

United Nations Committee on the
Elimination of Racial Discrimination

Combined Thirteenth and Fourteenth
Periodic Report of the Government of
Australia under Article 9 of the
International Convention on the
Elimination of all Forms of Racial
Discrimination

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GLOSSARY

ACT	Australian Capital Territory
AFP	Australian Federal Police
APS	Australian Public Service
ATSIC	Aboriginal and Torres Strait Islander Commission
CERD	International Convention on the Elimination of Racial Discrimination
CLR	Commonwealth Law Report
COAG	Council of Australian Governments
Cth	Commonwealth
HREOC	Human Rights and Equal Opportunity Commission
ICCPR	International Covenant on Civil and Political Rights
IHSS	Integrated Humanitarian Settlement Strategy
ILC	Indigenous Land Corporation
ILUA	Indigenous Land Use Agreement
IESP	Indigenous Education Strategic Plan
NCP	National Crime Prevention program
NSW	New South Wales
NT	Northern Territory
NTA	Native Title Act
PJC	Parliamentary Joint Committee
Qld	Queensland
SA	South Australia
Tas	Tasmania
TIS	Translating and Interpreting Service
UN	United Nations
UNHRC	UN Human Rights Committee
Vic	Victoria
WA	Western Australia
WCAR	World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance

INTRODUCTION

Preparation and Structure of Report

1. In accordance with article 9 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), Australia submits this report as an update on the measures it has adopted to give effect to the provisions of CERD. This report is Australia's 13th and 14th under CERD, covering the period 1 July 1998 to 30 June 2002.
2. Given the comprehensiveness of Australia's 10th, 11th and 12th reports, this report concentrates on significant developments in Australia's approach to implementing CERD obligations, since 1 July 1998. The report adopts a thematic approach in highlighting these developments, and in doing so addresses issues raised by the Committee on the Elimination of Racial Discrimination (the CERD Committee) during its consideration of Australia's 10th, 11th and 12th reports at its 56th session in March 2000.
3. The material included in this report should be considered in the context of the constitutional and legislative structures in Australia and the policies and programs that are in place to combat racial discrimination, as outlined in Australia's core document and previous periodic reports. Where relevant, this report contains cross-references to relevant parts of Australia's 10th, 11th and 12th reports.
4. To avoid adding to the burden on the secretariat resources of the CERD Committee, the Federal Government has endeavoured to produce a concise report and has not attached documents relevant to every initiative, legislative change and judicial decision mentioned in this report. The Australian Government is committed to the effective operation of the CERD Committee and looks forward to the Committee's consideration of this report.

Consultation with State and Territory Governments

5. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Federal Government and those of the six States – New South Wales, Victoria, Queensland, South Australia, Tasmania and Western Australia – and two internal self-governing territories – the Australian Capital Territory and the Northern Territory. For the purposes of this report, the two internal self-governing territories may be regarded as standing substantially in the same position as the States. As the State and Territory Governments are responsible for many of the government activities that give effect to CERD, the Federal Government consulted State and Territory Governments in the preparation of this report.

GENERAL MEASURES OF IMPLEMENTATION

6. The principal means by which Australia implements CERD is through the *Racial Discrimination Act 1975* (Cth) and the Human Rights and Equal Opportunity Commission.
7. The *Racial Discrimination Act 1975* (Cth) prohibits all forms of racial discrimination in all Australian jurisdictions, Federal, State, and Territorial. Although no separate legislation is required by States and Territories to ensure Australia's compliance with CERD, all States and Territories have also legislated in the area enabling individuals to choose to pursue their complaints under either the Federal or the relevant State or Territory scheme.
8. The Human Rights and Equal Opportunity Commission (the Commission) is the principal agency responsible both for monitoring compliance with CERD within Australia, and for investigating and conciliating complaints, including complaints of alleged human rights violations by or on behalf of the Federal Government and alleged discrimination in employment on a range of grounds.
9. The Commission is a national independent statutory authority, established by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth). The Commission has responsibilities for inquiring into alleged infringements under three anti-discrimination laws - the *Racial Discrimination Act 1975* (Cth), the *Sex Discrimination Act 1984* (Cth), and the *Disability Discrimination Act 1992* (Cth), as well as inquiring into alleged infringements of human rights under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth).
10. Human rights education is one of the core responsibilities of the Commission along with the investigation and attempted resolution of complaints about breaches of human rights and anti-discrimination legislation.
11. The Aboriginal and Torres Strait Islander Social Justice Commissioner has specific functions under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) and under the *Native Title Act 1993* (Cth). These functions relate to the monitoring of the enjoyment or otherwise by Indigenous people of their rights under the law.
12. The Federal Attorney-General is the Minister responsible to Parliament for the Commission.
13. Further detail on the *Racial Discrimination Act 1975* (Cth) and the Human Rights and Equal Opportunity Commission is available in the Tenth, Eleventh and Twelfth Periodic Report of the Government of Australia Under Article 9 of CERD.
***Human Rights Legislation Amendment Act 1999* (Cth)**
14. The *Human Rights Legislation Amendment Act 1999* (Cth) implemented a number of significant reforms to the administration, functions and procedures of the Human Rights and Equal Opportunity Commission.

15. The 1999 Act addressed the decision of the High Court of Australia in *Brandy v Human Rights and Equal Opportunity Commission and Ors*¹ which found that the Commission, which is not a court, was not permitted by the Australian Constitution to make binding and enforceable determinations that a person had engaged in unlawful discrimination. The Act provided parties with direct access to the courts and gave to the Commission a power to conciliate, rather than to determine, complaints of unlawful discrimination.

16. The 1999 Act also simplified the complaint-handling process and made the President of the Commission responsible for all complaints. The centralisation of complaint-handling processes was designed to improve the Commission's ability to utilise resources more effectively and to promote more consistent practices in handling complaints.

17. Under the new scheme, which came into operation on 13 April 2000, a person can make a complaint to the Commission alleging unlawful discrimination on the grounds of sex, race or disability. The President must inquire into the complaint and attempt to conciliate it.

18. Where a conciliated outcome cannot be achieved or if, in the view of the President, there is no case to answer, the President may terminate the complaint. If a complaint on the grounds of sex, race or disability is terminated, the complainant may bring legal proceedings in the Federal Magistrates Service or the Federal Court of Australia seeking an enforceable remedy for unlawful discrimination. Remedies that may be awarded include an apology, monetary compensation, reinstatement or promotion, provision of goods or services required or a combination of these remedies.

19. A preliminary review by the Commission has shown that the transfer of the hearing of complaints function from the Commission to the Federal Magistrates Service and Federal Court has not deterred complainants from pursuing their rights. In particular, statistics show that there are no adverse costs implications of the new procedure.

Further Reform of the Human Rights and Equal Opportunity Commission

20. The Australian Government is committed to pursuing legislative reform of the structure of the Commission to further enhance its ability to respond to current and emerging human rights issues. In particular, the Government aims to ensure that the Commission is best structured to focus on educating the broader Australian community about human rights issues.

21. The Human Rights Legislation Amendment Bill (No 2) 1999 provided for the replacement of the five 'portfolio-specific' Commissioners with three Deputy Presidents, who with the President and the Commission as a whole, have the responsibility to protect and promote the human rights of all Australians.

22. The Bill also proposed that new priority would be given to the Commission's function to educate the community, government and business about their responsibilities to respect other people's human rights.

23. The Bill lapsed when the Australian Parliament was prorogued on 8 October 2001. However, the Federal Government remains committed to pursuing legislative reform to the structure of the Human Rights and Equal Opportunity Commission.

Human Rights Education

24. The Australian Government is strongly committed to fostering human rights education within Australia and is proud of its achievements in this area. The Government considers that, in the long-term, education and awareness programs about human rights are the most effective way to reinforce the community's respect for human rights, promote tolerance and fairness and prevent discrimination. Human rights education also enhances the awareness of the importance of Australian democratic institutions in protecting and promoting the human rights of all Australians.

25. Australia's national human rights institution, the Human Rights and Equal Opportunity Commission, has an important role in promoting an awareness of, and respect for, human rights in the community.

26. In performing its statutory role of promoting human rights on behalf of the Australian Government, the Commission has undertaken a number of innovative projects. For example, in 2001 it launched the "Youth Challenge Online" website. The website is an important resource in assisting school teachers to educate students about human rights and responsibilities by way of role-plays, guided activities, surveys, personal stories discussion, and a monthly current issues series. In 2002 this website was short-listed for *The Australian* newspaper 2002 Awards for Excellence in Educational Publishing.

27. Major anti-racism/race discrimination education projects undertaken by the Commission which have been implemented in the reporting period include:

- the *Race for Business* information and training package to assist employers eliminate racism in the workplace and reduce the likelihood of complaints under the *Racial Discrimination Act 1975* (Cth) (www.humanrights.gov.au/racial_discrimination/race_for_business/index.html);
- the national civil society consultations on racism in preparation for the World Conference Against Racism during 2001 (www.humanrights.gov.au/racial_discrimination/national_consultations/index.html); and
- *Face the Facts: some questions and answers about immigration, refugees and Indigenous affairs*, which was updated and revised in 2001 (www.humanrights.gov.au/racial_discrimination/face_facts/index.html).

28. In 2002 several new fact sheets about CERD and the Racial Discrimination Act were published and widely distributed to schools and teachers' organisations as well as posted on the Commission's website (www.humanrights.gov.au/racial_discrimination/guide_law/index.html).

29. Other relevant human rights education programs undertaken by the Commission during the reporting period include the *Bush Talks* consultations on human rights in regional, rural and remote Australia (www.humanrights.gov.au/human_rights/rural_australians/bushtalks/index.html) and several national inquiries with substantial human rights education components, including the national inquiry into rural and remote education (www.humanrights.gov.au/human_rights/rural_education/index.html).

30. Both the *Bush Talks* consultations and the national inquiry into rural and remote education, and their respective publications, included significant components directly relevant to race discrimination and the promotion of social justice for minorities, particularly Indigenous people.

31. The Commission's specific human rights education electronic mailing list has 3,500 subscribers. These subscribers are teachers who receive regular updates on human rights to assist in direct classroom teaching.

32. The Government takes the view that a strong democracy provides protection against human rights abuses, such as racial discrimination. "Discovering Democracy", the Federal Government's civics and citizenship education program, provides an important contribution to human rights education at the secondary and tertiary level as well as in the adult and community education sector. Social justice is a major theme of Discovering Democracy activities in schools, and program activities support basic democratic values such as respecting and accepting cultural diversity.

33. The National Committee on Human Rights Education is one of the major initiatives implemented by Australia to mark the UN Decade for Human Rights Education.

34. The National Committee provides a forum for representatives from non-government organisations, government agencies, community bodies, business and the media to discuss and implement initiatives dealing with human rights education. The Committee seeks to involve Australians from a wide cross-section of society in its work and to draw on the active support and participation of Australians noted for their contribution to community life. This reflects the belief that promoting human rights is the responsibility of everyone and requires active community participation. One of the Committee's goals is for all Australians to have a fair opportunity to learn about human rights values, including mutual respect, individual dignity and equal opportunity. It demonstrates that education about human rights is something that all sectors of the community have an important role in promoting.

35. The Australian Government has endorsed the National Committee as the focal point for Australia's contribution to the UN Decade for Human Rights Education and provided the National Committee with \$40,000 in 2001/02 in addition to providing seed funding of \$10,000. This funding assists the Committee to raise awareness and appreciation of the important role that human rights education plays in preventing discrimination and promoting tolerance and fairness for all Australians, in line with the objectives of the UN Decade of Human Rights Education.

36. The Australian Government also contributes funding to the Australian Red Cross to assist it in the dissemination of information about international humanitarian law, particularly to defence force and aid personnel who are deployed in countries that may be experiencing armed conflict. In 2001/02, the Government provided \$120,000 to the Red Cross for this purpose.

37. All of these initiatives play an important role in increasing awareness and knowledge about human rights within the community. They also represent an important contribution to meeting the objectives of the UN Decade for Human Rights Education. (See also section on “Educational Materials Promoting Multiculturalism”, paragraphs 198 - 201.)

38. The New South Wales Anti-Discrimination Board’s annual program which includes specifically designed programs, educates the people of NSW about their rights and responsibilities under the *Anti-Discrimination Act 1977* (NSW).

39. In March 2000, a three-year campaign to promote understanding and respect for cultural diversity in Victoria was launched. Diversity Victoria is a coalition of non-political and not-for-profit organisations who have come together to promote awareness, respect, understanding and appreciation of diversity. One of its key projects is “Celebrating Diversity”, which is convened by the Equal Opportunity Commission of Victoria. The first phase of the project focuses on “Leadership Training” and comprises a series of workshops based around a “Celebrating Diversity” kit. (See also section on “Anti-discrimination Legislation and Related Developments” paragraphs 49-70.)

40. In July 2001, the Queensland Anti-Discrimination Commission launched its textbook *Moving Forward: Students and Teachers against Racism*. It tells a series of stories from 11 different government and non-government schools, showing the positive measures taken to promote harmony, respect, understanding and fairness between school members, and with people in the community.

41. The Commission has produced four new publications covering respectively, information for employers, providers of accommodation, goods and services and education services.

42. These booklets provide extensive and current information for organisations, businesses and agencies which need to keep up to date with anti-discrimination legislation. (See also section on “Anti-discrimination Legislation and Related Developments”, paragraphs 49–70.)

43. The South Australian Equal Opportunity Commission has a Training and Education Services Unit offering structured courses including “Discrimination and Harassment” and “Equal Opportunity and Managers’ Responsibilities”. Some courses are available on-line to facilitate participation of people in remote or isolated areas, or are conducted as a one-to-one session to explore the impact and consequences of personal behaviour on a confidential basis. The Commission has also produced a number of fact sheets and easy to understand brochures on discrimination.

44. In addition to providing access to information about State and national equal opportunity and anti-discrimination laws and international human rights conventions,

the Commission's website showcases a number of innovative projects. For example, the Commission has developed "EO Rules", an on-line equal opportunity, human rights and anti-discrimination resource for young people. The aim is to provide information to young people about equal opportunity laws, and about their rights and responsibilities under those laws. The on-line site includes a "Student Forum" to allow students to communicate with the Commission and others to discuss human rights issues and a secure "Student Chat" facility.

45. The Commission's website includes a section for teachers, containing information and links to information sites. It also contains a "chat page" so that teachers can communicate with each other on issues raised in the teaching of equal opportunity and human rights.

46. The Commission has also developed a new easy-to-follow publication, *Managing Equal Opportunity*, to enable employers to put equal opportunity into practice. The publication contains up-to-date information, a comprehensive chapter on handling complaints and model employment policies and checklists.

47. *Play by the Rules*, a joint initiative of the Equal Opportunity Commission of South Australia and the South Australian Office for Recreation and Sport, is an on-line training and information resource for sport and recreation clubs and associations. "Play by the Rules" provides information on how to prevent and deal with inappropriate behaviour including discrimination, harassment, favouritism, bias and various forms of abuse.

48. The Northern Territory Anti-Discrimination Commission conducts specialised training in remote communities, specifically dealing with discrimination issues relevant to Indigenous people living in remote areas. Other anti-discrimination education programs and training packages are regularly offered for service providers working with both urban and remote Indigenous persons and those of a non-English speaking background.

49. The Commission has also produced a number of fact sheets, easy-to-understand brochures and videos on discrimination, which are available in six languages and some Aboriginal languages.

SIGNIFICANT LEGISLATIVE AND POLICY DEVELOPMENTS

Anti-discrimination Legislation and Related Developments

50. The Aboriginal and Torres Strait Islander Social Justice Commissioner is required by law to make two annual reports to the Government on the enjoyment of human rights and social justice by Indigenous Australians. Major topics covered by the Social Justice Reports presented during the reporting period were:

- an evaluation of responses to the Commission's report *Bringing them Home (Social Justice Report 1998)*;
- Indigenous children and young people (*Social Justice Report 1999*);
- Aboriginal reconciliation issues (*Social Justice Report 2000*); and
- Indigenous experiences with the criminal justice system and an update on the progress of Aboriginal reconciliation one year after the delivery of the final documents of the Council for Aboriginal Reconciliation (*Social Justice Report 2001*).

51. The Aboriginal and Torres Strait Islander Social Justice Commissioner is also required to provide annual reports on the effect of the *Native Title Act 1993 (Cth)* on the exercise and enjoyment of human rights of Aboriginal people and Torres Strait Islanders. Major topics covered by the Native Title Reports presented during the reporting period were:

- an evaluation of the impact of the 1998 amendments to the *Native Title Act 1993 (Cth)* on the human rights of Indigenous people in *Native Title Report 1998*;
- an evaluation of the decision of the CERD Committee in March 1999 under its early action procedure that the amendments to the *Native Title Act 1993 (Cth)* breach Australia's obligations under CERD in *Native Title Report 1999*;
- an evaluation of the Government's response to the CERD Committee decision and an analysis of important native title case law from the Full Federal Court decisions in *Western Australia v Ward* and *Yarmirr v Commonwealth* in *Native Title Report 2000*; and
- an evaluation of the procedural protections under the *Native Title Act 1993 (Cth)* in *Native Title Report 2001*.

52. The *Racial and Religious Tolerance Act 2001 (Vic)* commenced operation on 1 January 2002. Section 7 of the Act provides that it is unlawful for a person to engage in conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, another person or class of persons, on the ground of the race.

53. Under the legislation, vilification is unlawful where it occurs in public, or where it occurs in private but in circumstances that could reasonably be expected to be heard or observed by a third party.

54. Section 11 of the Act acknowledges the importance of freedom of expression by providing exceptions for conduct that is engaged in reasonably and in good faith in relation to:

- . an artistic work or performance;
- . a statement, publication, discussion or debate for genuine academic, artistic, religious or scientific purpose or which may be considered in the public interest; and
- . a fair or accurate report on a matter of public interest.

55. Section 24 of the Act also creates an offence of serious racial vilification. It provides that it is an offence to incite hatred against a person or class of persons and threaten, or incite others to threaten, physical harm towards that person or class of persons or the property of that person or class of persons.

56. Sections 17 and 18 of the Act also require employers to ensure that workplaces are free of racial and religious vilification. The Equal Opportunity Commission of Victoria has developed employer guidelines, *Employer Guidelines – Racial and Religious Tolerance Act*, to assist employers to create workplaces that are free from vilifying behaviour.

57. A review of the Northern Territory *Anti-Discrimination Act 1992* (NT) is underway and involves invitations for community comment on a discussion paper prepared with input from significant community stakeholders. Examples of issues raised in the paper are the inclusion of racial and religious vilification as prohibited conducts.

58. The *Community Relations Commission and Principles of Multiculturalism Act 2000* (NSW), which created the Community Relations Commission of NSW, commenced on 13 March 2001. This new legislation allows the Commission to be more proactive in its approach to cultural diversity and the full participation of people in NSW. The Act replaced the *Ethnic Affairs Commission Act 1979* (NSW).

59. The *Anti-Discrimination Act 1991* (Qld) was amended by the *Anti-Discrimination Amendment Act 2001* (Qld) to prohibit public acts of racial and religious hatred or vilification and to provide for offences of serious racial or religious vilification. These provisions commenced on 7 June 2001.

60. Section 124A of the Act provides that a person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race or religion of the person or members of the group. Subsection 124A(2) provides for three exceptions in relation to:

- . the publication of a fair report of a public act;
- . the publication of material in circumstances in which the publication would be subject to a defence of absolute privilege in proceedings for defamation; or
- . a public act, done reasonably and in good faith, for academic, artistic, scientific or research purposes or for other purposes in the public interest, including public discussion or debate about, and expositions of, any act or matter.

61. Section 131A of the Act also creates an offence of serious racial vilification. It provides that a person must not, by a public act, knowingly or recklessly incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the race or religion of the person or members of the group in a way that threatens or incites others to threaten physical harm towards the person or group of persons or their property.

62. The three exceptions available under subsection 124A(2) of the Act do not apply to serious racial and religious vilification.

63. The Queensland Anti-Discrimination Commission has developed an easy to understand brochure explaining the racial and religious vilification provisions of the *Anti-Discrimination Act 1991 (Qld)*. The website has also been redeveloped to provide information on the *Anti-Discrimination Act 1991 (Qld)* in 17 community languages.

64. The *Anti-Discrimination Act 1998 (Tas)* commenced operation on 10 December 1999.

65. Section 16 of the Act provides that a person must not discriminate against another person on the ground of a number of attributes, including race, in the areas of employment, education and training, provision of facilities, goods and services, accommodation and membership and activities of clubs.

66. In addition, section 19 of the Act prohibits racial vilification by prohibiting a person, by a public act, from inciting hatred towards, serious contempt for, or severe ridicule of, a person or a group of persons on the ground of the race of the person or any member of the group.

67. Section 20 of the Act also prohibits the publishing or display of any sign, notice or advertising matter that promotes, expresses or depicts discrimination or prohibited conduct.

68. The Act also established the Tasmanian Anti-Discrimination Commission as an independent statutory authority. An Anti-Discrimination Commissioner was appointed for a five-year term, commencing on 25 October 1999. The functions of the Commissioner are:

- . to advise and make recommendations to the Minister on matters relating to discrimination and prohibited conduct;

- . to promote the recognition and approval of acceptable attitudes, acts and practices relating to discrimination and prohibited conduct;
- . to consult and inquire into discrimination and prohibited conduct and the effects of discrimination and prohibited conduct;
- . to disseminate information about discrimination and prohibited conduct and the effects of discrimination and prohibited conduct;
- . to undertake research and educational programs to promote attitudes, acts and practices against discrimination and prohibited conduct;
- . to prepare and publish guidelines for the avoidance of attitudes, acts and practices relating to discrimination and prohibited conduct;
- . to examine any legislation and report to the Minister as to whether it is discriminatory or not; and
- . to investigate and seek to conciliate claims.

69. Following the appointment of the Commissioner, a highly successful community awareness campaign was conducted on the operation of the Act. Information sessions were provided free of charge and were conducted in conjunction with local, State and Australian Government agencies, businesses, community organisations, service providers, service organisations, schools, colleges, vocational training institutions, universities, ethnic community groups and other community organisations. In total, 127 free community information sessions were conducted by the Commissioner from October 1999 to June 2000.

70. In June 2002, the South Australian Attorney-General published a discussion paper on whether the *Equal Opportunity Act 1984* (SA) should be amended to prohibit discrimination on the ground of religion, and whether there should also be legislation prohibiting religious vilification. Many replies were received and the SA Government has the matter under consideration.

71. The SA Government is considering legislation to ensure that victims of racial vilification are able to refer their complaints to the Equal Opportunity Commission where matters are dealt with through processes of mediation, conciliation and education.

INDIGENOUS ISSUES

General Policy

72. The Australian Government's national commitment to reducing Indigenous disadvantage is founded on a genuine partnership with Indigenous people and follows a number of key themes:

- . taking a whole-of-government approach by involving all relevant portfolio Ministers and the States and Territories, working within the reconciliation framework set down by the Council of Australian Governments (see paragraphs 91–94);
- . increasing the focus on individuals and their families as the foundation of functional communities;
- . encouraging and supporting self-reliance and independence from welfare;
- . strengthening leadership, capacity and governance;
- . addressing the debilitating effects of substance abuse and domestic violence;
- . increasing opportunities for local and regional decision-making by Indigenous people, and improving program coordination and flexibility to respond to local needs; and
- . improving access to mainstream programs and services, so that Indigenous-specific resources can be better targeted to areas of greatest need, particularly to areas where mainstream services do not reach.

Reconciliation

73. The Australian Government is firmly committed to the ongoing process of reconciliation and is continuing its work on both practical and symbolic measures. These measures are designed to ensure that the reconciliation process continues and improves the lives of Indigenous Australians.

74. There is widespread recognition that all Australians have a responsibility to progress reconciliation, and that true reconciliation occurs between neighbours, and within and between communities. The Government accepts a leading role in reconciliation by sustaining its commitment to the implementation of practical and symbolic measures which have a positive effect on the everyday lives of Indigenous Australians.

75. In 1991, the Australian Parliament unanimously supported the establishment of the Council for Aboriginal Reconciliation to progress a formal process of reconciliation between Indigenous and non-Indigenous Australians. The Government believes that in its 10 year legislative lifespan, which ended in December 2000, the

Council worked energetically towards its objectives and played an important role in bringing about a change in community attitudes on reconciliation.

76. The Australian Government contributed \$5.6 million to Reconciliation Australia, an independent, non-profit body established by the Council for Aboriginal Reconciliation to provide a continuing national focus for reconciliation.

77. The Government has also funded the construction of Reconciliation Place in the heart of the nation's capital, as a prominent public symbol which celebrates the ongoing process of reconciliation and Australia's commitment to it.

78. The Department of Immigration and Multicultural and Indigenous Affairs implements the Australian Government's *Living in Harmony* initiative. Part of this initiative is to encourage harmony between people of different cultural backgrounds, including Indigenous people, and religious faiths. Reconciliation activities have been a focus of the initiative.

79. State Governments have initiated other programs focussing on reconciliation. For example, the Queensland Government is implementing a Reconciliation Action Plan with the aim of removing the barriers to full social and economic participation by Aboriginal and Torres Strait Islander people, both practically and symbolically. This plan also aims to engage the public in discussion about the benefits that could flow from reconciliation between Indigenous and non-Indigenous Queenslanders, both economically and socially. Other Queensland Government initiatives include:

- . a communication campaign to elevate the status of reconciliation;
- . the Premier's Reconciliation Awards for business, and a reconciliation category in existing tourism awards; and
- . an Indigenous leadership program.

Addressing Indigenous Disadvantage

80. Although Aboriginal and Torres Strait Islander people are the most disadvantaged group within the Australian community, Australian governments are making headway in addressing social and economic disadvantage. For example:

- . infant death rates fell by a third between 1992 and 2001;
- . since 1996, basic health services have been provided for another 44 remote communities which previously had little or no access to services;
- . between 1992-94 and 2001, Indigenous death rates for respiratory illness fell from between 7 and 8 times the non-Indigenous average to 3.5 times;
- . between 1992-94 and 1997-99, Indigenous death rates for infectious and parasitic diseases fell from between 15 to 18 times the non-Indigenous average to between 4 and 5 times;

- the proportion of Indigenous children who stay on at school through to Year 12 rose from 29 per cent in 1996 to 36 per cent in 2001;
- the number of Indigenous students undertaking post-secondary vocational and educational training virtually doubled from 26,138 in 1995 to 58,046 in 2001;
- in 2001, there were 4,321 Indigenous students enrolled in a university bachelor degree, the highest enrolment numbers on record;
- between 1 July 1999-30 June 2002, over 5,920 Indigenous people were placed in jobs through the Indigenous-specific Wage Assistance program, and 11,473 Indigenous jobseekers were assisted under Indigenous-specific Structured Training and Employment Projects;
- between 1995-2001 the number of Indigenous people commencing traineeships and apprenticeships increased significantly from 1,320 in 1995 to 5,950 in 2001;
- 93 per cent of discrete communities in 2001 had access to electricity compared to 72 per cent of those communities in 1992; and
- 73 per cent of those communities in 2001 had higher-level sewerage systems compared to 55 per cent in 1992.

81. Notwithstanding these improvements, the Australian Government is committed to addressing the underlying disadvantage confronting many Indigenous people, and is spending a record \$2.5 billion dollars on Indigenous-specific programs (2002-03), with a focus on the key areas of housing, health, education and employment, and targeting resources to those Indigenous people in greatest need, particularly those in remote areas. These programs are in addition to other social benefits such as universal health coverage and income support, which are available to all Australians, and Indigenous programs and services funded by State and Territory Governments.

82. In the Northern Territory, there is a range of Territory Government programs that specifically address key areas of Indigenous social and economic disadvantage. These include wide-ranging initiatives in education, health, housing, service delivery and economic development, that are being developed and implemented in consultation and partnership with Indigenous leaders, communities and organisations. For example, the importance of education in determining life outcomes and impacts on disadvantage was studied in a 1998 NT Government review on Indigenous Education. 151 recommendations to improve Indigenous education in the NT were produced by the review, and are being systematically implemented in conjunction with the national Indigenous Education Strategic Plan (IESP) 2000-04. As a result Indigenous education is specifically identified as core business for the NT Department of Employment, Education and Training and a program to improve attendance and education outcomes for remote Indigenous communities is being piloted in four sites.

Families and Communities

83. The Australian Government recognises that concepts of family and community are central to Indigenous cultures. The Government also recognises that many Indigenous families and communities are facing huge stresses as they struggle to cope with disadvantage.

84. In order to build community capacity, a minimum of \$20 million is available for Indigenous-specific initiatives under the Australian Government's "Stronger Families and Communities" strategy. The strategy supports 60 State and Territory-based Indigenous projects which focus on leadership, local solutions to local problems, and early intervention and prevention. Examples of projects are:

- . Australian Leadership Program, which is assisting Indigenous men and women who are active in their communities' affairs to participate in an accredited leadership program (under the auspices of the Australian Institute of Aboriginal and Torres Strait Islander Studies); and
- . Family Income Management Trials, which are designed to assist Indigenous families to build their capacity to better manage income and family responsibilities.

85. The Australian Government is working closely with the States and Territories and the Aboriginal and Torres Strait Islander Commission (ATSIC) to find lasting, well-coordinated and practical responses to the very serious problem of family violence in Indigenous communities.

86. A national strategy on Indigenous family violence, developed jointly by ATSIC and the Australian Government, and endorsed by the State and Territory Governments, focuses on a range of areas, including better targeting of existing resources to support community-driven initiatives, and improved coordination of policies and programs at all levels of government.

87. The Australian Government has also allocated approximately \$10 million for Indigenous projects as part of its "National Partnerships Against Domestic Violence" grants program. Of this, \$6 million is dedicated to Indigenous community organisations for innovative local solutions to family violence. ATSIC provides approximately \$5 million per year through 12 family violence units across Australia to assist victims of violence and provide preventative community education.

88. The 1996 *Bringing Them Home* report by the Human Rights and Equal Opportunity Commission reported on the historical practice and effects of removing Indigenous children from their families. Beyond the initial \$63 million Government funding, the Australian Government has allocated a further \$53.9 million over four years to June 2006. This funding is allocated to the family tracing and reunion, counselling, and parenting support elements of the Government's original 1997 response to the report.

89. The Australian Government is also managing an independent consultancy which is reviewing and evaluating all government and non-government responses to

the *Bringing Them Home* report. The evaluation, which will include a good practice review, is expected to be completed in 2003.

90. In 1999, the Australian Parliament endorsed an historic “Motion of Reconciliation”, through which it:

- . expressed its deep and sincere regret that Indigenous Australians suffered injustices under the practices of past generations, and for the hurt and trauma that many Indigenous people continue to feel as a consequence of these practices; and
- . reaffirmed a whole hearted commitment to the cause of reconciliation between Indigenous and non-Indigenous Australians as an important national priority for all Australians.

91. The Australian Government believes there are serious difficulties in devising an equitable and workable scheme of financial compensation, and that this is not the answer to the complex and long-term cultural and social effects of separation practices. It has instead concentrated on providing services that support Indigenous people in rebuilding their family and cultural ties.

Council of Australian Governments Initiatives

92. In November 2000, the Council of Australian Governments (COAG), comprising the Australian Government, the State and Territory Governments, and the Australian Local Government Association, agreed to a reconciliation framework. The framework includes a new approach for governments based on partnerships and shared responsibilities with Indigenous communities, and program flexibility and coordination between government agencies, with a focus on local communities and outcomes. Priority actions in three areas were agreed:

- . investing in community leadership initiatives;
- . reviewing and re-engineering programs and services to ensure they deliver practical measures that support families, children and young people. In particular, governments agreed to look at measures for tackling family violence, drug and alcohol dependency and other symptoms of community dysfunction; and
- . forging greater links between the business sector and Indigenous communities to help promote economic independence.

93. To further progress these activities, COAG decided, in April 2002, to trial a whole-of-government cooperative approach in up to 10 communities or regions. The aim of these trials is to improve the way the different levels of government interact with each other and with communities to deliver more effective responses to the needs of Indigenous Australians. This approach is flexible in order to reflect the needs of specific communities, build on existing work, and improve the compatibility of different State, Territory and Australian Government approaches.

94. The Australian Government is determined that these trials will succeed and has established a core group of Departmental Secretaries (agency heads) which are guiding a dedicated taskforce charged with the responsibility of turning the whole-of-government approach into reality. Each Secretary will take on a strong role as the federal champion of each of the identified communities. States and Territories are showing a strong commitment to the project.

95. COAG has also commissioned the Steering Committee for the Review of Commonwealth/State Service Provision to produce a regular report against key indicators of Indigenous disadvantage. This report will help to measure the impact of changes to policy settings and service delivery and provide a concrete way to measure the effect of the Council's commitment to reconciliation through a jointly agreed set of indicators.

Land Rights and Native Title

96. Successive Australian Governments have implemented a range of initiatives in support or recognition of Aboriginal and Torres Strait Islander land rights. Consequently, well over 15 per cent of the Australian continent is now owned or controlled by Aboriginal and Torres Strait Islander people. The various measures implemented include land rights legislation, legislation to recognise and protect native title, and purchases of land on behalf of Indigenous Australians.

97. Land rights legislation seeks to recognise and provide for Indigenous people's rights and needs in relation to land, primarily by grants of freehold title to Aboriginal Land Trusts and Corporations. Native title legislation recognises and protects pre-existing Indigenous rights and interests in land, based on continuity of connection with the land in accordance with traditional laws and customs, and where recognition would be compatible with the common law of Australia.

Indigenous Land Fund

98. The Aboriginal and Torres Strait Islander Land Fund (Indigenous Land Fund) was created in 1995 to purchase land for Indigenous Australians unable to benefit from recognition of native title. The Indigenous Land Corporation (ILC) receives an annual allocation of over \$50 million each year from the Indigenous Land Fund to acquire and manage land on behalf of Indigenous Australians and to provide economic, environmental, social and cultural benefits. In 2001-02, total Australian Government expenditure on the ILC for land acquisition and management was \$65.4 million.

99. As at 30 June 2002, the ILC had purchased 151 properties, at a cost of \$135.4 million, covering a land area of 5,167,884 hectares across Australia. Notable purchases include the 26,749 hectare station of Compton Downs (in New South Wales, 2000), Mouth House at the mouth of the Murray River (in South Australia, 2001), and Murrayfield Farm on Bruny Island (in Tasmania, 2001).

100. The ILC's main strategy in land acquisition is to achieve a representative land base across all clan or language groups in both regional and urban areas. By 2004, the Indigenous Land Fund will have a \$1.3 billion capital base providing a revenue stream to enable land purchases for the benefit of Indigenous people indefinitely.

101. Australian Government funding for land rights and native title for Indigenous people in 2002-03 is \$224 million, including \$67 million per annum for land purchase and land management. In addition, the eight State and Territory Governments provide funding for these activities. For example NSW established a fund of \$492 million to be used by Land Councils for land purchase and management.

Land Rights

102. All Australian States and Territories (except for Western Australia, which has a land reserve scheme) have implemented land rights legislation that generally grants inalienable title to land to Indigenous people.

103. For example, since the commencement of the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth), almost half of the Northern Territory has been granted to Aboriginal traditional owners in the form of inalienable freehold title. As well, a significant portion of South Australia has been granted to Aboriginal traditional owners under the *Pitjantjatjara Land Rights Act 1981* (SA) and the *Maralinga Tjarutja Land Rights Act 1984* (SA). Development of these lands, including for mineral exploration, requires the consent of the Aboriginal traditional owners. With input from the NT Government, Aboriginal Land Councils, and other stakeholders, the Australian Government is currently reviewing the *Aboriginal Land Rights (Northern Territory) Act 1976* (Cth) to examine ways to maximise the economic opportunities for Aboriginal landowners in the Northern Territory.

104. Similarly in NSW, since the commencement of the *Aboriginal Land Rights Act 1983* (NSW), under which land can be granted to Aboriginal Land Councils without evidence of traditional connection, 65,823 hectares in NSW have been granted to the Land Councils as at 30 June 2002.

Native Title

105. Native title was first recognised in Australia by the High Court of Australia in the decision of *Mabo v Queensland (No 2)*². The *Native Title Act 1993* (Cth) (NTA) subsequently established a framework for recognising and protecting native title. The *Native Title Amendment Act 1998* (Cth) was the legislative response to a range of judicial decisions following *Mabo*, including the *Wik* decision (see Australia's CERD Report 11 and 12], and established a framework for consensual and binding agreements about future activity (Indigenous Land Use Agreements or ILUAs).

The ILUA Provisions

106. The ILUA provisions allow parties to register agreements in relation to activities by governments which may 'affect' native title, such as permits for mining or other development on land where native title exists. ILUAs must satisfy certain criteria (including in relation to consultation and authority) and, once registered, bind all native title holders in the relevant area, even if they were not parties to the agreement. However, before an agreement can be registered, public notification must be given and native title holders who are not parties have an opportunity to take action either to become a party or to object to the registration³.

107. The ILUA provisions are substantially based on the model developed and proposed under the auspices of the Council for Aboriginal Reconciliation and the National Indigenous Working Group on Native Title in the context of the 1998 amendments to the NTA⁴. The report of the Federal Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund (PJC) on ILUAs, released in September 2001, gave unanimous endorsement to ILUAs, stating that ‘three years of experience have demonstrated that ILUAs have the capacity to live up to their promise’.⁵

108. An example of an ILUA is one between the NSW Government and the Arakwal People of Byron Bay, which offers the Arakwal people jobs, training and a role in advising the Minister on the running of the National Park created under the ILUA.

Developments since amendment of the NTA

109. 3 June 2002 marked the tenth anniversary of the High Court of Australia’s *Mabo* decision. The decade since the *Mabo* decision has seen a paradigm shift in the Australian community’s attitudes to native title. This profound change to Australian law has been recognised and protected under the NTA.

110. It was a fundamental assumption underlying the NTA that the common law would develop over time with further consideration by the courts of the native title principles enunciated in *Mabo*. For instance, it was only in October 2001 in the *Croker* decision that the High Court found that native title could exist offshore⁶. As at 30 June 2002, there were a number of important principles of native title that were still to be determined. The High Court has reserved judgement in cases concerning the nature of native title rights and of extinguishment and the meaning of the expression ‘native title rights and interests’ (the *Miriuwung Gajerrong* case) and the nature of the connection required to be demonstrated to warrant recognition for native title rights and interests under the NTA (the *Yorta Yorta* case).

111. Notwithstanding the still evolving state of the law of native title, the NTA is delivering real outcomes to Indigenous communities. As at 30 June 2002, 43 determinations of native title had been made, 30 of them being determinations that native title exists, and 25 of them were made with agreement of the parties (consent determinations). Before the 1998 amendments to the NTA came into effect, only five determinations were made (including the original *Mabo* decision). Recent significant determinations include those recognising the native title of the Karajarri people and the Kiwirrkurra people of Western Australia. The Karajarri determination is the first consent determination to which the Australian Government is a party.

112. Increasingly, the Australian and the State and Territory Governments are recognising the benefits of addressing native title issues on a consensual basis. The Australian Government’s policy is to promote the resolution of native title issues by agreement wherever possible, as opposed to costly and time-consuming litigation. Native title agreements, whether about the recognition process or future development, can assist in developing better relationships between the parties to the agreement ‘on the ground’.

113. Through the ILUA provisions, the amended NTA ensures that Indigenous Australians have a 'seat at the table' in relation to future developments to negotiate benefits for their communities, including employment opportunities and heritage protection. As at 30 June 2002, 49 ILUAs delivering benefits to Indigenous communities across Australia had been registered under the NTA, with a further 24 in the registration process. An example of an ILUA in operation is the Blackwater Agreements made between the Kangoulu People, the Ghungalu people and BHP Billiton Mitsubishi Alliance in relation to mining in central Queensland. These agreements provide practical benefits for the Indigenous groups involved and ensure their cultural rights are respected whilst allowing the development of the Blackwater mine.

114. In addition, some 2,700 other agreements (which are not ILUAs) have been made between native title holders and other parties. A recent significant example was the Cooper Basin agreements (South Australia, 2001; known as CO98) between three Indigenous groups, seven petroleum explorers and the South Australian Government. The agreements provided for mining exploration and production, protection of Indigenous heritage, and compensation for an area of approximately 36 000 square kilometres.

115. The Australian Government continues to play a significant role in the resolution of native title across Australia. The Government funds the two key agencies for negotiating and determining native title, the National Native Title Tribunal and the Federal Court of Australia. The Government also funds Indigenous bodies (through ATSIC) to represent the interests of Indigenous people in the native title process and also funds third parties and its own involvement in negotiations and determinations. In the 2001-02 Federal Budget, the Australian Government injected an additional \$86 million over four years into the native title system, to enhance its efficient operation. The Government keeps funding levels in the native title system under regular review and takes a flexible approach to funding arrangements for the system.

116. Resolution of native title issues is gathering momentum as the fundamental principles of native title become clearer. In particular, as a result of the ILUA provisions in the amended NTA, a significant advance in agreement-making between native title holders, governments and other parties, has been achieved. As well as acknowledgment of traditional rights, ILUAs and other agreements can provide employment and training opportunities, cultural awareness education, and co-management arrangements, for example in relation to national parks. Resolution of native title, by determination and agreement-making, will accelerate as the common law and a culture of reaching negotiated outcomes develops, and the native title system matures.

CERD Committee criticisms of amended *Native Title Act 1993* (Cth)

117. On 11 August 1998 in Decision 1(53), the CERD Committee requested that Australia provide information on the amended NTA (ie the NTA as amended by the 1998 Act) and noted that it wished to examine the compatibility of the amended NTA with Australia's obligations under CERD. Australia argued that the amendments to the NTA were based on legitimate objectives that gave recognition and protection to native title in a manner superior to the common law.

118. On 18 March 1999 in Decision 2(54), the CERD Committee expressed concern about what it described as the lack of effective participation by Indigenous communities in the formulation of the amendments. The CERD Committee referred both to Article 5(c) of CERD and to the CERD Committee general recommendation XXIII, which stresses not taking decisions without the ‘informed consent’ of Indigenous people. As well, the CERD Committee expressed concern about the way in which the new validation, confirmation of extinguishment, primary production and right to negotiate provisions included in the 1998 Act extinguished or impaired Indigenous title. Accordingly, the CERD Committee considered that the amended NTA could not be considered a ‘special measure’ under CERD and called on Australia to suspend implementation of the 1998 amendments. Australia contended and remains of the view that the amended NTA maintains an appropriate balance between the rights of native title holders and the rights of others.

119. On 16 August 1999 in Decision 2(55), the CERD Committee reaffirmed its earlier decision, and in concluding observations on 24 March 2000 reaffirmed its decisions and reiterated its recommendation for Australia to ensure ‘effective participation by Indigenous communities in decisions affecting their land rights’.

CERD views: referral to Parliamentary Joint Committee

120. On 9 December 1999, the Australian Senate referred the views of the CERD Committee on the compatibility of the amended NTA with Australia’s obligations under CERD to the Parliamentary Joint Committee (PJC) for inquiry and report. The PJC consulted with a wide range of people, including Indigenous groups and experts, and published its report on the views of the CERD Committee in June 2000.⁷

121. The majority of the PJC concluded that:

... the amended Native Title Act is consistent with Australia’s obligations under the *International Convention on the Elimination of All Forms of Racial Discrimination* and that therefore no further amendments are necessary in order to ensure that Australia’s international obligations are complied with.⁸

122. The PJC report considered all of the concerns expressed in the CERD Committee decisions, particularly ‘effective participation’ by Indigenous people in the process of formulating the 1998 amendments to the NTA and the changes to the NTA relating to the four sets of contentious provisions (validation, confirmation, primary production and the right to negotiate).

123. In relation to the CERD Committee’s comments about effective participation, the PJC noted that the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a party, includes a political right for every citizen to take part in the conduct of public affairs.⁹ Further, Article 5(c) of CERD elaborates on the ICCPR by obliging State parties to provide a guarantee of equality before the law in the enjoyment of rights including political rights. However, the UN Human Rights Committee (UNHRC) has accepted that political rights in international instruments do not give rise to a right to participate in the political process in a specific fashion, and groups cannot require governments to undertake a particular form of consultation in relation to legislation.¹⁰

124. Accordingly, the PJC found, in view of the UNHRC's interpretation of 'effective participation' in public affairs, that Article 5(c) of CERD does not oblige Australia to obtain the 'informed consent' of particular groups to the exercise of legislative power.¹¹ To the extent that Article 5(c) does require 'effective participation' in public affairs, the PJC found that Indigenous Australians did participate in the extensive public consultation and lengthy parliamentary process, and had a significant input into the final form of the amended NTA.¹²

125. In relation to the CERD Committee's comments about 'reductions in rights' under the amended NTA, the PJC found that the substance of the changes in relation to the validation, primary production upgrade and the right to negotiate provisions was a response to the uncertainty caused by the *Wik* decision. The original NTA had been drafted on the assumption that native title could not exist over leasehold land, including pastoral land. The *Wik* decision meant that native title could co-exist with other interests and changes to the NTA were necessary to clarify the operation of this inter-relationship. The changes in relation to confirmation provisions were considered necessary to provide certainty about when native title could continue to exist and when it had been extinguished.

126. The PJC found that international law allows for a 'margin of appreciation' in the implementation of international obligations because 'national institutions are best placed to assess the need for substantive equality measures and to find a balance between a range of competing interests'.¹³

127. In summarising its views about the four sets of provisions, the PJC concluded that:

The amended Native Title Act strikes a balance between native title interests and other interests. It provides protection to native title that is at least the equivalent of the protection provided to comparable non-Indigenous interests, and provides significant benefits to native title holders which non-Indigenous title holders do not enjoy.

In relation to the four contentious sets of provisions, the Government acted to balance competing interests and to provide certainty. The amendments do not breach the Government's obligations for a range of reasons, including the fact that they are within the Government's margin of appreciation, that there is little or no impact on native title and that there are countervailing beneficial measures for any effect these provisions have on native title, including compensation.¹⁴

128. The Government's response to the PJC report was tabled in the Federal Parliament on 5 October 2001. The Government welcomed and endorsed the PJC's report.

129. As requested by the CERD Committee, a copy of the PJC report is attached to this report.¹⁵

Alternative Future Act Regimes

130. In concluding observations dated 24 March 2000, the CERD Committee also expressed concerns that the enactment of alternative 'future act' regimes by States and Territories had reduced the protection of the rights of native title applicants under the

NTA. The CERD Committee further noted that the Federal Senate had rejected one such regime, and recommended that close scrutiny continue to be given to any future alternative regime to ensure that the rights of Indigenous people would not be reduced further.

131. The NTA, since 1993, has facilitated the States and Territories enacting their own legislation in relation to the doing of future acts. This enables the States and Territories to enact laws tailored to complement local legislation on future acts, for example, mining laws. However, it is only where the Federal Minister is satisfied that the criteria set out in the NTA are met that a determination may be made allowing the alternative regime to operate instead of the Federal Act.

132. All determinations of alternative regimes are subject to scrutiny by both Houses of the Federal Parliament. Either House is able to disallow the determination for any reason (including reasons unrelated to the compliance of the regime with the criteria set out in the NTA). Decisions by the Federal Minister to make a determination in relation to an alternative regime are also subject to review by the Courts under the *Judiciary Act 1903* (Cth).

133. As at 30 June 2002, the Federal Minister had made 24 determinations of alternative regimes in relation to 5 separate jurisdictions. Of those 24 determinations, 10 were disallowed by the Federal Senate. As at 30 June 2002, of the 14 determinations which were not disallowed in the Parliamentary scrutiny process, four had been found to be invalid by the Federal Court, although this decision was under appeal. As a result, 10 alternative regimes were operating at that time (some since 1995). The most recent of these are the determinations made in relation to Queensland in 2000.

Indigenous Criminal Justice

Diversory and Preventative Programs

134. The Australian Government is exploring innovative ‘diversion’ strategies as part of its \$21 million initiative, the “National Crime Prevention” program (NCP), as well as encouraging information-sharing between jurisdictions on effective initiatives.

135. Under the NCP, the Australian Government funds a number of initiatives aimed at addressing issues affecting Indigenous people. For example, Indigenous family violence, Indigenous mentoring programs and diversion programs are current priority areas under the NCP.

136. Other initiatives include national research studies, pilot projects (including projects in the areas of capacity building), and early intervention. For example, in Derby, Western Australia, a pilot project to prevent domestic violence which targets young people is being trialed. The project is based on the recommendations contained in a 1999 NCP Report - *Working with Adolescents to Prevent Domestic Violence- Indigenous Rural Model*. In September 2001 the South Australian Attorney-General signed a Framework for action on Indigenous Family Violence, through a Ministerial Forum for Prevention of Domestic Violence, that is being implemented through local community development processes.

137. Under the NCP, the Australian Government is also funding a National Review and Forum on Juvenile Diversion. The project will:

- . provide a national profile of approaches to diverting juveniles from the criminal justice system;
- . identify different models and good practice; and
- . facilitate the promotion of information on good practice.

138. The Government is also funding, in cooperation with ATSIC, the development of a national profile of Indigenous Night Patrols. Early indications are that night patrols play an important role in reducing crime in Indigenous communities. The project will identify models of best practice and will provide a valuable resource for community-based Indigenous organisations.

139. Other Australian Government initiatives that are designed to address Indigenous justice issues include the “Stronger Families and Communities” and “Partnership Against Domestic Violence” strategies. Projects supported under these strategies help to reduce violence and build the capacity of families and communities.

140. The Australian Government is strongly committed to working with the States and Territories to prevent juveniles from entering the criminal justice system. This is demonstrated by the Agreement between the Government and the Northern Territory, which came into effect on 1 September 2000.

141. Under the Agreement, the Australian Government will provide \$20 million over four years for a juvenile pre-court diversion scheme and will jointly fund an Aboriginal Interpreter Service. The aim of the Juvenile Pre-Court Diversion Scheme is to divert juveniles away from the formal justice system and the Courts. The Scheme provides that the Courts will only be used where offences committed are of a more serious nature or other diversion options have been tried and failed. There is a strong focus on diverting Indigenous juveniles to culturally appropriate diversion programs developed and delivered by local Indigenous community organisations. A total of 3496 apprehension cases were dealt with in the first 29 months; of these, 63% were offered diversion. The Aboriginal Interpreter Service has registered some 245 interpreters covering 104 languages. A formal evaluation of the scheme and of the Aboriginal Interpreter Service will commence later in 2003.

142. The Australian Government jointly funds with the South Australian Government a mentoring program for Aboriginal youth in Adelaide, Panyappi. The South Australian Government runs similar programs in Port Augusta (Port Augusta Youth Strategy) and Ceduna (Bush Breakaway).

143. South Australia (SA) has examined its juvenile justice legislation with a view to improving Aboriginal access to diversionary options including family conferencing. SA is developing an Aboriginal Youth Court in Port Augusta, based on a model that draws on the framework and experience of the Aboriginal Court in the adult system.

144. In 2001, SA commenced the Aboriginal Justice Initiative, which has developed a Justice Portfolio Reconciliation Statement, established the Aboriginal Justice Consultative Committee and developed its vision for Aboriginal Justice and the Aboriginal Justice Strategic Framework. Extensive community negotiations took place in 2002 and the Aboriginal Justice Strategic Direction is expected to be completed in June 2003.

145. In addition, the SA Department of Justice is working to improve access to bail, explore sentencing options for Aboriginal people, to improve access to front end home detention and expand Aboriginal Courts. The SA Police Force has developed alternative strategies such as Diversion of Street Offences and the Police Drug Diversion Program.

146. In 2002, NSW established a number of Aboriginal Community Justice Groups, to deal with justice-related problems at the community level. This also aims to provide alternate community-controlled means of dealing with offenders and supporting victims.

147. In June 2002, the NSW Aboriginal Justice Advisory Council signed the NSW Aboriginal Justice Agreement in partnership with the NSW Attorney-General, giving formal recognition to their commitment to reducing the involvement of Aboriginal people in the criminal justice system.

148. In 2001, NSW implemented a circle-sentencing pilot at Nowra Local Court which aims to provide more appropriate sentencing options for Aboriginal offenders and establish a sentencing format which allows for Aboriginal community involvement and control. Circle-sentencing involves taking the sentencing court to a community setting where community members and the Magistrate sit in a circle to discuss the offence and the offender. Circle-sentencing involves victims of offences as well as offenders' families and other respected community people. Offenders can apply to the court to have their matter dealt with by circle-sentencing after pleading guilty or being found guilty by the Court.

Aboriginal Justice Strategies

149. Following the Communiqué produced at the Ministerial Summit on Indigenous Deaths in Custody in 1997 (see paragraph 83 of Australia's previous report), most State and Territory governments have agreed to develop, in consultation with Indigenous organisations, justice strategies to reduce the incarceration rates for Indigenous Australians.

150. For example, parties to the Queensland Aboriginal and Torres Strait Islander Justice Agreement have made a commitment to reduce the incarceration rate of Indigenous people in Queensland by 50 per cent by the year 2011. The Queensland Government has enacted legislation (the *Police Powers and Responsibilities Act 2000* (Qld)) regarding the questioning of Indigenous people suspected of having committed an indictable offence. All suspected persons in Queensland have the right to have a friend, relative or lawyer present during questioning. However, when dealing with an Indigenous person, police have the additional responsibility of notifying a legal aid organisation if the Indigenous person has not already done so. Questioning must be

suspended until a support person has been afforded an opportunity to speak privately with the Indigenous person, and the support person may be present during any subsequent questioning.

151. In June 2002, the NSW Aboriginal Justice Advisory Council signed the NSW Aboriginal Justice Agreement in partnership with the NSW Attorney-General. This Agreement gives formal recognition to their commitment to reducing the overrepresentation of Indigenous people in the criminal justice system. Western Australia and Victoria also have justice strategies in place.

152. These strategies build upon other initiatives such as greater cooperation and liaison between police and Aboriginal people, improved custodial safety, and more culturally aware practices by police and courts.

153. The over-representation of Indigenous people in the criminal justice system reflects a history of socio-economic disadvantage. Australian governments have put in place a range of Indigenous-specific programs designed to address this disadvantage in areas such as health, education, housing and employment, as outlined elsewhere in this report. This is in addition to general programs and services, such as unemployment assistance, which are available to all Australians. (See also section on “Addressing Indigenous Disadvantage”, paragraphs 79–81)

Mandatory Sentencing

154. The Australian Government recognises that the States and Territories have a difficult job in dealing with the impact of crime and the problem of repeat offenders and that in some circumstances they may consider it appropriate to introduce mandatory detention laws for some offences. The Australian Government believes that the States and Territories are best placed to address the problems associated with repeat offending and detention through their own legislatures and court systems.

155. The issue of mandatory sentencing has been the subject of two Federal Senate inquiries. The most recent inquiry by the Senate Legal and Constitutional References Committee into the Human Rights (Mandatory Sentencing for Property Offences) Bill 2000 (Cth) was tabled in the Federal Parliament on 12 March 2002. A majority of the Committee recommended against passage of the federal legislation which, if enacted, would have overridden the so-called mandatory sentencing provisions of the *Criminal Code* (WA). They were also of the view that mandatory sentencing was an issue best addressed by the Western Australian Parliament.

156. Provision for the mandatory detention of repeat offenders who have previously been convicted on at least two occasions of home burglary in Western Australia came into effect on 14 December 1997. The practice in relation to juvenile offenders, however, is that the courts have a choice between imprisonment or detention on the one hand, and a supervisory order of some kind on the other. The Australian Government considers the provision for mandatory sentencing in the *Criminal Code* (WA) to be a sentencing issue rather than a racial issue, as the law applies to all people in Western Australia without discrimination on the basis of race.

157. A report on a review of the *Criminal Code* (WA) was tabled in the Western Australian Parliament on 15 November 2001.

158. The review concluded that the provision for mandatory sentencing in the *Criminal Code* (WA) has had little effect on the criminal justice system. It found that courts generally sentence adult offenders with the required offence history to periods of imprisonment greater than the minimum 12 months mandated by the legislation.

159. The review did not recommend any changes to those provisions. It confirmed the existence of a judicial discretion to impose non-custodial sentences instead of detention. It also showed that only a small number of juvenile offenders (143) have been convicted under the mandatory sentencing laws in the four years since they were introduced in 1996, of which 17 per cent were not sentenced to detention.

160. Provision for the mandatory detention of both adults and juveniles in relation to a range of property offences operated in the Northern Territory from 8 March 1997 to 21 October 2001. The *Juvenile Justice Amendment Act (No.2) 2001* (NT) repealed mandatory sentencing for juvenile offenders and the *Sentencing Amendment Act (No. 3) 2001* (NT) repealed mandatory sentencing for adults.

Non-discriminatory Law Enforcement

161. In addition to anti-discrimination laws at the national, State and Territory levels, police standing orders or regulations in each jurisdiction have made it clear that racially discriminatory conduct by police personnel is unacceptable. For example, the Australian Federal Police (AFP) has in place policies and mechanisms to identify and deal with ethnic intolerance and any other type of inappropriate behaviour. Repercussions include disciplinary measures, demotion and criminal charges.

162. The police in each jurisdiction have agreed that they need to take particular care in ensuring that racial stereotypes are not perpetuated when dealing with crimes within an ethnic community or the community at large. For example, the AFP does not use racial profiling, but instead profiles investigations according to a range of indices, such as current criminal trends and financial activities of the individual.

163. Police in each jurisdiction have also demonstrated their commitment to a multicultural police force by adopting the National Statement of Principles, which provides a framework for the recruitment of individuals from ethnic communities. Strategies to ensure a multicultural police force include:

- . culturally neutral police entry processes to avoid cultural bias;
- . removing inappropriate criteria for recruitment (eg height requirements); and
- . ensuring that selection interviewing panels have knowledge of, and sensitivity to, cross-cultural issues.

164. For example, the AFP has a “Work Life Diversity” program to foster a harmonious working environment by educating AFP members to value cultural and individual differences and to treat each other with respect. It also has a range of training programs including:

- . a basic “Cultural Diversity and Indigenous Culture” course (at recruitment level);
- . a “Dealing with Racist Violence” program; and
- . management seminars to encourage managers and employees to promote positive workplace behaviour.

MULTICULTURAL ISSUES

Citizenship

Australian Citizenship Program

165. The *Australian Citizenship Act 1948* (Cth) provides the legislative basis for the acquisition and loss of Australian citizenship. Australian citizenship may be acquired by birth, grant, descent, adoption and resumption. It may be lost by renunciation or, in very limited circumstances, by deprivation.

166. Citizenship legislation and policy is inclusive and non-discriminatory, including on the grounds of sex, religion, race, colour, national or ethnic origin. Acquisition of Australian citizenship is on the basis of set criteria which all applicants must meet.

Legislative Amendments

167. Significant amendments to citizenship legislation were enacted in 2002. These include repeal of s17 of the *Australian Citizenship Act 1948* (Cth) with effect from 4 April 2002, so that Australian citizens who acquire another citizenship from 4 April 2002 will no longer lose their Australian citizenship.

168. Other amendments included initiatives to benefit children and young adults (for example providing individual Certificates of Australian Citizenship to children who acquire Australian citizenship) and measures to enhance the integrity of the citizenship acquisition process. These amendments came into effect on 1 July 2002.

Citizenship Promotion

169. The Government views Australian citizenship as a cornerstone of Australia's inclusive and culturally diverse society, and a unifying focal point that all Australians share. Acquisition of Australian citizenship benefits both individual Australians and the community as a whole. For this reason, the Government is promoting Australian citizenship very widely in the community.

170. The promotion campaign, which commenced in 2001, is designed to encourage those eligible to apply for Australian citizenship to do so, and to promote the value and significance of Australian citizenship with the community. The campaign continued in 2002.

171. A focal point of the campaign is Australian Citizenship Day, celebrated on 17 September. Australian Citizenship Day is an opportunity for all Australians to reflect on and celebrate the values which underpin Australian citizenship. The first Australian Citizenship Day was celebrated in 2001 with a program of activities held around the country, including affirmation ceremonies which give all Australians, those born in Australia and those born overseas, an opportunity to affirm their loyalty and commitment to Australia and its people. On Australian Citizenship Day, citizenship and affirmation ceremonies are held across Australia by local government councils and community groups.

172. *Citizenship 2030*, an education and promotional program aimed at discussing Australian citizenship and cultural diversity in rural areas with school children and community groups, is another citizenship program.

173. A multimedia program, *Let's Participate: A course in Australian Citizenship*, was introduced in July 2001 to help migrants learn more about Australia's society and institutions and assist their settlement.

Australian Multiculturalism

Public Service Programs

174. The *Public Service Act 1999* (Cth) came into operation on 5 December 1999. Among other things, the Act sets out a framework of values under which the Australian Public Service (APS) is to operate. The APS Values include:

- . the APS is a public service in which employment decisions are based on merit;
- . the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
- . the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- . the APS promotes equity in employment; and
- . the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment.

175. The Charter of Public Service in a Culturally Diverse Society (the Charter) represents a nationally consistent approach to ensuring that government services are delivered in a way that is sensitive to the language and cultural needs of all Australians. It draws its rationale from Australia's multicultural policy, which was updated in 1999 as the Australian Government's *New Agenda for Multicultural Australia*. Under the Charter, the Government has established 7 core principles to integrate the management of cultural diversity into the strategic planning, policy development, budget and reporting processes of government services. These principles are access, equity, communication, responsiveness, effectiveness, efficiency and accountability. Australian Government portfolio agencies report annually on their implementation of the Charter.

176. The Government has also developed a Charter performance measurement framework as a practical tool with which agencies can assess their performance in implementing the principles of the Charter. It assesses performance in meeting Charter-related responsibilities against the 5 core roles that agencies perform - policy adviser, regulator, purchaser, provider, and employer. Performance indicators are used to assist analysis. The SA and NSW Governments have similar initiatives.

177. The South Australian Government has also directed all its agencies to use ethno-specific media to promulgate information about their services, to ensure that

people of all language backgrounds have access to information about Government services and programs.

178. Other State and Territory initiatives include the NT Police Ethnic Advisory and Police Ethnic Youth Advisory Groups, that form close cooperative links between the NT Police and the ethnic community and stimulate recruitment to the NT Police from ethnic communities.

New Agenda for a Multicultural Australia

179. Australia's multicultural policy is articulated in the 1999 *New Agenda for Multicultural Australia*, which has a strong focus on harmony, inclusiveness and the benefits of diversity. The Council for Multicultural Australia has been established to assist the Government to implement the agenda.

180. The Australian Government is fully committed to Australian multiculturalism, a policy which recognises, celebrates and responds to Australia's cultural and linguistic diversity.

181. A further example of the Government's commitment is the identification of issues and concerns affecting community relations in Australia and the development of appropriate strategies to address these issues. Regular reports are produced and strategy papers on fostering inter-group harmony are prepared, for example, in response to the local effects of the 11 September terrorist attacks in the USA and the escalation of the Israeli-Palestinian conflict. Overseas issues with the potential to impact on Australia are monitored, such as voting rights in the former homeland for some overseas-born Australian residents.

182. A considerable volume of material to raise awareness about racism, discrimination and related intolerance can be found on-line at www.immi.gov.au. This website also contains tools and case studies which promote good diversity management practices in Australian workplaces.

Grants Programs

183. The Australian Government's *Living in Harmony* initiative, which began in 1998, is primarily a community-based education program, which provides funding for projects that promote community harmony and reduce racism and bigotry. The initiative is implemented through three linked elements: a community grants program, a partnership program, and a public information strategy to promote and explain the overall concept. From the 2002-03 financial year, the Government recommitted \$3.5 million per year for the next four years to the initiative to build upon the success of the initiative to date.

- Community grants are available for locally-based projects undertaken by not-for-profit community organisations, including Indigenous groups and ethnic communities. 137 grants have been funded under the initiative, with an annual grants round continuing until 2005.
- Through the partnerships program, the Australian Government works with a small number of organisations to develop demonstration projects that explore

different ways of improving social cohesion, tackling racism or generating better understanding, respect and cooperation among people of different backgrounds.

- . The public information strategy, led by Harmony Day on 21 March each year, is designed to promote and reinforce the concepts and practice of acceptance and fairness in the community. It builds upon the message that Australians generally live in harmony with one another, that Australians should celebrate their achievements in creating a harmonious society, and that people should actively work together to say 'no' to racism. In 2002 Australia celebrated its fourth Harmony Day, with increasing levels of participation and commitment by community groups, businesses, schools and individuals each year.

184. The NSW Community Relations Commission administers a Community Development Grants Program that offers financial assistance to community-based organisations that undertake projects for the benefit of the multicultural community, including the promotion of social justice for ethnic communities in NSW.

185. The NT Government established an ethnic affairs grants program in 1994 and since 1998 more than \$2.4 million has been provided to ethnic community organisations to undertake projects that promote and maintain the cultural and linguistic diversity of the Northern Territory. Operational funding is also provided to umbrella organisations such as the Multicultural Council of the NT and the Multicultural Broadcasting Council of the NT.

Productive Diversity

186. Among other priorities the *New Agenda for Multicultural Australia* commits the Australian Government to seek opportunities for working with the private sector to maximise the economic and social benefits of Australia's diversity.

187. The main emphasis of the Australian Government's *Productive Diversity* program over recent years has been to articulate a sound business case for supporting the application of diversity-management within the Australian business community. To this end, partnerships have been formed with a number of Australia's leading companies to identify different ways business can improve its performance by making greater use of Australia's cultural and linguistic diversity.

188. Many Australian corporations have worked closely with the Government to develop tools, case studies and training materials that will assist business to be more successful in managing the benefits of diversity, both in the workforce and marketplace.

Migrant and Refugee Settlement

189. The Federal Integrated Humanitarian Settlement Strategy (IHSS) exists to ensure refugees and other humanitarian entrants receive appropriate and culturally sensitive initial assistance. This assistance is provided through contracted services in every State and Territory for an average of six months. Refugees are eligible for all IHSS services as well as paid travel to Australia and free medicals prior to entry. In

addition, those accepted under the Special Humanitarian Program qualify for some services, determined on a case by case basis.

190. The National Integrated Settlement Strategy is a planning framework which aims to link and improve the services available to migrants and refugees in Australia at local, regional, State/Territory and national levels.

191. In addition some State and Territory governments provide services to assist in the settlement of refugees and migrants. For example, the Northern Territory Government provides funding for services that assist migrants and refugees settling in the NT, published a handbook for migrants looking for work to assist in them accessing the workforce, conducts cross-cultural awareness workshops to assist government and non-government sectors in dealing with and providing services to migrants, and provides advisory services and support to assist overseas-trained people to obtain recognition of their qualifications and skills.

Newly Arrived Migrants – Access to English Language Programs

192. Australia has a long history of providing quality services to newly arrived migrants to ensure their effective settlement into Australian society. The Australian Government, under the *Immigration (Education) Act 1971* (Cth), funds and manages an adult migrant English-language teaching program, the Adult Migrant Education Program, to assist recently arrived migrants without a functional level of English to acquire the language skills they need to settle effectively in Australia. In 2001-02 there were 34,000 clients enrolled with the program. Program expenditure was \$96.5 million, with a further \$6.3 million raised from user charges. Charging relates to skilled visa applicants. The program is free to the majority of clients.

193. The Australian Government provides a special bridging English-language program for humanitarian entrants to help them to overcome barriers to learning arising from their pre-migration experiences before joining mainstream English classes.

Translating and Interpreting Services

194. The Australian Government's Translating and Interpreting Service (TIS) continues to provide a national 24 hour a day, seven days a week telephone interpreting service, on a national telephone number which is accessible by people in rural areas as well as those in cities and towns.

195. TIS provides interpreting on a fee-for-service basis to individuals, government agencies, community organisations, and private sector businesses and organisations. Other services include fee-free on-site interpreting, telephone interpreting and extract translations of personal documents to eligible individuals and community organisations providing settlement services to non-English-speaking migrants and refugees. Doctors in private practice can call a Doctors Priority Line which provides a free telephone interpreting service.

196. Major administrative reforms have been introduced in recent years to ensure TIS provides an efficient and cost-effective service to Australian residents.

197. State and Territory Governments also provide interpreting and translation services. For example, the NT Government has provided a free interpreter and translator service to government agencies and community groups since 1994, and the NSW Community Relations Commission provides an interpreting and translation service that can be used by all members and groups in the community.

Educational Materials Promoting Multiculturalism

198. Australia played a major role prior to, and during, the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) held in Durban, South Africa in 2001. The *We Are Australian* exhibition, originally funded through the Australian Government's *Living in Harmony* initiative, was exhibited at WCAR, where it was extremely well-received. It showcased Australian artists' work and celebrated Australia's cultural diversity. The Government welcomed a number of positive outcomes from the Conference, including language on Indigenous issues and on the benefits of cultural diversity, national human rights institutions and human rights education as key elements in the global fight against racism.

199. *Australia 2030* is a multimedia educational resource kit produced by the Department of Immigration and Multicultural and Indigenous Affairs to promote informed discussion of Australian immigration and population issues among secondary students. It contains information on the benefits of multiculturalism and productive diversity.

200. *Racism No Way* is an initiative of the Conference of Education Systems Chief Executive Officers, supported by the Australian Government's *Living in Harmony* initiative. The initiative is a leading example of a resource tool designed to assist both the upper primary and high school communities to develop an understanding of the nature of racism, and to address racism in the learning environment.

201. The Federal Minister for Citizenship and Multicultural Affairs launched the Harmony Day Education Kit as a resource for teachers of primary school-aged children in February 2002. The kit includes background information on Australian multiculturalism, activities and ideas to involve children in understanding and promoting harmony.¹⁶

¹ (1995) 183 CLR 245.

² (1992) 175 CLR 1.

³ One type of ILUA, known as a 'body corporate' ILUA, has slightly different requirements because these ILUAs are used after a determination of native title has been made, therefore the native title holders will already have been identified.

⁴ Nineteenth Report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Second Interim Report for the s206(d) Inquiry on Indigenous Land Use Agreements, September 2001, p10.

⁵ Nineteenth Report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, Second Interim Report for the s206(d) Inquiry on Indigenous Land Use Agreements, September 2001, p141.

⁶ (2001) 208 CLR 1

⁵ Sixteenth Report of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund, CERD and the *Native Title Amendment Act 1998*, June 2000 (PJC report).

⁸ PJC report xviii.

⁹ ICCPR Article 25.

¹⁰ CCPR General Comment 25, 12/07/96; Marshall v Canada, Communication No. 205/1986, UN Doc. CCPR/C/43/D/205/1986, para 5.5.

¹¹ PJC report p54.

¹² PJC report pp58-60.

¹³ PJC report p9 and pp37-54.

¹⁴ PJC report p54.

¹⁵ The report is available at: http://www.aph.gov.au/senate/committee/ntlf_ctte/report_16/contents.htm.

¹⁶ Australia's Thirteenth and Fourteenth CERD Report is available at www.dfat.gov.au/reports/cerd