AUSTRALIA

CERD A/32/18 (1977)

161. The initial report of Australia and additional documents supplied by that Government were considered by the Committee together with the introductory statement made by the representative of Australia before the Committee.

162. Members of the Committee expressed their satisfaction with the comprehensiveness of the report and documents before them, with the candour with which conditions in the reporting State were described and discussed, and with the fact that the information was organized on the basis of the guidelines laid down by the Committee. It was observed that the extensive material supplied by the Government of Australia in connection with its initial report would form a useful background for consideration of future reports from that Government.

163. The multifaceted approach of the Government of Australia to the problems of racial discrimination was noted with satisfaction. The Committee took note of the four principles underlying the policy of the Australian Government: that racial discrimination should be prescribed by appropriate legislation; that clear legal remedies should be provided; that formal administrative machinery should be established to supplement the legal and judicial measures by mediation and conciliation; and that steps should be taken - in such fields as research, education and public information - to combat racial prejudice and promote tolerance and understanding. Several members of the Committee commented on the special emphasis placed by the Australian Government on methods of mediation and conciliation and expressed an interest in receiving information in the future on the effectiveness of those methods; they pointed out, however, that procedures of conciliation could not be an adequate substitute for the prohibition and punishment of those acts to which mandatory articles of the Convention, such as Article 4, refer.

164. It was noted that the definition of racial discrimination in the Racial Discrimination Act of 1975 was based on the definition provided in article 1, paragraph 1, of the Convention.

165. Members of the Committee considered the situation of "Aboriginal" groups in Australia and the policy of the Australian Government regarding them in the light of the provisions of article 1, paragraph 4, and article 2, paragraph 2, of the Convention. Some members expressed misgivings about the terminology used in the material before the Committee - referring to such words as "Aboriginals", "ethnics" and "reserves" and observing that those words had acquired unacceptable racist connotations; and the attention of the Committee was called to a statement in the first annual report of the Commissioner for Community Relations, to the effect that "a principal problem for the Aborigines [was] in their lack of self-respect as a community and as individuals ", which appeared to be a generalization about racial groups of the kind which usually generates and /or manifests racial prejudice . Some members expressed concern at the fact that some provisions of the Racial Discrimination Act of 1975 applied specifically to acts of discrimination against immigrants and appeared not to apply to acts of discrimination against "Aboriginals"; they recalled that the latter were the only indigenous population, whose

protection against racial discrimination should receive high priority. In that connection, it was noted that "descent"- which was one of the five factors of racial discrimination mentioned in section 9, paragraph 1, of the Racial Discrimination Act of 1975 (following the wording of article 1, para. 1, of the Convention) - was omitted from the texts of sections 10, 12, 13, 14, 15 and 18 of that Act; and the omission seemed to be the result of drawing a distinction between the treatment accorded immigrants and measures affecting "Aboriginals". On the other hand, it was suggested that government policy with regard to immigrants tended to treat them in the same way as "Aboriginals" and that, to the extent to which the latter were an underprivileged group, the treatment accorded to the immigrants should rather aim at putting them on an equal footing with other population groups constituting the bulk of Australian society. Referring to the special measures dealing with "Aboriginals", some members thought that the Government of Australia was trying to reconcile two important principles: it was anxious to bring about the integration of all groups and it wished to preserve each group's culture and traditions. Fears were expressed, on the one hand, lest the measure under consideration contribute to the loss of the unique social and cultural heritage of the "Aboriginals" and, on the other hand, lest those measures result in the "Aboriginal" population being cut off, or at any rate kept at a distance, from the Australian population in general, or lest the special education programmes designed for the benefit of the "Aboriginals" serve in fact to keep them at an inferior educational level. The provisions of Australian legislation regarding "reserves" gave rise to expressions of concern in the Committee, particularly in view of the danger that the institution of "reserves" might imply restrictions on movement and might produce or perpetuate racial segregation.

166. The situations of immigrants gave rise to some questions, in addition to the observations mentioned in the preceding paragraph. Noting that, according to the information in the tables annexed to the initial report of Australia, the proportion of immigrants of Asian and African origin in the past three decades to the total immigrant population was only 7.3 per cent, some members inquired whether that very small proportion reflected a definite policy on the part of the Australian Government and whether a quota system based on countries-of-emigration was in effect. It was asked whether, in the Australian experience, massive immigration had given rise to new problems of racial discrimination - other than the usual problems affecting the relations of the general population with the immigrants - such as racial discriminations by one group of immigrants against another, or by the immigrants against the "Aboriginal" populations.

167. The application of article 4 of the Convention in Australia gave rise to much discussion. It was noted that there was a discrepancy between the statement in the report, that " in ratifying the Convention, ... the Australian Government declared that it was not in a position to treat the matter covered by article 4 (a) as punishable by the criminal law", on the one hand , and the actual text of the declaration made by the Australian Government upon its ratification of the Convention (which was not a reservation under article 20 of the Convention), on the other. That declaration stated: "Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law ... It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a)". Several members expressed the hope that the Australian Government would soon act in accordance with that statement, thereby fulfilling its obligations under the mandatory provisions of article 4 of the Convention. While noting that

some of the acts mentioned in article 4 of the Convention were declared "unlawful" in sections 16 and 17 of the Racial Discrimination Act of 1975, some members called attention to the fact that the Convention required that all the acts mentioned in article 4, paragraph (a), shall be declared "offences punishable by law" and that the organizations and acts described in article 4, paragraph (b), shall be declared "illegal" and "prohibited" ; and it was pointed out in that connection that the provisions of section 26 of the Racial Discrimination Act of 1975 designated acts of racial discrimination as "unlawful" but not as "offences" subject to criminal law. Some members asked for further information on the existing criminal law under which acts of the kind mentioned in article 4 of the Convention were punishable.

168. In connection with the application of article 5 of the Convention, questions were asked about the exceptions provided for in section 24 (2) of the Racial Discrimination Act of 1975; about the different penalties provided for discrimination in employment and in dismissal from employment, under section 6, subsections 1 and 2, of the Racial Discriminations Act of 1976 of South Australia; and about the requirements of section 18 of the Racial Discrimination Act of 1975, which stipulates that an act which was done for two or more reasons, of which racial discrimination was one, would not be unlawful unless racial discrimination was the "dominant reason for the doing of the act". In connection with the provisions of paragraph (c) of article 5 of the Convention, reference was made to sections 25 and 31 of the Australian Constitution: section 25 appeared to countenance the possibility that, under the law of any Australian state, "all persons of any race" might be "disqualified from voting at elections for the more numerous House of the Parliament of the State"; and section 31 appeared to empower states to apply their electoral laws not only at state level but also for Commonwealth Parliamentary elections, unless the Parliament provided otherwise. It was recalled that neither section 25 nor section 31 of the Australian Constitution has been amended.

169. With regard to the application of article 6 of the Convention, it was noted that an aggrieved person could, in accordance with sections 24 and 25 of the Racial Discrimination Act of 1975, commence with civil proceedings, in respect of acts made unlawful by Part II of the Act - but only after obtaining a certificate from the Commissioner for Community Relations that he had been unable to settle the matter. Referring to the power of the Commissioner, under section 21 (2) of the Act, to refuse or to cease to investigate a complaint, some members asked what would happen if the Commissioner considered a complaint to be "frivolous" or the matter to which the act related "trivial", while the complainant held a contrary view. Members asked whether the ombudsman played any role in the implementation of the Racial Discrimination Act.

170. Concerning of the article 7 of the Convention, several members noted with the satisfaction the emphasis put by the Australian Government on measures taken in the fields of education and public information to combat racial prejudice and racial discrimination . Some members of the Committee asked whether the Government's programme included measures to inform the population of the establishment of the complaints machinery and the bodies associated with it, or efforts to publicize the ideals of the Convention.

171. Members of the Committee noted with regret that the report did not contain the information envisaged by the Committee in its general recommendation III and decision 2 (XI), concerning relations with the racist regimes in southern Africa. The information given in the report

concerning Australia's policy in relation to racial discrimination in sport required clarification: some members asked how "South Africa's willingness and ability to move away from racial discrimination in sports" - which was described as "the best condition for permitting the entry of South African sporting teams into Australia" - was verified.

172. The demographic information provided in the report in response to the Committee's general recommendation IV gave rise to questions relating to classification and terminology, and it was hoped that the lines of demarcation between different categories would be sharpened, and overlapping of categories avoided, in future reports.

173. The machinery established for dealing with problems or racial discrimination was discussed; there was fear that overlapping of functions or conflicts of jurisdiction might adversely affect the effectiveness of existing or contemplated bodies. Some members commended the Commissioner for Community Relations for the perceptiveness, the candour, and the sensitivity to the more subtle varieties of racial discrimination manifested in his first annual report. The references in that report to inadequate resources were noted with concern. A hope was expressed that the Australian Government would continue to furnish the Committee with the annual reports of the Commissioner.

174. The representative of Australia commented on the observations and inquiries made by members of the Committee and summarized in the preceding paragraphs. He assured the Committee that the objections voiced by some members to the use of terms like "Aboriginals" and "reserves" would be brought to the attention of the Australian Government, as would also the comments on the statement describing the "Aborigines" as lacking in self-respect - which, he said, would no doubt be contradicted by many of the data contained in the report of the Commissioner himself and disagreed with by many "Aboriginals". His Government had recognized the fundamental right of "Aboriginals" to retain their racial identity and traditional life-style or, if they wished, to adopt partially or wholly the way of life of the Australian people. Future reports would give special attention to the measures being taken to improve the conditions of "Aboriginals" and their integration into the Australian community, while respecting their unique social and cultural heritage. The purpose of the rules governing movement of "Aboriginals" to and from "reserves", which were approved by the "Aboriginals" concerned, was to keep "non-Aboriginals" out of those areas; there were not restrictions on the movements of "Aboriginals" in Australia. There was no basis in law for the idea that the "reserves" for "Aboriginals" were a breach of article 1, paragraph 4, or article 2, paragraph 2, of the Convention. With reference to immigration policy, he stated that Australia did not apply country quotas.

175. With regard to article 4 of the Convention, the representative of the Australia said that his Government would continue its enquiry to ascertain what legislation, if any, was required to satisfy the obligations imposed by paragraph (a) of that article; in the meantime, the federal law on conspiracy would be applicable in many cases of racial discrimination: conspiracy to do any of the acts which were made unlawful by the Racial Discrimination Act of 1975 was illegal under the Federal Crimes Act. In connection with article 5 of the Convention, he stated, that the purpose of the exceptions mentioned in section 24 (2) of that Act was to provide exceptions to the operation of the Act in private households. That purpose was not incompatible with article 1,

paragraph 1, of the Convention, which defined racial discrimination as distinctions on the grounds of race that impaired the enjoyment of human rights in fields of "public life". Commenting on section 6 of the Racial Discrimination Act of 1976 of South Australia, which provided higher penalties for acts of racial discrimination in hiring than in dismissal, he informed the Committee that a person wrongfully dismissed could also bring a civil action for damages, and observed that that fact might have been taken into account by the Legislature. With respect to the right to vote, he stated that section 51, paragraph xxvi, of the Constitution had been amended in 1967 so that "Aboriginals" who wished to do so could vote. Concerning article 6 of the Convention, he stated that a refusal by the Commissioner for Community Relations to deal with a complaint did not necessarily deprive a complainant of the right to pursue his complaint further: the Commissioner's decision was reviewable by a court. In addition, a complainant would usually have recourse to the Federal ombudsman or to a state ombudsman, depending on the nature of the complaint. Referring to the questions about the powers of the ombudsman, he stated that some states in Australia had an ombudsman, and that a Federal ombudsman had recently been appointed. In the Australian states, the ombudsman had jurisdiction to act in any case of a complaint made to him so long as it related to a matter arising under state laws. The jurisdiction of the Federal ombudsman - who would assume his duties when the Federal Ombudsman Act came into operation later in 1977 - would be restricted to investigating allegations against Federal officials, including the Commissioner for Community Relations.

176. The representative of Australia assured the Committee that the questions raised by its members with regard to the application of article 7 of the Convention would be brought to the attention of the competent Australian authorities. The request for information on relations with South Africa would be conveyed to his Government; however, his Government had no dealings with the illegal minority regime in Zimbabwe and would continue to support the Security Council resolutions imposing sanctions against Zimbabwe until a negotiated and internationally accepted settlement was achieved. He informed the Committee about his Government's contributions to relevant United Nation Funds. Trade relations with South Africa were permitted to continue, though without official assistance where that could be avoided. The Australian Government did not actively promote trade with South Africa, and the presentation of trade displays and any other form of promotionally publicity in South Africa had been discontinued since 1972. As for relations in sports, his Government's policy had been stated in its report; in view of the way in which sport was organized in South Africa, that policy left very little scope for the entry of South African sportsmen and women into Australia. As for the demographic information presented by his Government, the comments made in the Committee about the need for greater care in racial identification, would be conveyed to the appropriate Australian authorities. He assured the Committee that his Government would ensure that there was no conflict of jurisdiction between the activities of the Commissioner for Community Relations, the Australian Commission on Human Rights and the Ethnic Affairs Council. The request concerning future annual reports of the Commissioner for Community Relations would be borne in mind in the preparation of the second periodic report of Australia.

CERD A/34/18 (1979)

397. The second periodic report of Australia (CERD/C/16/Add.4) was considered by the Committee together with the introductory statement made by the representative of the reporting State, which developed and supplemented the information contained in the report.

398. A number of members of the Committee expressed their appreciation of the report, which was described as a model of seriousness, objectivity and responsibility. They commended its frankness and sincerity and the fact that in many parts of the report the Government had committed itself to keeping the problem of racial discrimination under constant review.

399. The progress made in respect of the aboriginal population, particularly in the fields of housing, employment and land rights was welcomed by a number of members. At the same time, clarification was requested as to whether the measures adopted were sufficient to create the necessary social and economic conditions for the full integration of the aboriginal population into the economic and social life of Australia. Information was sought on what the final verdict of the Law Reform Commission had been on the question whether it would be desirable to apply aboriginal customary law to aboriginals. With regard to the special committee to investigate the recognition of aboriginal customary law in the administration of justice in aboriginal communities, apprehension was expressed that the recognition of that law might hinder the integration of the aboriginals into the Australian population as a whole. Some members regretted that the report lacked information concerning primary education of aborigines.

400. In connection with the rights of aliens, clarification was sought as to whether the four eligibility categories for immigration listed in paragraph 34 of the report constituted a restriction on immigration. Members of the Committee were interested to know if there were long-term plans to solve the serious housing problems of foreign migrants and the educational problems of their children. With reference to the novel idea of the Australian Government to allow non-resident foreigners in Australia to take part in elections and to hold office, some members of the Committee requested further details of that proposition which was one to be emulated by all State parties to the Convention.

401. A number of members of the Committee commended the measures adopted by the Australian Government described in paragraphs 1 to 9 of the report, in particular the stand taken by Australia in the United Nations with regard to the export of arms to South Africa and its contributions to various funds to assist the victims of racial discrimination and apartheid. Further information was requested on the Government's position on the problems of racism in South Africa, Zimbabwe and Namibia, in the light of recent developments there. It was noted that Australia had still not broken off all links with racist regimes and action was urged on the part of the Government to ensure that no relations were maintained with those regimes.

402. It was recalled that during the consideration of the initial report of Australia, the Committee had taken the view that the requirements of article 4 of the Convention were generally covered in Australian legislation but that the legislation did not go far enough. The Committee had expressed the hope that the Australian Government would consider enacting

legislation along the lines suggested by article 4. It was considered a retrograde step that the Government should currently question the very desirability of enacting legislation under article 4. It was pointed out that paragraph (a) of that article was not covered by Australian legislation and that sections 16 and 17 of the Racial Discrimination Act of 1975 referred to in paragraph 43 of the report did not entirely cover the provisions of paragraph (b). The Committee would welcome any further progress made in that area.

403. In connection with implementation of article 5 of the Convention, it was noted that the Racial Discrimination Act included express references to all the rights laid down in that article. A question was asked as to the nature of the exceptions to the anti-discrimination provisions referred to in paragraphs 12, 14 and 16 of the reports. Information was requested on the current status of the proposed legislation establishing the human rights commission referred to in paragraph 11 of the report. It was pointed out that there was a problem of the correlation between federal and state legislations, and a question was raised regarding what steps had been taken since the initial report to repeal any state laws which were potentially or actually discriminatory in nature.

404. With regard to measures ensuring effective remedies in accordance with article 6 of the Convention, it was recalled that during the Committee's consideration of the initial report, some members had inquired as to the possibility of providing access to the court's other than by recommendation of the Commissioner or permission of the Attorney-General. Since there was no reply to that question in the report, the hope was expressed that the appropriate measures would be taken and details supplied in the next report . While not wishing to diminish the importance of the conciliation procedures referred to in paragraph 18 of the report, some members believed that in the case of Australia the adoption of legislation and of penalties for the violation of such legislation represented possibly the most important aspect of activities relating to the implementation of article 6. Information was requested as to what action had been taken on the 296 written complaints received by the Employment Discrimination Committees and on the complaints mentioned in paragraph 23 of the report.

405. As far as the implementation of article 7 of the Convention was concerned, members of the Committee considered that the Australian Government should maintain in full force, and expand, the programmes it had adopted in conformity with that article, as described in paragraphs 109 to 124 of the report.

406. Replying to the questions raised by the members of the Committee the representative of Australia assured the Committee that the efforts made in respect of the aboriginals were not in any way intended to exclude them from any rights enjoyed by other Australians. The Law Reform Commission studying the question of the recognition of aboriginal law within the Australian legal system had not yet reported to the Government. The report would be given serious consideration and the Committee would be informed of the outcome.

407. Touching upon the rights of aliens, he said that the Government recognized that at the earlier stages of settlement immigrants had particular needs, especially if they came from non-English speaking backgrounds, and it therefore placed particular emphasis on providing appropriate opportunities for orientation and English-language training courses.

408. With regard to article 3 of the Convention he said that it was the policy of the Australian Government to maintain correct diplomatic relations with South Africa without derogating from its own total opposition to apartheid, which it had made known to the South African Government on many occasions in the clearest terms.

409. In connection with article 4 of the Convention, he confirmed that it was unlawful in Australia to incite persons to commit violence. He drew attention to sections 16 and 17 of the Racial Discrimination Act which, inter alia, made the utterance of racist comments unlawful. His Government attached importance to the creation of conditions that would effectively, and as strictly as possible, bring about the demise of racist propaganda and organizations. It firmly believed that in the current social, cultural and political circumstances the most effective way to do so was to promote free and open public debate on those issues, and not by limiting freedom of association or any other civil liberties.

410. With regard to article 5 of the Convention he said that the proposed human rights commission of Australia had not yet been established, but the Government intended to establish it before the end of the year. On the question of the relation of federal laws to state laws, he said that under section 109 of the Australian Constitution when a law of an Australian State was inconsistent with a law of the federal Parliament, the latter prevailed and the former was inoperative to the extent of any inconsistency.

411. As far as article 6 of the Convention was concerned, the representative stressed that the Australian Government did not regard the system of conciliation which existed in Australia to be in any way inconsistent with the requirements of the Convention. At the end of the process of conciliation, a complainant had the right under the Racial Discrimination Act to take his case to court. In the overwhelming proportion of cases that had come before the Commissioner for Community Relations, the conciliation procedure had proved very successful within the context of Australian society.

412. The representative of Australia said that he would transmit to his Government the comments and questions which he could not respond to, and they would be taken up in connection with the preparation of the next report.

CERD A/37/18 (1982)

123. The third periodic report of Australia (CERD/C/63/Add.3) was considered by the Committee together with the introductory statement made by the representative of the reporting state in which he provided information on the formal establishment on 10 December 1981 of the Australian Human Rights Commission and its composition. He explained that the Commission had comprehensive powers of inquiry, research and investigation of complaints and a brief to promote human rights concerns through educational and other programmes, and that Australia's Racial Discrimination Act had been amended to make the Commission responsible for all functions under that Act. Investigation and the resolution of complaints would , however, be handled by the Commissioner of Community Relations. He then referred to policies and programmes that his Government had developed to remedy the disadvantaged economic and social situation of Aboriginals in Australia and to ensure to Aboriginals increasing involvement in the political process of the country and access to Government services enjoyed by other Australian citizens. With regard, in particular, to Australia's concern to eliminate racial discrimination in the field of immigration and ethnic affairs, he referred, among other things, to the establishment, in January 1982, of an Immigration Review Panel to deal with a broad range of immigration and citizenship decisions.

124. The Committee congratulated the Government of Australia on its serious, detailed and objective report, which represented Australia's continuing commitment to eliminate racial discrimination at the national and international level. More information was, however, requested on the complex situation with respect to racial heterogeneity and the economic, social and other issues with which the Government was endeavouring to deal. It was noted that the Australian Human Rights Commission was entrusted with the protection of the rights recognized in various international instruments to which Australia was party and it was suggested that the Convention should be added to the list of those instruments in order to implement it more effectively. It was also noted from the report that the functions of the Australian Human Rights Commission did not extend to the Northern Territory, and specific information was asked for on the situation in that Territory with regard to racial discrimination, whether there had been any constitutional conflict between the Federal and State Governments in interpreting problems of racial discrimination, and if so, the manner in which it had been settled.

125. Members of the Committee drew particular attention to problems relating to the Aboriginals in Australia in the light of the provisions of articles 2 and 5 of the Convention. In general, appreciation was expressed for the work done in this field. Further information was requested on the situation in the states in which the Aboriginals were concentrated, how the 1979 Ethnic Affairs Commission Act was being implemented, what progress had been made in protecting the rights of ethnic groups in the State of New South Wales and whether any similar legislation had been enacted in other states. It was asked, in particular, whether there was any conflict between the 1975 Racial Discrimination Act and the laws of individual states, whether any other measures were contemplated if measures adopted to investigate, conciliate and attempt to settle complaints of racial discrimination failed to provide a solution and on what basis membership of the Aboriginal Development Commission was established and why it was made up of appointed rather than elected members. Referring to the various bodies listed in the report

which were concerned with the development of Aboriginals in Australia, some members of the Committee wished to know whether any organ existed or was contemplated to co-ordinate their activities, whether there was any overlapping of their duties or policies and whether there was any over-all national project to improve the situation of the aboriginals. With regard, in particular, to the question of Aboriginal land rights, information was requested on methods for resolving any confrontations which might arise between Aboriginals companies concerning drilling rights of lands considered by the Aboriginals to be ancestral lands. Furthermore, some information was requested on the progress made in reducing the unemployment rate among the Aboriginals and, in this connection, the Committee expressed a wish to see the reports of the Australian Committee on Discrimination in Employment and of the Equal Employment Opportunity Bureau. It was also asked whether Aboriginals could move to other areas of the country in search of improved employment prospects and better living standards. In the field of housing, members of the Committee referred to the considerable efforts being made by the Government of Australia to improve the situation of the Aboriginals and requested up-to-date information concerning new efforts and the results of current policies with particular regard to the percentage of the national budget devoted to the housing programme and the number and type of houses lived in by Aboriginals. In the field of education, members of the Committee wished to receive information on the progress in the performance of children in Aboriginal schools. They also asked what percentage of Aboriginals had been able to reach higher educational standards, whether any ethnic communities were represented in the Australian Institute of Multicultural affairs and, if so, whether they could take any part in the decision-making process in the Institute. One member observed that, in trying to improve the housing and material situation of the Aboriginals, the Government should avoid leading them into a ghetto situation, and wished to receive the Government's views on that question. In addition, information was requested with regard to the situation of immigrants from developing countries in Australia , and, in particular, how the new Immigration Act affected people already in the country and whether it had the effect of preventing their families from joining them.

126. In connection with article 3 of the Convention, it was noted that the report detailed Australia's commitment to the elimination of apartheid, but that it also stated that the policy of successive Australian Governments had been to maintain correct diplomatic relations with South Africa. It was recalled that, in the Committee's view, the maintenance of such relations was a stimulus to continue the policy of apartheid and therefore hardly compatible with the spirit of article 3 of the Convention.

127. As regards article 4 of the Convention, members of the Committee noted that Australia complied with its provisions except where they required the prohibition of the dissemination of ideas based on racial superiority or hatred and the outlawing of organizations which promote or incite racial discrimination, and they observed that it was precisely in that area that the Convention required states parties to adopt specific legislation to declare such acts punishable offences; even though the right to freedom of opinion and expression was recognized under article 5 of the Convention, that right had to be limited when it reached the point of causing injury and States parties must have some provision for punishment by law of acts based on ideas of racial superiority. One member pointed out that while the Racial Discrimination Act made certain acts unlawful, there was no penalty attached to its violation. It was also recalled, in this connection, that in the statement of interpretation made by Australia upon ratification of the

Convention, the Australian Government expressed the intention to seek from Parliament, at the first suitable moment, legislation specifically implementing the terms of article 4 (a) . The Committee would therefore await future reports on further steps by the Government of Australia to fulfil fully its obligations under article 4 of the Convention.

128. In respect of article 6 of the Convention, reference was made to the provision of section 24 (3) of the 1975 Racial Discrimination Act, already discussed by the Committee when previous reports of Australia had been considered, providing that a person had to obtain a certificate issued by the Commissioner for Community Relations before being able to initiate legal proceedings, and the Committee hoped that the Australian Government would continue to study the possibility of eliminating that requirement with a view to providing direct access to the courts.

129. In connection with article 7 of the Convention, members of the Committee wished to be kept informed about the efforts of the Australian Government in the field of teaching, education, culture and information to combat racial discrimination, with regard, in particular, to educational measures envisaged to instil respect for other communities in children's minds.

130. In reply to questions raised by members of the Committee, the representative of Australia provided demographic information about the population of his country with regard, in particular, to the number and location of the Aboriginals, who represented approximately 1.2 per cent of the Australian population. He also explained that the inclusion of the Convention in the list of international instruments within the purview of the Australian Human Rights Commission was not considered necessary since the Commission was responsible for the implementation of the Racial Discrimination Act and had full powers to monitor the implementation of the Convention.

131. With regard to questions concerning the Aboriginals in Australia, the representative referred to the work undertaken by the Australian Law Reform Commission in respect to the relations between Aboriginals and justice and between them and the police; he pointed out, however that the Law Reform Commission had not yet submitted to its report on Aboriginal customary law. Besides, the establishment of the Australian Human Rights Commission for the administration of the Racial Discrimination Act had increased the resources available to combat racial discrimination in Australia. As regards the reason why members of the Aboriginal Development Commission were appointed whereas those of the National Aboriginal Congress was elected, he explained that the former was an executive body, and that in Australia it was normal practice for such bodies to be comprised of appointed members, whereas the role of the latter was to express opinions and give advice on behalf of the Aboriginal community. Moreover, while there was no single official document in Australia containing all the elements of Aboriginal policy, there were nevertheless basic principles, drawing from the fundamental principles of self-management, as well as comprehensively developed and co-ordinated programmes of special measures for Aboriginals which were in fact provided by all levels of Government. The Federal Government furnished the bulk of the funds for the programmes, and the responsibility for their implementation often rested with those levels of Government which were closest to local communities. As regards the settlement of disputes over mining, most Australian states had established boards, which included Aboriginal members, to identify sites of significance to Aboriginals. When an area was developed, the developer and the State board

concerned took the necessary measures to protect the site. With respect to unemployment among Aboriginals, the representative outlined the most important elements contained in the National Employment Strategy for Aboriginals, announced by the Australian Government in 1977, which sought the co-operation of all employers, both public and private, in increasing employment and training opportunities for Aboriginals. With regard to housing or land rights, he stated that the essence of the Australian Government's policy was to ensure for Aboriginals an economic and social development consistent with their own desires and choices without their being in any way confined. In the field of education, he provided information on governmental educational services available to Aboriginal children, including two major education assistance schemes at the Federal level. As regards the members of the Australian Institute of Multicultural Affairs, he stated that all except the Chairman were drawn from ethnic communities. He also explained that his country had not adopted a new Migration Act but it had recently introduced some revision of immigration guidelines. Immigration policy remained utterly non-discriminatory on the grounds of race or ethnic origin and family reunion was still a priority criterion for entry into Australia.

132. With reference to article 4 of the Convention, the representative stated that Australia believed that its provisions should be seen in the over-all context of human rights, including especially those freedoms of association, expression and opinion enshrined in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. With particular reference to provisions of paragraph (a) of that article, he pointed out that they referred not to criminal offences but to offences punishable by law and that it was therefore up to the State, through its legislation, to punish such offences and to specify the type of penalty to be imposed for them. In this connection, he recalled that under articles 16 and 17 of the Racial Discrimination Act, the dissemination of ideas based on racial superiority or hatred was unlawful and that article 25 of that Act spelled out the penalty imposed for such offences and the powers granted to the courts.

133. With reference to article 6 of the Convention, the representative stated that in his country there was a clear right of access to the courts, but in view of the special circumstances prevailing in Australia, provisions was made for that access to be preceded by a system of conciliation, which had the advantage of giving the parties concerned the possibility of settling their dispute by a procedure which was less formal, easier and more readily available than that of the courts; that was particularly important for persons living in remote areas, as was the case with Aboriginals, and for those who were not entirely familiar with the country's judicial procedure.

134. With regard to article 7 of the Convention, the representative referred to a number of measures taken in Australia to counter racial discrimination in education, such as the inclusion of Aboriginal studies in teacher education, and in-service conferences and seminars for teachers of Aboriginal children.

CERD A/39/18 (1984)

328. The fourth periodic report of Australia (CERD/C/88/Add.3) was introduced by the representative of the reporting State who referred to the multi-cultural nature of Australian society and emphasized that, besides English, which was the most widely spoken language, over 300 language, including some 200 Aboriginal languages were spoken in his country. He stated that his Government recognized that Australian Aboriginal citizens constituted a group for whom special and concrete measures were required to promote their development and protect their rights and that the Minister for Aboriginal Affairs had tabled a resolution in Parliament on 8 December 1983 providing a set of principles intended to guide government policy towards Aboriginals. In recent years, there had been growing Aboriginal participation in policy formulation and programme delivery concerning Aboriginals and the Australian Government had developed a range of programmes to remedy the effects of Aboriginal disadvantage and discrimination; these programmes had brought new opportunities in education, the purchase and ownership of land, housing, employment and the provision of medical and legal services. The 1983/1984 national budget had allocated 341 million dollars for this purpose and over 900,000 square kilometres, over 11 per cent of the Australian territory, had been handed over or was in the process of being returned to Aboriginals.

329. The representative also provided information on Australia's immigration programme which had profoundly changed the composition of Australian society over the past 40 years. He pointed out that his Government remained firmly committed to maintaining a global non-discriminatory migration programme under which priority was given to family reunion, minimizing adverse effects on the labour market, and humanitarian obligations. In recent years, an average of 80,000 people had been entering Australia annually for settlement, with a significant proportion being admitted under the Refugee and Special Humanitarian Programmes, which made provision for people whose human rights had been prejudiced in their own country.

330. Furthermore, the representative stated that it was the Federal Government policy to act as standard bearer in the field of racial discrimination legislation and to encourage and co-ordinate the constructive developments that had been taking place independently in the states of Australia. He referred, in this connection, to a decision of the High Court in the Commonwealth versus Tasmania of 1 July 1984, to the Equal Opportunity Bill which would outlaw racial discrimination and to a series of major human rights initiatives taken by the Government elected in March 1983.

331. The representative pointed out that, from 1 July 1983 to 30 June 1984, the Australian Human Rights Commission established in 1981, the functions of which were described in some detail in the report, had dealt with 467 complaints under the Racial Discrimination Act and that the majority of them had been resolved.

332. With regard to his Government's policy of opposition to the apartheid regime of South Africa, the representative informed the Committee that in April 1984 the Australian Government had decided to refuse entry visas to South Africans holding official positions if the principal purpose of their visit was to promote apartheid doctrine or policies. At the same time, the Government had strengthened significantly its policy on the limitation of sporting contacts with

South Africa; it was taking positive steps to assist victims of apartheid and had permitted the establishment in Australia of information offices for the African National Congress and the South West Africa People's Organization. The representative also pointed out that Australia continued to maintain formal diplomatic relations with South Africa since the Government considered that its presence in Pretoria enabled it effectively to impress upon South African Government its opposition to apartheid.

333. The Committee congratulated the Australian Government on its frank and comprehensive report which had been prepared in accordance with the Committee's guidelines and which showed how conscientiously Australia was endeavouring to meet all its obligations under the Convention. It also praised the Australian representative's introduction which provided useful updated information.

334. Members of the Committee noted that Australia was developing a system of multi-culturalism and efforts were being made in the country to reduce the gap between the different segments of the populations and to eliminate racial discrimination. However, problems remained to be solved with regard to the most disadvantaged groups of the population, in particular, the Aboriginals, and they raised a number of questions on specific measures that the Australian authorities had taken or had planned in respect of those groups.

335. In this connection, members of the Committee made reference to the provisions of articles 2 and 5 of the Convention and inquired how the Aboriginal people could be helped to achieve in practice their full political and civil rights, in view of the many political and cultural differences which existed between them and other Australians, and how they would benefit from equal status with other Australians if for instance, in Western Australia, the state Government had not enacted any specific anti-discrimination legislation. They wished to know, in particular, how administrative institutions established in the Northern Territory since 1978 were composed, how they actually functioned, whether government-nominated persons were members of those bodies and whether the indigenous system of customary laws were employed in implementing self-government measures. It was also noted that restrictions on overseas travel for certain classes of Aboriginals had been removed and it was asked whether they were taking advantage of that opportunity, whether the Australian Government was helping them to participate in conferences dealing with problems of indigenous populations and whether Aboriginals had the right to choose their place of residence.

336. Members of the Committee felt that further information was needed with regard to the land handed over to Aboriginal people by the Federal Government of Australia. They asked, in particular, what criteria had been used in relocating Aboriginal families from one region to another, how land tenure arrangements worked, especially in Queensland, whether Aboriginals could acquire land and maintain ownership of it. They also inquired about the meaning of the expression "where disallowance is in the national interest" (referred to in the report with regard to provisions concerning mining on Aboriginal land) and the content of the guidelines being drafted by the Australian Petroleum Exploration Association for the protection of Aboriginal interests in respect to mining, and asked whether any land had been appropriated in the Northern Territory and, if so, how the affected Aboriginals had been compensated or resettled.

337. Members of the Committee also wished to know whether disadvantaged ethnic groups were able to enjoy freedom of thought, opinion and expression and what measures the Australian Government had taken to improve the access of Aboriginals to employment and education including university education. In this connection, they expressed the view that it would be useful to have a comparative picture of the situation with regard to employment opportunities in order to assess progress. It was asked, in particular, if Aboriginals were employed in the mines, what the recruitment procedures for them were and what their living and working conditions were like. It was also asked what proportion of the total number of Aboriginals had not been provided with housing.

338. Attention was also focused on questions relating to immigrants who were an important component of Australian society. It was noted that the Ethnic Affairs Commission, established under South Australian legislation, reported and made recommendations to the Government on matters relating to the avoidance of discrimination on the basis of ethnic origin and it was asked how many instances had been reported and what sort of action had been recommended and taken. Furthermore, information was requested on legal progress made with regard to equal opportunities for ethnic groups in New South Wales and on when the Ethnic Affairs Commission Bill of the State of Victoria would be implemented. It was asked, what percentage of employment in the public sector was offered to racial minority groups, how the New South Wales Discrimination Act was being followed in practice in respect to equal opportunity in public employment, what the tasks of the Ethnic Affairs Commission in New South Wales were and what action it had taken to improve conditions for non-English-speaking people who appeared to receive different treatment. In this connection, members wished to know what differences were discernible in the relations between immigrant groups and between those groups and the previous inhabitants, whether the earlier-established peoples accepted some immigrant groups more readily than others, whether any studies had been made of the various attitudes noted and the need to ensure that new immigrant groups adopted the right attitude with regard to Australia's Aboriginal peoples. More information was requested, in particular, on the Immigration Review Panel and on the measures taken to improve the status of immigrants from South East Asia. It was also asked why some migrants had not yet accepted Australian citizenship, what action was being taken in this regard, what their current status was, whether the failure to apply for citizenship was related to any constraints imposed by the Australian Citizenship Act 1948, whether any changes were envisaged in the Act after the report by the Australian Human Rights Commission in 1982, how the Australian Government was promoting bilingual education programmes for immigrants and what was meant by the appointment, in New South Wales, of a member of the medical board to represent immigrants and ethnic minority groups. Details were also requested on the action taken by the Attorney General's Department to amend all remaining discriminatory legislation in the field of immigration.

339. Members of the Committee paid particular tribute to the Australian Government's humanitarian measures concerning refugees. In this respect, questions were asked about the status of refugees from Indo-China, how many had acquired Australian citizenship, whether there were any stateless persons among them, whether they were under the responsibility of the commonwealth Government or of the state Governments of Australia and what the policy was with regard to their movement within Australia and outside the country.

340. Turning to article 3 of the Convention, members of the Committee wished to know whether the increase in trade with South Africa referred to in the report implied an increase in investment, whether the Australian Government was doing anything to prevent private firms from investing in South Africa, whether it had any special programme to help the front-line States to reduce their dependence on South Africa and improve their economic status and whether it had taken any measures to restrict relations with South Africa in the cultural field. Members of the Committee also expressed scepticism about Australia's view that the maintenance of diplomatic relations with South Africa enabled Australia to convey its opposition to the apartheid regime more effectively to the South African Government.

341. With reference to article 4 of the Convention, members of the Committee wished to receive more information on the co-operation between Federal and State authorities in tackling racial discrimination and on how the Federal Government could co-ordinate the different provisions dealing with racial and ethnic discrimination which existed in the Australian states. They also expressed the hope that the Australian Government would abandon its reservation with regard to article 4 (a) of the Convention and that it would be in a position to announce new measures in compliance with that article in its next report.

342. In connection with article 6 of the Convention, reference was made to the action taken by the Australian Human Rights Commission concerning complaints under the Racial Discrimination Act and it was asked which areas of human rights those complaints had touched upon, whether, apart from attempting to bring about conciliation, any other follow-up action had been taken, whether statistics could be made available on case law arising from the conciliation procedure, what results the complainants had achieved, what happened when the conciliation procedure failed to produce a solution, whether the dissatisfied party had recourse to the courts, whether the Convention could be legally invoked as part of the internal law of Australia and whether Australia would consider the possibility of accepting an international recourse procedure by making the declaration provided for in article 14 of the Convention.

343. With reference to article 7 of the Convention, information was requested on the promotional work of the Australian Human Rights Commission and the work of the Ministry of Immigration and Ethnic Affairs and the positive steps achieved by them. It was also asked what legal instruments were available to the Law and Education Committees to preserve the right of free speech and criticism while continuing to combat racial incitement.

344. Replying to the questions raised by members of the Committee, the representative of Australia stated that the Aboriginal people had the same political and civil rights at law as other Australian citizens, including the right to vote, freedom of movement and residence and the rights to freedom of thought, opinion, expression and belief. With regard specifically to Western Australia, the representative informed the Committee that the Western Australian Government had introduced the Western Australian Multicultural and Ethnic Affairs Commission Bill on 8 November 1983 and that the Commission had been established on 1 July 1984. An Aboriginal land inquiry was also due to begin at the end of 1984. The representative also stated that the Northern Territory Legislative Assembly comprised 25 elected members. Aboriginals were entitled to vote and to stand for election and one Aboriginal had recently been elected. The Northern Territory had its own court system, including a Supreme Court with five resident

judges, and appeals from it went to the Federal Court of Australia. An aboriginal Mission Justice Programme had been established in 1973 under which a magistrate and an anthropologist were assigned to particular Aboriginal communities to discuss and set penalties in criminal matters, and aspects of Aboriginal customary law were recognized in a number of statutory laws of the Northern Territory.

345. The representative explained that no restrictions existed on overseas travel by Aboriginals and funds for travel were available to them directly from the Commonwealth Government or from Aboriginal organizations funded by the Government. The Victorian Ethnic Affairs Commission Bill had come into effect in November 1982.

346. The representative then provided some additional information on the question of Aboriginal land rights. The representative stated, in particular, that the Aboriginal Family Resettlement Programme had been applied in eight towns and cities in the State of New South Wales since its commencement in 1972 in order to assist Aboriginals to resettle, if they so desired, in centres offering better opportunities, to provide general counseling, material and medical assistance to families and to assist those families to find employment and housing in their new communities. Aboriginals could choose where to live and could purchase land in the same way as other Australians, and special programmes were available to them for the acquisition of land. Mining activity in the Northern Territory, including exploration for minerals, could not be carried out on Aboriginal land unless the traditional Aboriginal owners of that land consented. There were some exceptions with respect to mining projects already existing when the land had become Aboriginal. The terms permitting mining were aimed at compensating people for damage to their land and for interference with the social and cultural life of the community.

347. Regarding employment and education of the Aboriginal, the representative stated that on a country-wide basis, according to the census of 1981, the Aboriginal unemployment rate was more than four times the rate for non-Aboriginals. The low labour force participation rates occurred in those States having a proportionately high Aboriginal rural population and reflected the lack of job opportunities in those areas. A lack of conventional education and vocational skills was the major problem faced by Aboriginals seeking employment but in the last decade, educational and training opportunities had been widely extended to Aboriginal people by the Government. In education, the Government's emphasis was on involving Aboriginals in the development of projects to help increase educational levels. Key elements in Aboriginal participation in policy and programme development were: the National Aboriginal Education Committee, Aboriginal Educational Consultative Groups in the Northern Territory, and the encouragement in all States of education authorities and institutions which sought meaningful involvement of Aboriginal people at the community level.

348. As regards immigrants in Australia, the representative provided detailed information on post-arrival measures concerning immigrants which had been adopted in July 1982 and reviewed in September 1983. The representative pointed out that some new initiatives had been introduced, notably in relation to the current discussion on languages and the expansion of multicultural television services. He also made reference to a wide range of programmes and services for refugees administered both governmentally and non-governmentally and explained

that there were no separate records kept in Australia on refugee acquisitions of citizenship. However, there were general statistics on the acquisition of citizenship and from July 1983 to January 1984, 11,925 grants of citizenship had been made to persons from Asia including China, the Lao People's Democratic Republic, Malaysia, the Philippines, and Viet Nam, representing over 19 per cent of the total grants. A large number of those people were of refugee origin.

349. With reference to article 3 of the Convention, the representative stated that Australian exports to South Africa had been $A 184 million in 1981, $A 184 million in 1982 and $A 165 million in 1983, which seemed to reflect a leveling off of the increase. Besides, the Australian Government was considering the introduction of a code of conduct for Australian companies operating in South Africa.

350. In connection with article 4 of the Convention, the representative referred to the complexities of Federal State legal structures in Australia and stated that the Commonwealth had made clear its wish that each state should develop human rights legislation and that such legislation should be consistent with Federal legislation. Where it was not consistent, the Commonwealth Act prevailed. If state laws were consistent with the act and with Australia's international obligations, those laws could stand alongside the Commonwealth legislation.

351. With regard to article 6 of the Convention, the representative stated that most complaints submitted under the Racial Discrimination Act had been satisfactorily resolved through conciliation procedures. As for the details of the complaints and information on what happened when conciliation procedures failed, the representative referred to the reports of the Commissioners for Community Affairs and, in particular, to the 1982-1983 report. The question of making the declaration under article 14 of the Convention was periodically reviewed by the Australian Government, but no decision had been taken.

352. The representative finally referred briefly to a number of other questions raised by the members of the Committee and stated that comprehensive replies to those questions would be included in Australia's next report.

CERD A/43/18 (1988)

47. The fifth periodic report of Australia (CERD/C/115/Add.3) was considered by the Committee at its 816th and 817th meetings, held on 2 August 1988 (CERD/C/SR. 816-817).

48. The report was introduced by the representative of the State party who described briefly the major developments which had occurred in his country since the preparation of the report under consideration, in 1985. He referred, in particular, to the establishment in 1987 of the Office of Multicultural Affairs within the Prime Minister's own Department, which reflected the importance of multiculturalism in the political and social processes of the Australian community, and he provided information on his Government's immigration programme which was non-discriminatory and global in nature. The representative also recalled that, in his country, political and legal responsibilities were shared between the federal Government and the Governments of the Australian States and Territories. He pointed out that Aboriginal and Torres Strait Islander Australians were entitled to all the rights and freedoms enjoyed by other Australians, even though many Aboriginals and Islanders remained, in practice, seriously disadvantaged, and he provided information on administrative, financial and social measures taken by the Australian authorities to improve their living conditions. He stated that his Government was guided in its approach to Aboriginal and Islander policy by the principle of self-management.

49. Furthermore, the representative of Australia referred to the establishment by his Government, on 10 December 1986, of the Human Rights and Equal Opportunity Commission which had a wide range of functions, including investigations and resolution of complaints of human rights violations, research and community education, reporting to the Government on human rights issues and intervening, with the permission of the court, in court proceedings involving human rights matters. The Commission, which was composed of a part-time President and three full-time Commissioners, also had broad responsibilities with regard to the implementation of legislation enacted in accordance with human rights instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination.

50. The representative also referred to the declaration made by his Government in relation to article 4 (a) of the Convention. He stated that the Australian Government was reconsidering its position on the basis that article 4 should not be read in isolation from the rest of the Convention, and should be interpreted as requiring States to adopt further legislative measures only in so far as that was consistent with fundamental rights of freedom of speech and expression embodied in the Universal Declaration of Human Rights and expressly set forth in article 5 of the Convention. He added that his Government had implemented a policy of non-discrimination and equal employment opportunity for all persons employed or seeking employment in the public service and that special provisions existed for the employment of Aboriginals and Torres Strait Islanders. Moreover, Australia rejected apartheid as an affront to human dignity and a flagrant violation of fundamental human rights. In that connection, he provided information on an extensive range of political, social and economic measures taken by his Government against the Government of South Africa. Australia, in particular, persisted in the view that only by implementing mandatory economic sanctions could the most effective pressure for change be brought to bear on the South African Government.

51. Members of the Committee expressed satisfaction at the considerable amount of information provided both in the report and in the statement made by the Australian representative. That information took account of points raised at previous sessions of the Committee and gave an overall picture of the legislation and practice regarding prevention of racial discrimination in Australia. In that connection, they expressed the hope that the additional information given orally by the representative of Australia would be included in the next report by the Australian Government.

52. A number of question were asked concerning the general framework of application of the Convention by Australia. Information was sought regarding the status of legislation which had been passed, but whose provisions had then been declared by the Supreme Court not to conform with international obligations Australia had assumed, and it was asked whether all the legislation in force was in conformity with those obligations. Information was also requested on demographic trends in Australia since the last census in 1981 and on the proportion of Australian land that was set aside for Aboriginals.

53. With reference to special measures taken for the benefit of underprivileged ethnic groups in Australia, a member asked whether the Australian Government considered that the time limitation mentioned in article 1, paragraph 4, of the Convention applied to the special measures in question, or whether they were to be continued for an indefinite period. Members also wished to know how the Australian Government, under its policy of "multiculturalism", managed to give all the groups forming Australian society the rights established by Australian law, why there were value-system and culture conflicts in Australian society and how many new immigrants were entering the country under the plans for expansion of the population. Information was also requested on the composition of the Australian Institute of Multicultural Affairs and on that of the Ethnic Affairs Commissions, as well as on the development of the homeland centres.

54. With particular reference to article 2, paragraph 2, of the Convention, members of the Committee asked a number of questions concerning the measures taken by Australia to protect the Aboriginals. They wished to know why the Land Rights Model prepared by the Government had been rejected by the Aboriginal community and what the principles underlying that model were, why no action had been taken on the bills on that question which had been submitted in the States of Victoria and Western Australia, whether the Aboriginal lands were threatened with expropriation and what the position of the Australian Government was on the question of self-determination for the Aboriginal people. Information was also requested on access by Aboriginals and Torres Strait Islanders to higher education, the professions and Australian political life and on their actual participation therein. It was also asked what measures had been taken for the protection and dissemination of Aboriginal languages and dialects in Australia, what committee was examining the problem of the high death rate among Aboriginals in detention and what that committee and the 1986 Seaman report on land rights had recommended.

55. With reference to article 3 of the Convention, members of the Committee welcomed the measures taken by the Australian Government to oppose apartheid. They noted Australia's reasons for maintaining diplomatic, economic and trade relations with South Africa and asked for some clarifications in that regard. It was also asked whether the Australian Government was considering acceding to the International Convention on the Suppression and Punishment of the

Crime of Apartheid.

56. In connection with article 4 of the Convention, members of the Committee asked whether acts of racial discrimination gave rise in Australia only to civil proceedings, of whether the penalties could really be applied and whether the criminal law provisions concerning the punishment of acts involving violence or incitement to violence also covered acts of violence based on difference of ethnic origin. Clarification was also sought of the measures taken by Australia to implement article 4 (b) of the Convention, as they did not appear to be quite consistent with the provisions of that article.

57. In reply to the questions raised by the members of the Committee, the representative of Australia explained the legal system existing in his country for the implementation of international human rights instruments, in particular, the International Covenants on Human Rights, to which Australia was a party. That system consisted mainly of a comprehensive network of federal and State measures which included the Federal Human Rights and Equal Opportunity Act. The Human Rights and Equal Opportunity Commission had set up regional offices which worked in co-operation with States which had their own human rights machinery for the handling of complaints. If a provision of domestic law was found to be in conflict with an international obligation, an amendment to the law in question would be required.

58. The representative further stated that the percentage of Australian land set aside for the use and benefit of Aboriginal people was greater than the percentage of Aboriginal people as a proportion of the population. However, the Aboriginal people saw land less in economic than in cultural terms and for that reason the Government was taking various measures to assist Aboriginal people in determining their priorities for the future in order to acquire economic independence through the utilization of the resources of the land. Regarding Australia's policy of multiculturalism, he stated that, since 1986, an Access and Equity Programme had been implemented in his country to ensure participation by all immigrants in the services offered by the federal Government, and many state Governments had similar programmes. Concerning Australia's immigration policy, he informed the Committee that current projections based on the latest census put his country's population at more than 16 million and that the estimated intake of immigrants for 1988-1989 was about 140,000. The problems of Australia's multicultural society were not only of a cultural character, but also connected with the provisions of the necessary infrastructure. The Government had recently established a committee to advise on future immigration policy and was currently considering a review of the immigration programme and the composition of Australian society as a whole. The broadest possible representation of the various ethnic communities was ensured in the composition of the various multicultural commissions.

59. With reference to specific questions concerning the Aboriginal people, the representative of Australia stated that the reason why the Land Rights Model had been abandoned was that it had failed to obtain the overwhelming support of both the Aboriginal and non-Aboriginal communities. The federal Government had thus opted for the solution of working with the States, so that they could develop legislation or acquire land for the benefit of the Aboriginal community, intervening with specific legislation only if difficulties arose. The state and federal Governments had, in particular, made substantive contributions for land acquisition and land

development in special recognition of the Aboriginal needs in Western Australia and the Australian Government was committed to the principle of involving the Aboriginal people in decisions about their own future. The representative also provided information on increasing participation of Aboriginal people in higher education and in the professions. He stated that, where Aboriginal people were living in identified groups, bilingual education was encouraged and supported by the Government. However, the fact that there were some 500 Aboriginal language groups, some of them very small, gave rise to difficulties, and it was necessary to decide in which languages instruction should be provided. Regarding the question of Aboriginal deaths in custody, he said that the state and federal Governments were working together through the Muirhead Royal Commission to ensure that the question was addressed any weakness in the system overcome.

60. With reference to article 3 of the Convention, the representative of Australia provided detailed information on the decreasing amount of trade between his country and South Africa, and on measures to ban Australian investments in that country. He emphasized that the diplomatic presence of his Government in South Africa provided, among other things, a channel for direct humanitarian and educational assistance to victims of the apartheid system. He also stated that Australia, like other Western States, did not intend to sign or ratify the International Convention on the Suppression and Punishment of the Crime of Apartheid because of the vagueness with which apartheid was defined in the Convention and because it had difficulties with the concept of extraterritorial jurisdiction which the Convention sought to create.

61. With reference to article 4 of the Convention, the representative stated that, in Australia, existing criminal legislation covered all acts of violence against any persons, irrespective of race, colour or ethnic origin. The Racial Discrimination Act provided civil sanctions for certain acts of discrimination and incitement to such acts, but there was no federal or State legislation specifically creating the offence of incitement to racial hatred, although certain behaviour constituting incitement might in fact be covered by some other type of criminal offence.

CERD A/46/18 (1991)

223. The sixth periodic report (CERD/C/146/Add.3), and the seventh and eight periodic reports submitted in one document (CERD/C/194/Add.2), were considered by the Committee at its 915th to 917th meetings, held on 6 and 7 August 1991 (see CERD/C/SR. 915-917).

224. In his introductory statement, the representative of the reporting State welcomed the opportunity to continue his Government's constructive dialogue with the Committee. Australia was an open book on matters concerning human rights; the Government was committed to a policy of multiculturalism and was actively developing strategies to facilitate the more equitable sharing of resources among the country's diverse ethnic groups.

225. A number of significant changes had occurred since the fifth report of Australia had been considered. Among the most notable was the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1989. The Commission aims to promote the participation of indigenous groups in the formulation and implementation of policies affecting them and to further their economic, social and cultural development. This new structure permits the elected representatives of the Aboriginal and Torres Strait Islander peoples for the first time to determine for themselves the priorities and programmes affecting them, including the allocations of funds. The balance of power between the Minister for Aboriginal Affairs and the indigenous population had shifted dramatically as a result of this reform, although a certain scepticism persisted.

226. Drawing the attention of the Committee to the recently published national report of the Royal Commission into Aboriginal Deaths in Custody, the representative recalled that the Commission was formed to investigate the circumstances surrounding the deaths of 99 Aboriginal people in custody between 1980 and 1989. Although the Commission concluded that none of the deaths had resulted from deliberate use of unlawful violence by police and prison officials, the findings none of the less pointed to the social and economic oppression experienced by many Aboriginals Australians. A joint forum of federal and State ministers was convened earlier this year to develop a coordinated response to the recommendations of the Commission by March 1992. The Australian Government had already implemented one of those recommendations by agreeing to accede to the Optional Protocol of the International Covenant on Civil and Political Rights. Further developments in this area would be covered in Australia's next periodic report.

227. A broad of process of reconciliation had been recently announced by the Australian Government to transform relations between Australia's indigenous people and the wider community. The process sought to achieve its aims through an extensive public awareness and education campaign and the establishment of a Council for Aboriginal Reconciliation. Other important initiatives presently being undertaken by the Government included the development of a National Aboriginal Health Strategy to address the significant problems in that area, and the response to recommendations contained in the report of the National Inquiry into Racist Violence, presented to the Commonwealth Parliament in April of this year.

228. Members of the Committee welcomed the representative's detailed and frank introduction

to his Government's reports, thanked him for copies of the report of the National Inquiry into Racist Violence and noted with satisfaction the seriousness with which the Australian Government undertook its reporting obligations as evidenced by its detailed reports and the quality of its delegation.

229. In regard to article 2, members of the Committee pointed out that it was not clear from the reports exactly how the Australian Government discharged its obligations to ensure that the Convention was adequately implemented in each of its constituent States and territories. Concern was expressed over the status of the application of the Convention in those jurisdictions that had not passed anti-discrimination legislation subsequent to the adoption of the Equal Opportunity Act by the federal Government in 1984. Members of the Committee wished to know, in particular, about Aboriginal representation on the new Commission and similar bodies and why the Convention was not applied in the Australian Capital Territory, in Tasmania or in the Northern Territory, and asked for clarification concerning measures taken at the level of States and territories to improve the status of disadvantaged groups. They inquired about the "special needs" exceptions to some of the legislation. In connection with the new Commission on Human Rights, it was asked whether a fourth commissioner might not be appointed to deal with discrimination against Aboriginals.

230. Members of the Committee expressed concern over the situation of the Aboriginal people with regard to land rights and asked why the federal Government had abandoned efforts to pass legislation in that area, leaving the question to be decided instead by the States and territories. They wondered why no law on Aboriginal land rights was in force in Western Australia. They also wished to know why the Aboriginal people had opposed federal land rights legislation and what the difference was between the approach of the federal Government described in the reports and the approach actually taken by the States and territories in that regard.

231. Members of the Committee also expressed concern about the circumstances that gave rise to the Inquiry of the Royal Commission into Aboriginal Deaths in Custody. In that regard, they wished to know why the number of Aboriginal people in custody was disproportionately high; whether it was true that offenders arrested for minor offences were treated differently according to their ethnic background; why Aboriginal people were apparently being held in custody for such relatively minor offences as intoxication and the use of offensive language; whether any criminal prosecution had been brought in connection with these deaths; which jurisdictions had not accepted the recommendations of the Royal Commission and why they had not done so; and what the reasons was for the August 1989 decision of the Supreme Court of New South Wales to reject the extradition of 16 Aboriginal detainees to Queensland.

232. Concerning article 3, members of the Committee wished to know what economic ties still existed between Australia and South Africa.

233. Regarding article 4, members of the Committee expressed regret that no figures were given in the reports of Australia on the number of persons who had been convicted of racist acts. Members also wished to know if, notwithstanding the findings contained in the report of the National Inquiry into Racist Violence, the Australian Government would continue to tolerate racist propaganda as a legitimate exercise of the freedom of expression. It was further noted that

information regarding the implementation of article 4 (b) was lacking in the report.

234. In regard to article 5, members of the Committee inquired why special programmes to assist the Aboriginal and Torres Strait Islander people in exercising their social, economic and cultural rights had not been set up before 1987; what were the results to date of the programmes that had been established; what was the percentage of Aboriginals among skilled workers, university students and public sector employees; how many hospitals had been established in Aboriginal communities under the National Aboriginal Health Strategy; how the problem of alcoholism was tackled; and how many doctors and nurses spoke Aboriginal languages and were familiar with Aboriginal traditions. In addition, members of the Committee asked about the proportion of Aboriginal children in New South Wales who had been taken into institutional care and about the protection of sacred sites. They wished to know how many refugees had settled in Australia in recent years and what were their countries of origin.

235. With reference to article 6, members of the Committee wondered why no complaints had been received from residents of the Aboriginal community of Toomelah where, according to the eight periodic report, people had been living in "appalling conditions"; why the number of complaints registered under the Racial Discrimination Act of 1975 had declined significantly between 1985 and 1990; and whether effective recourse measures were actually in operation.

236. Members of the Committee welcomed the decision of the Australian Government to accede to the Optional Protocol of the International Covenant on Civil and Political Rights and asked whether the Australian Government was also giving active consideration to making a declaration under article 14 of the Convention.

237. In his reply, the representative of Australia said that the Government had given priority to ensuring that Aboriginal and Torres Strait Islander people were adequately represented on commissions and in offices that were directly relevant to their communities. The proportion of Aboriginal persons working in the Aboriginal and Torres Strait Islander Commission, for example, was 40 per cent or more.

238. Concerning the relationship between the federal Racial Discrimination Act and State and territory anti-discrimination legislation, the representative noted that section 6A of the Act preserved the operation of State and territory laws that furthered the objectives of the Convention and that section 108 of the Australian Constitution ensured that any State or territorial legislation that was inconsistent with the Act would be invalidated to the extent of inconsistency. Thus, persons wishing to lodge complaints alleging racial discrimination could do so either with the federal Human Rights and Equal Opportunity Commission or, where applicable, with a commission or board established under State anti-discrimination legislation. The suggestion of a fourth commissioner should be considered. The federal Racial Discrimination Act applied throughout Australia and no separate legislation by States was required to ensure Australia's compliance with the Convention. In regard to the lack of anti-discrimination legislation in Tasmania, the Northern Territory and the Australian Capital Territory, those three jurisdictions were each preparing legislation against racial discrimination which, it was hoped, would be enacted by the time of Australia's next periodic report. Further information about the "special needs" exceptions was furnished.

239. Concerning article 3, the representative described the restrictions on economic ties with South Africa. Exports to the country had fallen, and little was imported from it.

240. In regard to article 4, significant criminal prosecutions of perpetrators of racist violence had taken place in Australia recently. The leader of the Australian Nationalist Movement, a racist organization, was convicted last year of 53 criminal offences and, along with other members of the Movement, had received a substantial prison sentence. In light of the recommendations of the inquiry into the causes of racist violence and the Commission report on Aboriginal deaths in custody, the Government of Australia would be considering various options, including possible legislation concerning incitement to racial hatred and violence. The reservation might be withdrawn and the possibility of a declaration under article 14 would be considered. These issues would be specifically addressed in Australia's next periodic report.

241. With regard to the Government's policy on Aboriginal land rights, it was now felt that the State-by-State approach was more appropriate than a federal solution. Legislation ensuring Aboriginal land rights was in the process of being drawn up in Queensland. A land rights bill introduced in Tasmania had been defeated in that State's Upper House but might be reconsidered later in 1991.

242. Referring to specific questions raised in connection with the deaths of 99 Aboriginal persons in custody between 1980 and 1989, the representative explained that 30 had died from hanging, 12 from trauma, 4 from gunshot wounds and 7 from other external wounds. The average age of those dying from natural causes was 30. An exhaustive investigation had concluded that no unlawful violence had been used, but it was recognized that measures must be undertaken as a priority to prevent further deaths in custody. Concerning the inquiry whether Aboriginals were too often held in custody when bail following arrest or the issue of a summons would be more appropriate, the representative noted that the need for a change in the practice was recognized and that new guidelines in this regard would be finalized by March 1992.

243. With reference to the Aboriginal cultural heritage, the representative declared it essential that skeletal remains in museums around the world be returned. He supported the policy of "keeping places", controlled by Aboriginals, for sacred objects.

Concluding observations

244. The Committee concluded that the reports submitted by Australia indicated that efforts were being undertaken by the federal Government to establish a multicultural society in Australia. This policy might, given the acquiescence of the majority population, improve the overall situation of all ethnic groups, including the Aboriginal and Torres Strait Islander people.

245. However, it was evident from the report, as well as from the oral introduction of the Australian delegation that the situation of the Aboriginal and Torres Strait Islander people required further affirmative action. Improvements were particularly needed in the area of education, employment, housing, land rights and health services.

246. The Committee recognized that the Australian Government has in recent years developed

strategies and enacted policies to address these issues. These efforts fully conformed with the spirit and objectives of the Convention, and they marked significant progress when compared to the situation described in earlier reports. The Committee expected the Australian Government to pursue further and energetically its policies in this regard and to ensure implementation of the Convention in all States and territories under its jurisdiction. The Committee was encouraged by the commitment expressed by the Australian representative (the Minister for Aboriginal Affairs) to the cause and impressed with the supplementary information provided by his delegation. His positive attitude and his information about recent Government action towards improving the situation of Aboriginal and Torres Strait Islander people enabled the development of a constructive dialogue between the Australian delegation and the Committee.

247. The Committee wished to emphasize that it viewed the Australian federal Government as responsible for ensuring compliance with the obligations entered into under the Convention, at all levels of Government throughout its jurisdiction. The Committee took note of the affirmative response of the Australian representative concerning this issue.

CERD A/49/18 (1994)

512. The Committee considered the ninth periodic report of Australia (CERD/C/223/Add.1) at its
1058th and 1059th meetings, on 11 and 12 August 1994 (see CERD/C/SR.1058 and 1059).

513. The report was introduced by the representative of the State party, who drew attention to the various measures his Government had taken in the context of action to combat racial discrimination since the submission of the preceding report. The policy of multiculturalism launched in 1989 had been marked by the adoption of the National Agenda for a Multicultural Australia and of strategies to eliminate the language, cultural, racial and religious barriers that still existed in the country and to ensure the equitable distribution of resources for the benefit of the entire community.

514. Major progress in the implementation of the Convention had been made for the benefit of Aboriginals and Torres Strait Islanders. An independent parliamentary committee had just submitted recommendations suggesting drastic reforms to ensure that the strategies drawn up in favour of the Aboriginals would be effective in practice. A very broad process of reconciliation had been instituted in 1991 to meet the indigenous people's aspirations and expand possibilities of dialogue between Aboriginals and the non-Aboriginal community at all levels. The post of Aboriginal and Torres Strait Social Justice Commissioner had also been established to make recommendations on the enjoyment of human rights by Aboriginals and the implementation of educational programmes on such questions.

515. The report of the Royal Commission into Aboriginal Deaths in Custody had been favourably received by the federal, state and territory governments. Some $A 400 million had been committed over five years for the implementation of the 339 recommendations contained in the report. The specific application of the report was nevertheless difficult, since over two thirds of the recommendations related to the police, prisons and administration of justice in the states and territories, where federal legislative power was limited.

516. The Aboriginal and Torres Strait Islander Commission, which had just been set up, consisted of 35 democratically elected regional councils and had a $A 1 billion budget. It represented a very innovative approach to autonomy in Australia. Its objectives were to ensure maximum participation by Aboriginals in the formulation and implementation of policies and programmes for their benefit, to promote Aboriginal self-management and self-sufficiency and to take part in the economic, social and cultural development of the Aboriginals.

517. The decision handed down by the High Court in the Mabo case on 3 June 1992 had been significant in many regards. It related to the rights of the Meriam people to the lands of the Murray Islands in Torres Strait. The High Court had decided to recognize a form of native title to land and had rejected the historical proposition that Australia had been terra nullius at the time of colonial settlement. That decision was of concern primarily to Australian Aboriginals who had maintained a traditional lifestyle and ancestral links with the land where native title had not been extinguished. The Federal Government had adopted the Native Title Act in November 1993 to

give effect to that decision and had set up the $A 1.5 billion National Aboriginal and Torres Strait Islander Land Fund. Problems had nevertheless arisen in connection with the implementation of the Mabo decision by some states and territories, especially the Government of Western Australia, which had tried to invalidate the Supreme Court's decision.

518. The report recently submitted by the Race Discrimination Commissioner stressed that persons from non-English-speaking backgrounds continued to have economic and social problems, particularly in respect of access to employment. Many specific measures had been suggested by the Commissioner to solve those problems. A bill on racist violence and racial defamation had also been submitted, but had not yet been discussed.

519. Members of the Committee commended the State party for its regularity in fulfilling its reporting obligations and for the seriousness with which it took its obligations under the Convention. Appreciation was expressed for the quality of the report, which had been prepared in accordance with the Committee's guidelines for the preparation of State party reports, as well as for the comprehensiveness of the additional information submitted to the Committee prior to and in the course of the discussion. They expressed their appreciation for the opportunity to engage in a frank, serious and extremely constructive dialogue with a very high-level delegation. The opportunity given to the Social Justice Commissioner (Human Rights and Equal Opportunity Commission), who was independent from the Government, to provide information in reply to questions raised and comments made by members of the Committee was highly commended and considered to be an example to be followed by other reporting States.

520. Regarding the general application of the Convention in Australia, members asked for more detailed information on the way in which the concept of Aboriginal was defined with respect to the recognition of Aboriginal land rights; on the measures taken to inform individuals of their right to submit communications under article 14 of the Convention; on the measures adopted in the light of the recommendations of the Race Discrimination Commissioner; on the way in which the reconciliation procedure was applied for the benefit of non-Aboriginal communities; on the reasons why the reconciliation process was not expected to produce results until 2001; on the total number of immigrants in Australia; on the status of Christmas Island and the Cocos (Keeling) Islands; and on the Australian policy on the granting of entry visas. More generally, members asked whether the proliferation of programmes, strategies and other measures designed to combat racial discrimination, in particular against Aboriginals, might not lead to duplication and to coordination and centralization problems; and what was the exact status of the Convention in the domestic legal order, particularly at the federal level.

521. With regard to article 2, read jointly with article 4 of the Convention, members asked for clarifications regarding the implementation of the Mabo decision and of the Native Title Act; on the contradictions between the position of the federal Government and that of the states or territories in that regard; on the envisaged procedure for compensating the majority of the Aboriginal population who would not benefit from the Mabo decision, particularly Aboriginals living in urban areas; on the recognition of Aboriginal rights to natural resources and the protection of their environment; on the Government's position regarding the ratification of ILO Convention No. 169, which stipulated that indigenous peoples had the right to compensation for damage resulting from programmes for the exploration or exploitation of their lands; on the

question of mineral royalties as envisaged in the Wik case currently before the Queensland courts; and on the functions and activities of the Council for Aboriginal Reconciliation, which did not yet seem to have any clear focus.

522. Regarding article 3 of the Convention, members asked for information on the segregation in housing and education which seemed to exist in some parts of Australia, such as Toomelah and Goonawindi.

523. Members asked for clarification of Australia's reservation to article 4 (a) and in particular on the reasons for which the reservation had not been entered promptly in accordance with the terms of the reservation itself; on problems encountered in implementing article 4 of the Convention in Tasmania; on the measures taken to deal with racial violence against persons of a racial or ethnic origin different from that of the majority of Australians; on the inquiries conducted and penalties imposed following the violent action of the police against Asian students during the confrontations in June 1993; and on the conclusions of the Ombudsman following the inquiry into interracial relations in New South Wales which he had conducted at the request of the state Minister for the Maintenance of Order.

524. With regard to article 5 of the Convention, members asked for further information on the government policy to promote multiculturalism launched in 1989; on measures taken to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the difficulties encountered in that regard at state or territory level; on the participation of Aboriginals in the electoral process and, in general, in the conduct of public affairs; on measures taken with regard to such phenomena as infant mortality, disease, street violence, poverty and unemployment, to which Aboriginals were particularly exposed, especially those living in urban areas; on the number of Aboriginals in the criminal justice services, on prison staff, and in the police forces and social services; and on the recognition of Aboriginal customary law by the Australian courts. Additionally, clarification was requested of the treatment of refugees or asylum-seekers, particularly "boat people", who were detained for long periods of time in unsatisfactory conditions in camps while their applications were being processed.

525. Details were requested on the effects of the numerous education programmes envisaged to implement article 7 of the Convention.

526. In his reply, the representative of the State party stressed the key role played by the Human Rights and Equal Opportunity Commission in encouraging community awareness of the rights available under the Convention. The Convention itself was appended to the Racial Discrimination Act and thus formed part of Australia's domestic legislation. Monitoring of the many human rights initiatives was a considerable task and the potential for duplication did undoubtedly exist. There was, however, good cooperation between the key human rights agencies, which helped to reduce the latter problem. On the subject of Australia's ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, indigenous people in Australia had asked for further time to consider the matter, since some believed that the Convention did not go far enough.

527. The reconciliation process was a national initiative designed to apply both in urban areas

and in more remote parts of the country. It was intended to act as a focus for deeper changes which would inevitably take many years to complete. There was an accumulated backlog in the response to human needs in the fields of employment, housing and many other areas and long-term public awareness and public education campaigns would be required to overcome the false and stereotyped images portrayed by the education system and the media.

528. In reply to questions relating to article 3 of the Convention, the representative said that, although living conditions in Toomelah had been considerably improved, Toomelah was one of hundreds of Aboriginal communities in which living conditions needed to be further addressed.

529. With regard to articles 2 and 4 of the Convention, the representative stated that the enactment of the proposed national legislation on racial vilification would make it easier for Australia to withdraw its reservation on article 4 of the Convention, although other factors would have to be taken into consideration.

530. There was, as yet, no provision in Australian law for a right to compensation for loss of lands and it might be necessary to await further judicial pronouncements before a final decision was made in that regard. Many Aboriginal people were anxious to ensure compensation not only for lost land, but also for the social, economic and cultural deprivation of the Aboriginal people over many years. Although the Mabo case applied only to a rather small number of persons, the principles involved had subsequently been introduced into domestic law through the enactment of the Native Title Act 1993. While applicants for native title had to prove a traditional connection with their land, that connection need not necessarily be a physical one. Sizeable areas of land all over Australia had already been returned to indigenous ownership, even before any decisions of the National Native Land Tribunal. Sixteen per cent of the Australian mainland was under the ownership of indigenous people. Since indigenous land was not considered sovereign territory in Australia, the state or territory law prevailed in matters of national concern, such as environmental protection.

531. Referring to the possibility of states overriding the Mabo decision, the representative said that, given the importance of the Convention, the Racial Discrimination Act and the Native Title Act, such action was unlikely. Furthermore, the Federal Court and the High Court had the final say in questions of interpretation of common law and the Constitution. They could - and did -overturn decisions of state or territory judiciaries if they were inconsistent with Commonwealth law, the Constitution or judicial precedent.

532. In reply to questions concerning article 5 of the Convention, the representative stated that the Royal Commission into Aboriginal Deaths in Custody had been primarily directed towards state and territory governments and concerned matters of day-to-day administration in which the Commonwealth Government had limited capacity to enforce compliance, since issues relating to the police, prisons and criminal justice reform had traditionally been regarded as matters within the exclusive jurisdiction of state and territory governments.

533. There were regrettably no indigenous members of the federal Parliament and only one indigenous member of a state parliament. There was, however, evidence of significantly increased enrolment and participation in elections by indigenous people throughout Australia

and an increasing number of indigenous members of local government councils. Furthermore, there was increasing indigenous participation in trade unions and in business, supported by the national representative bodies and actively promoted as part of the reconciliation process, and a strategy has been initiated for the recruitment of indigenous people into public sector employment at state, territory and federal levels.

534. With reference to Australia's treatment of non-English-speaking people, and in particular refugees, asylum-seekers and "boat people", the representative stated that the Government's human rights policies were based on a fierce opposition to any form of discrimination. Although Australian policy regarding African immigration had been discriminatory in the past, the Government was now proud of its non-discriminatory policy on immigration. Australia's intake of refugees and displaced persons was one of the highest in the world. During 1992 and 1993, people of more than 60 nationalities had been admitted to Australia, which testified to the Government's non-discriminatory response to the refugee problem. An intense public debate was, however, in progress concerning the acceptance of "boat people", since some sectors of the population feared that they were being given preferential treatment.

Concluding observations

535. At its 1067th meeting, on 18 August 1994, the Committee adopted the following concluding
observations.

(a) Positive aspects

536. The State party is commended for its regularity in fulfilling its reporting obligations and for the seriousness with which its takes its obligations under the Convention. Appreciation is expressed for the quality of the report, which has been prepared in accordance with the Committee's guidelines for the preparation of State party reports, as well as for the comprehensiveness of the additional information submitted to the Committee prior to and in the course of the discussion.

537. Appreciation is also expressed for the opportunity to engage in a frank, serious and extremely constructive dialogue with a delegation led by the responsible minister. He was accompanied by the Social Justice Commissioner (Human Rights and Equal Opportunity Commission), himself from Australia's indigenous population and the holder of an independent post. The Commissioner was present to provide information in reply to questions raised and to mention matters on which he had his own views. Members of the Committee highly commend the composition of the delegation, describing it as an example to be followed by other reporting States.

538. Satisfaction is expressed for the numerous measures taken in Australia, since the consideration of the previous report, to improve relations between all groups and in particular the situation of Aboriginal people. The Government's efforts to establish a multicultural society in Australia, despite some opposition, are welcomed. Note is taken, in that regard, of various programmes and strategies, such as the Access and Equity Strategy, the National Agenda for a

Multicultural Australia and the Community Relations Agenda, which provide a framework designed to encourage different cultural groups to share their distinctive heritage and seek to ensure that all Australians enjoy equality of treatment and opportunity in all spheres of public life. The Council for Aboriginal Reconciliation Act 1991 is welcomed as a measure of great potential interest.

539. The broad responsibilities and powers of the Commonwealth Human Rights and Equal Opportunity Commission in the implementation of the Racial Discrimination Act of 1975 and in conducting public inquiries into human rights matters are noted with particular satisfaction. The activities of the Aboriginal and Torres Strait Islander Commission and the transfer of certain specific responsibilities to the Torres Strait Regional Authority are noted with appreciation. The noteworthy conclusions and recommendations of the Royal Commission into Aboriginal Deaths in Custody and the consequent establishment of the Aboriginal and Torres Strait Social Justice Commissioner are also welcomed.

540. The attention paid by the judiciary to the implementation of the Convention is particularly appreciated. The decisions of the High Court of Australia in Mabo v. Queensland constitute a very significant development. It is noted with satisfaction that the decision rejected the proposition that Australia was terra nullius at the time of colonial settlement and recognized the survival of native title to land where this title had not been validly extinguished. The Commonwealth Government's follow-up in its Native Title Act 1993 and the establishment of the National Aboriginal and Torres Strait Islander Land Fund are also welcomed.

541. The readiness of the Commonwealth Government to show leadership in securing a better implementation of the Convention is much appreciated. For example, it is likely to use its influence to see that police training is improved with respect to the avoidance of racial discrimination.

(b) Principal subjects of concern

542. It is noted with concern that, although the Commonwealth Government is responsible for ratifying international human rights instruments, the implementation of their provisions requires the active participation of states and territories which have almost exclusive jurisdiction over many of the matters covered by the Convention and cannot be compelled to change their laws. Programmes and strategies designed, at the federal level, to promote reconciliation and social justice and to address the problems associated with Aboriginal deaths in custody, could be jeopardized by lack of cooperation from state or territory governments. The Committee will follow with concern any relevant developments in the relations between the governments in Australia.

543. The situation of the Aboriginal and Torres Islander people remains a subject of concern, despite efforts aimed at remedying the injustices inherited from the past. Concern is expressed that Aboriginals continue to die in custody at a rate comparable to that which led to the appointment of the Royal Commission.

544. Legal proceedings for the recognition of native title and for responding to land claims have

been protracted. The necessity for claimants to prove that they have maintained their connection with the land and that their title has not been extinguished can be an exigent condition. That persons who identify as Aboriginal but whose ancestors are predominantly non-Aboriginal may not qualify as Aboriginal with respect to land rights may become a further matter of concern. Only a very small percentage of the Aboriginal population will benefit under the Native Title Act.

545. Aboriginals continue to suffer disadvantage in such areas as education, employment, housing and health services. Their participation in the conduct of public affairs is disappointing. It is, once again, noted with concern that, according to various social indicators, Aboriginals are more deeply affected by social problems such as alcoholism, drug abuse, delinquency and incarceration than any other social group in the country.

546. The situation of members of other, non-English-speaking, minorities, particularly refugees or asylum-seekers, as regards enjoyment of their rights and freedoms under article 5 of the Convention is also a matter of concern. Immigrants from the African and Asian regions seem, according to non-governmental sources, not to be adequately protected against discrimination.

(c) Suggestions and recommendations

547. The Committee recommends that Australia pursue an energetic policy of recognizing Aboriginal rights and furnishing adequate compensation for the discrimination and injustice of the past. The Commonwealth Government should undertake appropriate measures to ensure a harmonious application of the provisions of the Convention at the federal and state or territory levels. The recommendations adopted by various bodies entrusted with the protection of Aboriginal rights - the Royal Commission into Aboriginal Deaths in Custody, the Human Rights and Equal Opportunities Commission, and the Aboriginal and Torres Strait Islander Commission - should be fully implemented by all those concerned, particularly state and territory governments.

548. The Committee recommends the strengthening of measures to remedy any discrimination suffered by members of non-English-speaking minorities and Aboriginals in the fields of the administration of justice, education, employment, housing and health services and to promote the participation of all in the conduct of political affairs. Law enforcement officials should receive more effective training to ensure that in the performance of their duties they respect as well as protect human dignity and maintain and uphold the human rights of all. Similarly, the State party should continue to strengthen its education and training programmes. The Committee hopes to receive more information on these matters, particularly with respect to non-English-speaking minorities, in Australia's next periodic report.

549. The Committee recommends that the State party adopt appropriate legislation with a view to withdrawing its reservation to article 4 (a) of the Convention.

550. The Committee recommends that the report submitted by the State party to the Committee and the concluding comments of the Committee be disseminated as widely as possible in Australia in order to encourage the involvement of all sectors concerned in the elimination of all

forms of racial discrimination.

551. The Committee draws the attention of the State party to the amendment to article 8, paragraph 6, of the Convention, which was approved by the Fourteenth Meeting of States parties and by the General Assembly in its resolution 47/111, and encourages the State party to expedite its action formally to accept that amendment.

CERD A/55/18 (2000)

24 The Committee considered the tenth, eleventh and twelfth periodic reports of Australia, submitted as one document (CERD/C/335/Add.2), at its 1393rd, 1394th and 1395th meetings (CERD/C/SR.1393, 1394 and 1395), held on 21 and 22 March 2000. At its 1398th meeting (CERD/C/SR.1398), held on 24 March 2000, it adopted the following concluding observations.

1. Introduction

25. The Committee welcomes the reports submitted by the State party and the additional oral and written information provided by the delegation, while regretting the late submission of the tenth and eleventh periodic reports. Appreciation is expressed for the comprehensiveness of the report and of the oral presentation. The Committee was encouraged by the attendance of a high-ranking delegation and expresses its appreciation for the constructive responses of its members to the questions asked.

26. The Committee acknowledges that the State party has addressed some of the concerns and recommendations of the Committee's concluding observations on the ninth periodic report (A/49/18, paras. 535-551).

2. Positive aspects

27. The Committee is encouraged by the attention given by the State party to its obligations under the Convention and to the work of the Committee.

28. The Committee notes with appreciation the many measures adopted by the State party during the period under review (1992-1998) in the area of racial discrimination, including those adopted to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody. The Committee welcomes the numerous legislative measures, institutional arrangements, programmes and policies that focus on racial discrimination, as comprehensively detailed in the tenth, eleventh and twelfth reports, including the launching of a "New Agenda for Multicultural Australia" and the implementation of the "Living in Harmony" initiative.

3. Concerns and recommendations

29. The Committee is concerned over the absence from Australian law of any entrenched guarantee against racial discrimination that would override subsequent law of the Commonwealth, states and territories.

30. The Committee reiterates its recommendation that the Commonwealth Government should undertake appropriate measures to ensure the consistent application of the provisions of the Convention, in accordance with article 27 of the Vienna Convention on the Law of Treaties, at all levels of government, including states and territories, and if necessary by calling on its power to override territory laws and using its external affairs power with regard to state laws.

31. The Committee notes that, after its renewed examination in August 1999 of the provisions of the Native Title Act as amended in 1998, the devolution of power to legislate on the "future acts" regime has resulted in the drafting of state and territory legislation to establish detailed "future acts" regimes which contain provisions further reducing the protection of the rights of native title claimants that is available under Commonwealth legislation. Noting that the Commonwealth Senate on 31 August 1999 rejected one such regime, the Committee recommends that similarly close scrutiny continue to be given to any other proposed state and territory legislation to ensure that protection of the rights of indigenous peoples will not be reduced further.

32. Concern is expressed at the unsatisfactory response to decisions 2 (54) (March 1999) and 2 (55) (August 1999) of the Committee and at the continuing risk of further impairment of the rights of Australia's indigenous communities. The Committee reaffirms all aspects of its decisions 2 (54) and 2 (55) and reiterates its recommendation that the State party should ensure effective participation by indigenous communities in decisions affecting their land rights, as required under article 5 (c) of the Convention and General Recommendation XXIII of the Committee, which stresses the importance of securing the "informed consent" of indigenous peoples. The Committee recommends to the State party to provide full information on this issue in the next periodic report.

33. The Committee notes that the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund is conducting an inquiry into "Consistency of the Native Title Amendment Act 1998 with Australia's international obligations under the Convention on the Elimination of All Forms of Racial Discrimination (CERD)". It is hoped that the results will assist the State party to re-evaluate its response to decisions 2 (54) and 2 (55). The Committee requests the State party, in accordance with the provisions of article 9, paragraph 1, of the Convention, to transmit the report of the Joint Parliamentary Committee's inquiry to the Committee when it is tabled.

34. The establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC) and of the Aboriginal and Torres Strait Islander Social Justice Commissioner within the Human Rights and Equal Opportunity Commission (HREOC) were welcomed by the Committee. Concern is expressed that changes introduced and under discussion regarding the functioning of both institutions may have an adverse effect on the carrying out of their functions. The Committee recommends that the State party give careful consideration to the proposed institutional changes, so that these institutions preserve their capacity to address the full range of issues regarding the indigenous community.

35. While acknowledging the significant efforts that have taken place to achieve reconciliation, concern is expressed about the apparent loss of confidence by the indigenous community in the process of reconciliation. The Committee recommends that the State party take appropriate measures to ensure that the reconciliation process is conducted on the basis of robust engagement and effective leadership, so as to lead to meaningful reconciliation, genuinely embraced by both the indigenous population and the population at large.

36. The Committee notes the conclusions of the "National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families" and acknowledges the measures taken to facilitate family reunion and to improve counselling and family support services for the victims. Concern is expressed that the Commonwealth Government does not support a formal

national apology and that it considers inappropriate the provision of monetary compensation for those forcibly and unjustifiably separated from their families, on the grounds that such practices were sanctioned by law at the time and were intended to "assist the people whom they affected". The Committee recommends that the State party consider the need to address appropriately the extraordinary harm inflicted by these racially discriminatory practices.

37. The Committee acknowledges the adoption of the Racial Hatred Act 1995 which has introduced a civil law prohibition of offensive, insulting, humiliating or intimidating behaviour based on race. The Committee recommends that the State party continue making efforts to adopt appropriate legislation with a view to giving full effect to the provisions of, and withdrawing its reservation to, article 4 (a) of the Convention.

38. The Committee notes with grave concern that the rate of incarceration of indigenous people is disproportionately high compared with the general population. Concern is also expressed that the provision of appropriate interpretation services is not always fully guaranteed to indigenous people in the criminal process. The Committee recommends that the State party increase its efforts to seek effective measures to address socio-economic marginalization, the discriminatory approach to law enforcement and the lack of sufficient diversionary programmes.

39. The Committee expresses its concern about the minimum mandatory sentencing schemes with regard to minor property offences enacted in Western Australia, and in particular in the Northern Territory. The mandatory sentencing schemes appear to target offences that are committed disproportionately by indigenous Australians, especially juveniles, leading to a racially discriminatory impact on their rate of incarceration. The Committee seriously questions the compatibility of these laws with the State party's obligations under the Convention and recommends to the State party to review all laws and practices in this field.

40. Taking note of some recent statements from the State party in relation to asylum-seekers, the Committee recommends that the State party implement faithfully the provisions of the 1951 Convention relating to the Status of Refugees, as well as the 1967 Protocol thereto, with a view to continuing its cooperation with the United Nations High Commissioner for Refugees and in accordance with the guidelines in UNHCR's "Handbook on Refugee Determination Procedures".

41. The Committee acknowledges the efforts being made to increase spending on health, housing, employment and education programmes for indigenous Australians. Serious concern remains at the extent of the continuing discrimination faced by indigenous Australians in the enjoyment of their economic, social and cultural rights. The Committee remains seriously concerned about the extent of the dramatic inequality still experienced by an indigenous population that represents only 2.1 per cent of the total population of a highly developed industrialized State. The Committee recommends that the State party ensure, within the shortest time possible, that sufficient resources are allocated to eradicate these disparities.

42. The Committee recommends that the State party's reports be made widely available to the public from the time they are submitted and that the Committee's observations on them be similarly publicized.

43. The Committee recommends that the State party's next periodic report, due on 30 October 2000, be an updating report and that it address the points raised in the present observations.