

# AUSTRALIA

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**Head of state:** Queen Elizabeth II, represented by William Deane

**Head of government:** John Howard

**Capital:** Canberra

**Population:** 18.5 million

**Official language:** English

**Death penalty:** abolitionist for all crimes

**The government's rejection of international human rights scrutiny and policies on asylum-seekers were major human rights issues. The arbitrary detention of at least 3,000 refugee applicants and "boat people" triggered riots, mass breakouts and complaints of ill-treatment by guards. The government announced legislation to ratify the Rome Statute of the International Criminal Court.**

## Background

Human rights advocates called for a Bill of Rights to safeguard the rights provided in international human rights treaties to which Australia is party. Their concerns were echoed by the UN Human Rights Committee (HRC), which monitors implementation of the International Covenant on Civil and Political Rights (ICCPR), and by the UN Committee on Economic, Social and Cultural Rights. They found that treaty rights have no legal status in Australia and cannot be invoked in domestic courts, leaving gaps in Australia's human rights system and impeding the recognition and applicability of treaty provisions.

In May, the Prime Minister failed to participate in public events to recognize past human rights violations against indigenous peoples and indicated his opposition to proposals for reconciliation and racial tolerance developed over 10 years by the government-funded Council for Aboriginal Reconciliation.

## Refugees and asylum-seekers

The Minister for Immigration and Multicultural Affairs sought revisions of international refugee standards to deter irregular movements of asylum-seekers. More than 2,940 "boat people", including 500 children, were automatically detained under the Migration Act, which prohibited courts from ordering their release. Hundreds were held in tents and other improvised detention facilities in remote areas. The national Human Rights and Equal Opportunity Commission investigated allegations that guards ill-treated immigrant detainees and neglected medical care. In September the UN Working Group on Arbitrary Detention had to cancel plans to investigate the immigration detention regime, after the government failed to allow it to visit.

☞ In May, the family of a three-year-old Chinese boy, detained all his life at Port Hedland detention centre, was released following a High Court decision that he should not be

denied protection from persecution in China because his parents were unsuccessful refugee applicants.

☞ In January, a 32-year-old Algerian asylum-seeker was deported despite a written request by the UN Committee against Torture not to remove him from Australia, so that the Committee could consider his case. The government argued it had "no obligation" to act on such requests.

## International obligations

A Senate committee report in June addressed the government's failure to grant protection to unsuccessful asylum applicants in accordance with Australia's obligations under the UN Convention against Torture, the ICCPR and the UN Children's Convention. The report criticized continuing procedural flaws that had led to the deportation in 1999 of a Chinese woman more than eight months pregnant who underwent an abortion on arrival in China. It recommended that certain government officials should not be members of the tribunal which decides on unsuccessful refugee applications.

Three UN treaty bodies published observations on Australia's obligations towards asylum-seekers. The Committee on the Elimination of Racial Discrimination (CERD) recommended the "faithful" implementation of international refugee law. The HRC recommended policy changes on mandatory detention under the Migration Act. The Committee against Torture found "an apparent lack of appropriate review mechanisms for ministerial decisions" on people who may face torture if deported.

## Deaths in custody and imprisonment of Aborigines

Aborigines continued to die in custody in disproportionate numbers, sometimes in disputed circumstances.

In January, the controversial death in custody of a 15-year-old Aboriginal boy in Darwin heightened public interest in a Senate inquiry into mandatory imprisonment schemes for juveniles. The inquiry found that the schemes violated the UN Children's Convention and recommended the passing of draft federal legislation overriding such schemes. The Prime Minister prevented the passing of the draft legislation. In March, the CERD recommended changes to the schemes which "appear to target offences that are committed disproportionately by indigenous Australians, especially in the case of juveniles". The HRC observed in July that such schemes raised a "serious issue of compliance" with the ICCPR. In November, the Committee against Torture recommended measures to prevent such schemes violating international standards. The Committee also expressed concerns about reported ill-treatment of prisoners, including the use of unnecessarily painful and humiliating restraint instruments.

In June, a Coroner's inquest in Tasmania found that prison authorities had failed in their duty of care to prisoners at risk of suicide, following repeated inquest recommendations since 1991 to improve safety at Risdon prison, Hobart. The Tasmania state government introduced extensive prison reforms, including in prison health services, to halt a spate of prison deaths.

### **Withdrawal from UN scrutiny**

Following a review triggered by the CERD observations, in August the government announced major limitations on Australia's future cooperation with UN human rights bodies. It decided to agree to UN treaty body visits and requests for information only in "compelling" cases, to report to UN treaty monitoring bodies on a selective basis and to reject "unwarranted requests from treaty committees to delay removal of unsuccessful asylum-seekers from Australia".

### **AI action**

In September, AI sent an open letter to Prime Minister Howard, asking his government to reconsider the above measures, which AI said constituted an attack on the UN human rights protection system and set a bad example internationally. Australia's selective approach to reporting to treaty bodies would be in breach of the binding obligations it undertook when becoming party to human rights treaties, and its reluctance to cooperate with the UN's special human rights mechanisms created the impression it had something to hide. In a written reply, the Prime Minister's office failed to respond to any of the serious concerns expressed by AI.