

AUSTRALIA 2012 HUMAN RIGHTS REPORT

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 a 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.

Human rights problems were reported in a few areas. The main areas of concern were domestic violence against women and children, particularly in indigenous communities; discrimination against indigenous people; and lengthy detention and austere detention center conditions for some asylum seekers.

Other concerns included the death of an indigenous man while in police custody, which the Northern Territory coroner found was preventable.

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.

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. There were occasional reports that police and prison officials mistreated suspects in custody. Some indigenous groups asserted that harassment of indigenous persons 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.

Physical Conditions: According to the Australian Bureau of Statistics (ABS), from July 1 to September 30 the average number of inmates in prison custody countrywide (excluding persons in community-based and other minimum-security facilities) was 29,385, including 2,185 women and 6,961 unsentenced inmates. Unsentenced inmates included pretrial detainees, convicted prisoners awaiting sentencing, and persons awaiting deportation. As of June 30, the median time spent in custody by unsentenced inmates was 2.8 months. According to the Productivity Commission, in 2010-11 prison utilization was 101 percent of prison design capacity. Prison utilization is defined as the annual daily average prison population as a percentage of the number of single and shared cells provided for in the design capacity of the prisons.

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 latest data available) the death rate was more than six per 1,000 for the general population, 1.3 per 1,000 for indigenous prisoners, and 2.2 per 1,000 for nonindigenous prisoners.

On January 5, in the Northern Territory, a young indigenous man died after being taken into police custody as a protective measure because he was heavily intoxicated. In September the Northern Territory coroner found that the “care, supervision and treatment of the deceased” while in police custody “was completely inadequate and unsatisfactory, and not sufficient to meet his medical needs.” The Northern Territory police completed a full review of custody operations and procedures following the death, which resulted in the stationing of senior officers at the facility at all times and stationing of nurses there four nights a week to help identify prisoners in need of medical assistance. In October the

Northern Territory deputy chief minister ruled out taking disciplinary action against the Northern Territory police.

A number of domestic and international human rights groups voiced concerns about conditions at immigration detention centers (see section 2.d.).

Administration: Recordkeeping on prisoners was adequate. 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. Prisoners and detainees had access to visitors, could observe religious practices, and could 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.

Monitoring: In April the UN special rapporteur on violence against women conducted a study tour hosted by the government and the Human Rights Commission (HRC). Following the tour the rapporteur released a report on women in the country’s prisons, which concluded that “many women cannot satisfy bail conditions...due to a lack of available housing” and were subject to “highly invasive and often traumatic strip searches that are not proportional to the aim of preventing contraband entering prison facilities.”

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

The armed forces, under the minister for defense, are responsible for external security. The Australian Federal Police (AFP), under the minister for home affairs and justice, and state and territorial police forces are responsible for internal security. The AFP enforces national laws, and state and territorial police forces enforce state and territorial laws. 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.

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. In the case of a terrorism suspect, however, the law establishes a seven-day limit on the total amount of time the suspect can be held if the questioning is spread over several days.

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 offense.” 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.

By law there is an independent monitor to help ensure that counterterrorism laws strike an appropriate balance between protecting the community and protecting human rights. 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 give legal advice to detainees who cannot afford counsel. Arrested persons enjoy additional legal protections, such as the ability to challenge the lawfulness of a detention and apply for compensation if unlawfully detained. All asylum seekers held in detention centers are eligible for free legal assistance. This assistance ceases when both the Department of Immigration and Citizenship (DIAC) and the relevant review tribunal make a decision on an asylum claim.

e. Denial of Fair Public Trial

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

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 enjoy the presumption of innocence and cannot be compelled to testify or confess guilt. They have the right to be informed promptly and in detail of the charges, with free interpretation as necessary, and the right to an attorney and adequate time and facilities to prepare a defense. Government-funded attorneys are available to low-income persons. The defendant's attorney can question witnesses, present witnesses and evidence, access relevant government-held evidence, and 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, and individuals or organizations may seek civil judicial remedies for human rights violations. 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. 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

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: In November radio broadcaster Alan Jones made a court-ordered on-air apology for controversial comments he made regarding Lebanese Muslim men in April 2005. Jones issued the apology after he lost a lengthy legal bid to overturn a 2009 decision by the New South Wales Administrative Decisions Tribunal that found his comments "incited hatred" and "serious contempt" in breach of the Anti-Discrimination Act.

In March the government-established Independent Inquiry into Media and Media Regulation released its report. One recommendation was creation of a government-funded news media council with the power to "require a news media outlet to publish an apology, correction or retraction, or afford a person a right to reply" and to set journalistic standards across all platforms. Some observers were concerned about the recommendation's implications for freedom of speech and press. In November the government announced that it expected to respond in 2013.

Internet Freedom

There were no government restrictions on access to the Internet or credible reports that the government monitored e-mail or Internet chat rooms without judicial

oversight. The Internet was widely available to and used by citizens. According to the International Telecommunication Union, 79 percent of the population used the Internet in 2011.

Law enforcement agencies require a warrant to intercept telecommunications, including Internet communications. In emergency situations the director general of ASIO 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) maintained 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 available to providers of filtering software. An owner or operator of such a Web site can appeal an ACMA decision to the Administrative Appeals Tribunal. Since 2010 three major telecommunications providers have voluntarily blocked Web sites on Interpol’s list of child-abuse links.

Following the March release of the Australian Law Reform Commission’s review of the national classification scheme, in November the government dropped its proposed plan for mandatory Internet filtering. The review had recommended changing the “refused classification” category to a more narrowly defined category of “prohibited” content. While not addressing the mandatory Internet filtering proposal directly, it suggested that, in view of the volume of “prohibited” content on the Internet, particular subcategories of prohibited content be prioritized if Internet service providers were required to filter such content. Anticensorship groups had criticized the mandatory filtering 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 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 internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights. 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.

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.

The number of asylum seekers arriving by sea significantly increased in recent years, putting pressure on detention center capacity and processing times. In the 2011-12 fiscal year, 7,983 such arrivals were recorded, compared with 25 in 2007-08. On June 28, the government appointed an independent Expert Panel on Asylum Seekers. On August 13, the government announced it had accepted in principle all of the panel's recommendations, including reestablishing third-party processing of asylum seekers on Nauru and on Papua New Guinea's Manus Island and increasing humanitarian intake from 13,750 to 20,000 persons in the 2012-13 fiscal year. On August 16, Parliament amended the Migration Act to allow resumption of offshore processing in third countries. In support of the amendments, the immigration minister stated that arrivals by boat "should not receive advantage" over other applicants in the processing of their claims. Prior to this, unauthorized arrivals by sea seeking asylum were processed at the Christmas Island Detention Center, located off the country's northwest coast. In September the government began sending asylum seekers to Nauru for processing, and in November to Papua New Guinea's Manus Island. On November 21, the government stated that it would grant some new asylum seekers "bridging visas" permitting them to live in the community because it would not be possible to move all new asylum seekers offshore in the immediate future.

The August 16 legislation repealed a section of the Migration Act under which a third country was required to meet certain criteria to be designated for offshore processing, including provision of access to effective procedures for assessing asylum claims and protection for asylum seekers that met relevant human rights standards, pending a decision on their applications. In 2011 the High Court cited those requirements in declaring illegal a government agreement with Malaysia involving transfer to Malaysia of up to 800 maritime asylum seekers in return for Australia's accepting 1,000 confirmed refugees annually for the next four years. The court noted that Malaysia had no domestic refugee law and had not ratified the 1951 Refugee Convention. The new law authorizes the immigration minister to designate a country to be a regional offshore processing center by regulation, if the minister determines it is in the national interest to do so, and requires the minister to notify Parliament, which may then disapprove the proposed designation within five working days of notification. The law states that such a designation "need not be limited by reference to the international obligations or domestic law of that country." A number of domestic and international human rights organizations criticized the legislation as removing protections previously included in the law for unauthorized arrivals by sea and as attempting to eliminate judicial review of the designation of offshore processing countries.

Under the government's revised policy on asylum processing for unauthorized maritime arrivals, as of August 13, asylum seekers transferred to third countries for regional processing will have their asylum claims assessed by the country in which the claim is processed. On October 3, the immigration minister stated that asylum seekers processed in Nauru and Papua New Guinea would not be entitled to judicial review of their cases under Australian law but would be entitled to a merit-based review in the processing country.

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.

Because the Christmas Island Detention Center remained at or near capacity throughout the year, some asylum seekers were transferred to detention centers on the mainland. On August 26, approximately 100 asylum seekers on Christmas Island went on a hunger strike in protest against the possibility of being sent to Nauru for processing. As of November 4, there were 377 asylum seekers in Nauru.

At year's end approximately 181 asylum seekers had been transferred to Manus Island.

On March 12, DIAC reported that two detainees at a Darwin detention center threatened to harm themselves and were treated at a hospital before being returned to the center. On May 21, the government reported that 2,145 adults and 1,863 children in immigration detention had been moved into community-based accommodation since October 2010.

Delays in processing asylum applications continued to be a problem during the year, resulting in protracted detention of some asylum seekers. In addition a small number of asylum seekers remained in long-term detention despite having exhausted the appeal process; they could not be returned to their home country because they lacked travel documents or could not obtain necessary transit visas. The commonwealth ombudsman reviews all cases of persons in detention for two years or more. As of October 31, there were 512 persons in immigration detention longer than two years. The immigration minister stated that asylum seekers in Nauru could wait up to five years for their applications to be processed based on the "no advantage" principle that those arriving by boat be processed according to the same timeline as other asylum seekers.

Parliament, the ombudsman, the UNHCR, and an advisory group composed of experts on immigration and humanitarian issues monitored detention facilities in the country. During the year the local nongovernmental organization (NGO) Refugee Action Coalition criticized the facilities and services provided on Nauru, noting the asylum seekers had only tents for housing pending preparation of a more permanent facility and stating that the site lacked mental health facilities and "proper" medical facilities. The same organization reported in October that three asylum seekers on Nauru received hospital treatment after a suicide attempt and two incidents of self-harm, respectively. On October 15, approximately 200 asylum seekers on Nauru held a protest calling for Australia to start processing their asylum applications and to close the Nauru facility, and requesting access to international agencies like the Red Cross. In November there were reports of a mass hunger strike by asylum seekers on Nauru, and DIAC stated that 11 asylum seekers had harmed themselves. Following a three-day visit to Nauru in November, Amnesty International reported "cruel, inhumane and degrading" conditions and a "climate of anguish" among asylum seekers.

Refoulement: 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 June the government returned a Tamil asylum seeker to Sri Lanka despite his claim that he was at risk of being tortured. The Office of the UN High Commissioner for Human Rights asked the government to refrain from deporting him pending another appeal. However, the government stated there had been “an exhaustive assessment process,” which “determined the individual does not engage Australia’s protection obligations.”

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 constitution and law provide 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: The country held free and fair federal parliamentary elections in 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.

Participation of Women and Minorities: There are no legal impediments to public office for women or minorities. There were 66 women in the 226-seat federal Parliament (37 in the House of Representatives and 29 in the Senate). The prime minister and the governor-general were women, and there were three female judges on the seven-member High Court. At year’s end there were five female ministers in the 22-member federal cabinet, three women among the eight ministers outside the cabinet, and five women among the 12 parliamentary secretaries. There was one woman among the eight premiers and chief ministers of the six states and two territories.

Indigenous persons and other minorities generally were underrepresented among the political leadership relative to their share of the population. In 2010 an

indigenous person was elected to the federal House of Representatives for the first time. There were two indigenous persons in the Western Australia State parliament and six in the Northern Territory legislative assembly. The Tasmania and New South Wales State parliaments and the Australian Capital Territory legislative assembly each had one indigenous member. There was an Asian-Australian in the federal cabinet.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for corruption by officials, and the government generally implemented these provisions effectively. There were isolated reports of government corruption. In 2011 the AFP initiated bribery-related charges against seven 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. On August 20, one of the men was sentenced to six months' imprisonment, suspended for two years, after pleading guilty and agreeing to provide evidence in the investigation.

The law requires income and asset disclosure by appointed and elected officials. Queensland, Western Australia, and New South Wales states have 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. These bodies actively collaborated with civil society, operated independently and effectively, and had adequate resources.

Federal, state, and territorial governments have freedom of information (FOI) 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. FOI laws, including appeal mechanisms, generally functioned effectively. In October the government initiated a review of FOI laws that was scheduled for completion by April 30, 2013.

A freedom of information commissioner is 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 is independent and 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. The media and NGOs deemed its reports and reported them widely.

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

The Human Rights (Parliamentary Scrutiny) Act 2011 took effect January 4. It requires that a statement of compatibility with international human rights obligations accompany each new bill and established 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 antidiscrimination laws.

Women

Rape and Domestic Violence: The law criminalizes rape, including spousal rape, and the government enforced the law effectively when cases were reported to authorities. The laws of the individual states and territories prescribe the penalties for rape.

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 2005 ABS Personal Safety Survey (the latest available), one in three women had experienced physical violence since the age of 15, and almost one in five experienced sexual violence. The ABS reported that during 2011 police recorded 17,238 victims of sexual assault, 85 percent of whom were women.

Domestic violence was believed to be substantially 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 received training 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 lead to criminal proceedings or disciplinary action against the defendant and compensation claims by the plaintiff. Complaints of sexual harassment as well as sex discrimination may be submitted to the HRC under the Sex Discrimination Act. The HRC received 262 complaints of sexual harassment from July 2011 to June 2012, but separate statistics on resolution of harassment complaints were not available.

Reproductive Rights: Couples and individuals have the right to decide freely and responsibly the number, spacing, and timing of their children, and to have the information and means to do so free from discrimination, coercion, and violence. 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: Women enjoy the same legal rights and status as men, and the law provides for pay equity. According to the ABS, the pay gap in practice 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's entering and advancing in their organization. The law also prohibits discrimination against employees on the basis of family responsibilities, including breastfeeding.

The HRC received 505 complaints under the Sex Discrimination Act from July 2011 to June 2012. Of these, 431 included claims of sex discrimination and 262 included claims of sexual harassment; some complaints included both. Of the 487 finalized complaints, 143 were terminated, 189 resolved by conciliation, 105 discontinued or withdrawn, and 50 administratively closed.

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

On August 22, the HRC released its review on the Treatment of Women in the Australian Defense Force, which the sex discrimination commissioner headed. On November 26, the government accepted all 21 HRC recommendations, which included the creation of a Sexual Misconduct Prevention and Response Office, waivers of the initial minimum provision of service and return of service obligations for victims of sexual assault or harassment, and growth targets for recruiting women.

Children

Birth Registration: Citizenship is not derived by birth in the country. Children are citizens if at least one parent is 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 the prevention of child abuse 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 (the latest available data). These included physical abuse, sexual abuse, emotional abuse, and neglect.

Child Marriage: The legal minimum age of marriage is 18 years for both boys and girls. A person who is between 16 and 18 years may apply to a judge or magistrate in a state or territory for an order authorizing his or her marriage to a person who has attained 18 years of age. However, the marriage of a person under age 18 requires parental or guardian consent. Two persons under age 18 may not marry each other. While no statistics were available, marriages involving a person under age 18 were rare.

Harmful Traditional Practices: Female genital mutilation/cutting (FGM/C) is a crime under the laws of all states and territories, and medical policy prohibits the practice. While the number of residents born in countries where the practice is common was growing, there were no widespread reports of FGM/C during the year. On September 13 in Sydney, authorities charged a local Islamic leader, a retired nurse, and the girls' parents with allegedly performing FGM/C on two young girls, ages six and seven at the time, in the state of New South Wales between October 2010 and July 2012. On September 19, authorities arrested an additional four female relatives allegedly present at one or both of the procedures. Following a November local court hearing, the court magistrate continued bail for the eight accused and adjourned the case until February 2013.

In December the government announced it would immediately implement measures to boost community awareness and education campaigns and review the country's legal framework in an effort to eliminate FGM/C. Measures included A\$500,000 (\$520,000) in grants to fund organizations to run education and awareness campaigns, new research and data collection efforts on the practice of FGM/C, and scheduling of a national summit on FGM/C in 2013.

Sexual Exploitation of Children: The law provides for penalties of up to 25 years' imprisonment for commercial sexual exploitation of children. There were documented cases of children under age 18 engaged in prostitution.

The law prohibits citizens and residents from engaging in, facilitating, or benefiting from sexual activity with children under age 16 overseas, and provides for a maximum sentence of 17 years' imprisonment upon conviction. During the

year the government continued its awareness campaign to deter child sex tourism through the distribution of materials to citizens and residents traveling overseas.

The legal age for consensual sex is 16 in the 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 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 (\$286,000). Federal law allows suspected pedophiles to be tried in the country regardless of where the crime is committed. The AFP worked with its international partners to identify and charge persons involved in the online exploitation of children.

The government largely continued federal emergency intervention measures initiated in 2007 to combat child sexual abuse in 73 Aboriginal communities in the Northern Territory. These measures included emergency bans on sales of alcohol and pornography, restrictions on the payment of welfare benefits in cash, linkage of support payments to school attendance, and medical examinations for all indigenous children under age 16 in the Northern Territory. The federal minister for families, community services, and indigenous affairs stated that proven cases of abuse had doubled for indigenous children in the Northern Territory since the start of the emergency intervention, which reflected increased investment in child protection services. On June 29, Parliament passed legislation extending most of the intervention measures for 10 years.

While public reaction to the intervention remained generally positive, some Aboriginal activists asserted 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 www.travel.state.gov/abduction/resources/congressreport/congressreport_4308.html.

Anti-Semitism

According to the 2011 census, the country's Jewish community numbered 97,300 persons. In the 12-month period ending in September 2012, the Executive Council of Australian Jewry, an NGO, recorded 543 anti-Semitic incidents, compared with 517 during the previous 12 months. These incidents included physical and verbal assaults, such as Jewish persons walking to and from synagogues being pelted with eggs; vandalism; and harassment.

Some expressions of anti-Semitic sentiments by private citizens received media scrutiny. For example, Cardinal George Pell, Archbishop of Sydney, apologized in April after making what Jewish leaders described as "deeply problematic" comments about Jews during a public debate. In August a popular radio-show host publicly apologized for a joke he made on the air referring to the Holocaust.

In December the Australian Curriculum, Assessment, and Reporting Authority announced that the Holocaust would be included in the mandatory curriculum in schools nationwide for students ages 14 to 16 beginning in 2014. New South Wales was scheduled to introduce the new curriculum first, with other states and territories to follow.

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; access to air travel and other forms of transport; 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.

Schools are required to comply with the Disability Discrimination Act, and children with disabilities generally attended school. The federal government's Better Start initiative provided up to A\$12,000 (\$12,480) in funding for early intervention services and treatment for eligible children with disabilities. The government's More Support for Students with Disabilities initiative allocated A\$200 million (\$208 million) in additional funding for 2012 and 2013. The government also cooperated with state and territorial governments that ran programs to assist students with disabilities.

The HRC's annual report stated that 955 complaints citing 1,934 alleged grounds of discrimination were filed under the Disability Discrimination Act from July 2011 to June 2012. Of these, 31 percent related to employment, and 36 percent involved the provision of goods and services. The HRC resolved 976 complaints during the period, 451 through conciliation.

In July the federal and state governments agreed to launch the first stage of a National Disability Insurance Scheme (NDIS), beginning in July 2013, in South Australia, Tasmania, the Australian Capital Territory, and parts of New South Wales and Victoria. During the year the federal government committed A\$1 billion (\$1.04 billion) toward the first stage of the scheme. The NDIS aims to provide support for approximately 410,000 persons who have a permanent disability significantly affecting their communication, mobility, self-care, or self-management.

National/Racial/Ethnic Minorities

According to the HRC's July 2011 to June 2012 annual report, it received 477 complaints under the Racial Discrimination Act, citing 844 alleged grounds of discrimination. Of these, 46 percent involved employment, 28 percent involved provision of goods and services, and 18 percent alleged "racial hatred." Persons born outside the country filed 41 percent of the complaints, and Aboriginals and

Torres Strait Islanders filed 35 percent. During this period the HRC resolved 502 complaints, 226 through conciliation.

Between September and November, several assaults on Korean citizens were reported, which raised concern in the Korean community about possible racial motivation for the crimes. In one case in September, a group of teenagers assaulted a Korean citizen in a Melbourne park while reportedly shouting a racial epithet at him. The government and the Victoria police concluded there was insufficient evidence that the assault was racially motivated, brought no charges in the case. In the other cases police indicated that race was not a motivating factor.

Indigenous People

According to the 2011 census, Aboriginals and Torres Strait Islanders numbered approximately 548,370 persons, or 2.5 percent of the total population.

Indigenous ownership of land was predominately in non-urban areas. Indigenous-owned or -controlled land comprised approximately 20 percent of the country's area (excluding native title lands) and nearly 50 percent of the land in the Northern Territory. 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. Under a 2002 High Court ruling, native title rights do not extend to mineral or petroleum resources and, in cases where leaseholder rights and native title rights are in conflict, leaseholder rights prevail but do not extinguish native title rights.

The approximately Indigenous Land Corporation is a special account of A\$1 billion (\$1.04 billion) that provides a continuing source of funds for indigenous persons to purchase land for their use. It receives an annual minimum payment of A\$45 million (\$46.8 million) from the federal government. 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), in 2007 the government took control of 64 indigenous communities through five-year land leases. In May 2011 the government reported it was paying rent to 48 affected communities and negotiating with the remaining communities. All rent payments were backdated to the commencement date of the leases and the payments continued until the leases

expired in August 2012. In legislation passed June 29, the government did not extend the compulsory five-year leases. Instead it began negotiating voluntary long-term leases.

In a March 28 letter to the minister for families, community services and indigenous affairs, the UN High Commissioner for Human Rights expressed concern about education measures in the June 29 legislation that linked welfare payments to school attendance, stating that the measures appeared to be punitive in nature and that laws should help indigenous people “take control of decision making about their own development goals.”

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 2011 the Productivity Commission reported improvements in 13 areas of indigenous well-being but deterioration 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 2002-08; school retention to year 10 had increased from 83 to 96 percent from 1998 to 2010; and there were improvements in employment. However, “virtually all the indicators in this report” showed wide gaps between indigenous and other citizens.

According to the ABS, in 2011 indigenous adults were 14 times more likely than nonindigenous adults to be imprisoned and comprised 27 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 16 percent, compared with approximately 5 percent for the nonindigenous population.

The Productivity Commission’s 2012 Indigenous Expenditure Report estimated that total direct indigenous expenditure in 2010-11 was A\$25.4 billion (\$26.4 billion). This resulted in spending of A\$44,128 (\$45,893) per indigenous citizen compared to A\$19,589 (\$20,372) for other citizens. The report found that the difference was due to “greater intensity of service use” and “additional costs of providing services.”

In a September report on government programs for indigenous persons, the NGO Desert Knowledge characterized the government’s approach as overly rigid and centralized, which the organization stated was leading to a “deep sense of

disconnect and discontent” in indigenous communities. The organization recommended a more decentralized approach, with greater local community input into and accountability for the design and implementation of government programs in indigenous communities.

The National Congress of Australia’s First Peoples is the national representative body for Aboriginals and Torres Strait Islanders. It was designated to receive A\$29.2 million (approximately \$30.4 million) over five years from the federal government. The HRC has an Aboriginal and Torres Strait Islander social justice commissioner.

On January 19, the government received an expert panel’s report on the issue of indigenous peoples’ recognition in the constitution. On February 15, it announced allocation of A\$10 million (\$10.4 million) to help build public awareness and public support for this issue.

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

There are no laws criminalizing consensual same-sex sexual conduct between adults. Discrimination on the basis of sexual orientation and gender identity is prohibited by law in a wide range of areas, including in employment, housing, family law, taxes, child support, immigration, pensions, and social security.

The HRC received 21 complaints of discrimination based on sexual orientation from July 2011 through June 2012. However, information on their resolution was not available.

Other Societal Violence or Discrimination

Federal and various state laws prohibit discrimination on the ground of HIV-positive status. The government generally enforced these laws effectively. The HRC reviews complaints of discrimination on the ground 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 known 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, including related regulations and statutory instruments, protects the rights of workers, including public servants, to associate freely domestically and internationally and also protects against antiunion discrimination. Federal, state, and territorial laws protect workers' right to organize, conduct legal strikes, and bargain collectively. Labor laws protect citizens, permanent residents, and migrant workers. The government effectively enforced applicable laws.

Under the law workers are free to join or decline to join industrial associations, and discrimination against individuals for membership or nonmembership in a union is prohibited. The law provides for reinstatement of workers fired for union activity. 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. Federal and state laws regulate strikes in essential services, such as law enforcement, air-traffic control, and sanitation. The law permits the government to stop strikes judged to have an "adverse effect" on the employer or damage third parties, but this provision was not used during the year. Industrial action must be authorized by a secret ballot of employees; unions complained that this requirement was unduly time consuming and expensive to implement.

With regard to collective bargaining, the law requires that employers act in "good faith" when a majority of employees want a collective agreement and enables low-paid workers to engage in multiemployer "good faith bargaining." Either side may be represented by a bargaining agent in the process.

An enterprise agreement--a collective agreement made at an enterprise level between employers and employees--cannot override relevant laws. For example, an enterprise agreement cannot include "a term that confers an entitlement or remedy in relation to unfair dismissal before the employee has completed the minimum employment period."

Fair Work Australia is an independent industrial relations management institution. Its functions include determining minimum wages and employment conditions, and dispute resolution. There is a national safety net of minimum employment standards.

By law 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, registration of a union may be cancelled if a strike has a substantially adverse effect on public service or defies an order of the New South Wales Industrial Relations Commission. Following criticism from unions and the International Confederation of Trade Unions that the Australian Building and Construction Commission (ABCC) discriminated against unions in the building and construction sector, the ABCC was replaced on June 1 by the Fair Work Building Industry Inspectorate (FWBII), a specialist regulator for the building and construction industry. The FWBII inherited many of the same powers as the ABCC but with slightly diminished authority. For example, the FWBII may not launch prosecutions until after an industrial matter is settled. With appropriate approval, the FWBII director may require a person to attend and answer questions at an examination, provide information, and produce documents.

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 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 July 1, Fair Work Australia increased the national minimum wage for adults working full time (38 hours per week) by 2.9 percent from A\$589.30 (\$612.87) to A\$606.40 (\$630.65) per week, based on a minimum hourly rate of A\$15.96 (\$16.60). There was no official poverty-level income figure, but the minimum wage, combined with welfare payments, was 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. The law requires equal pay for equal work.

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 workers who have worked for at least 330 hours during at least 10 of the 13 months prior to the birth or adoption of the child.

Under the law maximum weekly hours are 38 plus “reasonable” additional hours (determined according to the law, 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). The law provides for paid annual holidays and premium pay for overtime. Industry standards or awards mandate rest periods and overtime pay. 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.

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 2011 and June 2012, the Fair Work Ombudsman recovered A\$39 million (\$40.6 million) on behalf of 18,497 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.

During 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 July, approximately 3.44 million persons (30 percent of the workforce) were employed as part-time workers, of whom 70 percent were women. Casual employees were employed on a daily or hourly wage basis. They did not receive paid annual or sick leave, but the law mandates they receive additional pay to compensate for this.

There were reports that some individuals on so-called “457” employer-sponsored, skilled-worker visas were underpaid and used as a less expensive substitute for Australian workers. On April 5, the Federal Magistrates Court fined a Melbourne restaurant A\$72,000 (\$74,880) for exploiting a cook recruited on a 457 visa. This fine included underpayment of A\$24,217 (\$25,186) during a 10-month period in 2008-09. On July 2, the court fined another Melbourne restaurant A\$35,000 (\$36,400) and on August 6 issued a fine of A\$8,580 (\$8,923) to a vehicle-servicing company in Perth, both for underpayment of employees on 457 visas.

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