Commission (ABCC) as discriminating against unions in the building and construction sector. The ABCC was created as an enforcement agency by the Building and Construction Industry Improvement Act of 2005, which gave it authority to interview individual workers privately in connection with its regulatory investigations. It is an offense to refuse to attend an ABCC examination. The ABCC commissioner can refer such cases to the Commonwealth Department of Public Prosecutions (CDPP). If the CDPP chooses to prosecute, a court may impose a penalty of up to six months' imprisonment and a maximum fine of A\$3,300 (\$3,366) for breaches. Workers also may be fined up to A\$22,000 (\$22,440) for taking unlawful industrial action. In November the ABCC began litigation against three unions and five union officials for alleged unlawful industrial action; the case was still pending at year's end.

b. Prohibition of Forced or Compulsory Labor

The law explicitly prohibits forced or compulsory labor, but there were some reports of foreign nationals who came to the country for temporary work being subjected to forced labor by employers or labor agencies, including in such sectors

as agriculture, cleaning, construction, hospitality, manufacturing, and domestic service.

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

c. 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 age 17. Federal, state, and territorial governments effectively monitored and enforced a network of laws, which varied among jurisdictions, governing the minimum age for leaving school, claiming unemployment benefits, and engaging in specified occupations. The ACTU also monitored adherence to these laws.

d. Acceptable Conditions of Work

On June 5, Fair Work Australia increased the national minimum wage for adults working full time (38 hours per week) from A\$569.90 (\$580.20) to A\$589.30 (\$599.90) per week, based on a minimum hourly rate of A\$15.51 (\$15.80). There is no official poverty-level income figure, but the minimum wage, combined with welfare payments, is intended to provide a decent standard of living for a worker and family. Although a formal minimum wage exists, most workers received higher wages through enterprise agreements or individual contracts. Above-minimum wage classifications apply to certain trades and professions.

A taxpayer-funded, paid parental leave benefit began January 1. The Paid Parental Leave Scheme pays the minimum wage rate for up to 18 weeks. To qualify, a worker must have worked for at least 10 of the 13 months prior to the birth or adoption of the child and worked for at least 330 hours during that 10-month period.

Under the Fair Work Act, maximum weekly hours are 38 plus "reasonable" additional hours (determined according to the act, taking into account factors such as an employee's health, family responsibilities, ability to claim overtime, pattern of hours in the industry, and amount of notice given). Industry standards or awards mandate rest periods and pay for overtime. 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.

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. On July 28, the government signed the instrument of ratification for the International Labor Organization Convention 162 Concerning Safety in the Use of Asbestos.

The Fair Work Ombudsman provides employers and employees advice about their rights and has authority to investigate employers alleged to have exploited employees unlawfully. The ombudsman also has authority to prosecute employers that do not meet their obligations to workers. Employers can be ordered to compensate employees and are sometimes assessed fines. Between July 2010 and June 2011, the Fair Work Ombudsman recouped A\$26.7 million (\$27.2 million) for 17,360 underpaid employees. Workers exercised their right to a safe workplace in practice and have recourse to state health and safety commissions, which investigate complaints and order remedial action.

Over the past two decades, the percentage of the workforce regarded as temporary workers increased substantially. Temporary workers include both part-time and casual employees. Part-time employees have set hours and the same entitlements as full-time employees. The ABS reported that, as of June, approximately 3.43 million persons (30 percent of the workforce) were employed as part-time workers, of whom 70 percent were women. Casual employees are employed on a daily or hourly wage basis. They do not receive paid annual or sick leave, but the law mandates they receive additional pay to compensate for this.

There were some 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. On May 31, a Western Australian construction company that recruited workers from China and paid them less than A\$3 (\$3.06) per hour was prosecuted by the Fair Work Ombudsman and fined A\$123,000 (\$125,460). The company’s managing director and part-owner, a Chinese national, was fined an additional A\$24,600 (\$25,092) and the company ordered to pay the workers a total of A\$242,000 (\$246,840) in back pay plus interest of approximately A\$65,000 (\$66,300).

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.

