

XI - TREATIES

Treaties - Australian treaty practice - publication of treaties - signature - consultations with the state governments - role of Parliament

On 1 December 1988 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question on notice (HR Deb 1988 Vol 164, pp 3751-2):

The Australian Treaty List, including the Cumulative Supplement, sets out all the treaties which Australia has signed or to which it has become a party, and provides reference to the printed text. Copies of the List, which is part of the Australian Treaty Series, are held in the Parliamentary Library, as well as by State and University libraries. ...

Once a treaty has entered into force for Australia in accordance with its provisions, Australia's obligations are those set out in the text of the treaty. Some treaties enter into force on signature alone; others enter into force at a specified time after signature, and others including most multilateral treaties, only enter into force after signature has been confirmed by a later step such as ratification. If Australia signs a treaty and that treaty has not yet entered into force, Australia is obliged, in accordance with Article 18 of the Vienna Convention on the Law of Treaties, to refrain from acts which would defeat the object and purpose of the treaty.

The Federal Government informs the States and the Northern Territory in all cases of treaties being negotiated and, if requested, consults with the States and the Northern Territory concerning them. Depending upon the subject matter of the treaty, the Federal Government also consults relevant interest groups. A treaty entered into by the Federal Government is not legally binding in itself in domestic law. That law, whether it be Federal, State or Territorial, should be brought into conformity with the treaty before Australia can become a party to it. The people of Australia, through their elected representatives, determine whether necessary legislation is enacted to give effect to the provision of particular treaties in Australia.

On 23 May 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer to a question on notice about Parliamentary review or oversight of international Conventions (Sen Deb 1989, Vol 133, p 2525):

The Constitutional power to enter into treaties is one that belongs to the Governor General in Council. The Commonwealth Parliament, in consequence, has no formal function to exercise by way of review or oversight of international Conventions, treaties and agreements which the Federal Government is considering signing.

Successive Australian Governments have observed the practice of bringing all treaties to the attention of Parliament. The practice has been to table treaties in both Houses. This is done at most sessions in batches (tabling took place in April and November 1988) and often individually in the case of particularly important treaties about which statements may also be made to Parliament. Where a treaty enters into force by a step subsequent to signature, every effort

is made to table the treaty before that step is taken in order to give Parliament the opportunity to express its view on the treaty. Additionally, Parliament is able to consider its attitude to many treaties, when that is necessary for other parliamentary functions, such as appropriating moneys for Commonwealth purposes or enacting legislation to give effect to a treaty. This opportunity arises because it has been the consistent practice of Australian Governments that Australia never binds itself to a treaty unless existing law, state or federal, enables effect to be given to the obligations set out in the treaty. It follows that although Parliament has no formal role in reviewing and overseeing treaty action, there exist a number of avenues through which the Parliament is informed of all treaties which the government has signed and in respect to which the Parliament may express a view on individual treaties.

Treaties – ratification – International Labour Organisation Conventions – procedures for ratification and implementation

On 4 October 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answer in part to a question without notice (HR Deb 1989, Vol 169, p 1507):

In accordance with a long-standing agreement between the Commonwealth and the States concerning ILO matters, the ratification of an ILO Convention can only proceed when agreement is obtained from all the State and Territory Governments and when law and practice in all jurisdictions are in compliance with the provisions of the Convention. The Commonwealth is consulting with the State/Territory Governments on the ratification by Australia of Convention No 169. At this stage, it would be premature to propose a timetable for the ratification of the Convention. However, in accordance with the requirements of the ILO Constitution the Australian Minister for Industrial Relations is required to table a statement in the Australian Parliament on the results of consultations with the States and Territories and action taken or proposed in regard to the Convention. This statement should be tabled within 18 months of the adoption of the Convention by the International Labour Conference.

Treaties – implementation of international agreements by Federal legislation

For a list of Acts passed by the Federal Parliament since 1983 expressly implementing specific international Conventions, treaties and agreements, see the written answer of the Minister for Foreign Affairs and Trade, Senator Gareth Evans, on 23 May 1989: Sen Deb 1989, Vol 133, pp 2515–7.

Treaties – consideration by domestic courts in the absence of implementing legislation – Refugees Convention – International Covenant on Civil and Political Rights

See under "Refugees" and "Human Rights" in Part IX – Individuals above.

Arrangements other than treaties – the "Gleneagles Agreement" on sporting links with South Africa

On 2 May 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said in part in answer to a question without notice (Sen Deb 1989, Vol 133, p 1558):

... the Government remains totally committed to our specific obligations under the Gleneagles Agreement and our strong principled commitment to not giving recognition nor support in any form to South African sporting organisations, so long as the system of apartheid continues to discriminate racially against the majority of South Africans, including in the sporting field.

On 5 May 1989 Senator Evans said further in answer to a question without notice (Sen Deb 1989, Vol 133, p 1920):

There has been a continuing distinction under the Gleneagles Agreement and its application by Australia between sporting teams and individual sportsmen coming to this country. There may be no significant moral distinction but there has certainly been a distinction in the practical administration of the policy. I think it is a policy that needs to be kept under constant review in terms of its application to both individual South African sportsmen wanting to come here and individual Australian sportsmen wanting to go to South Africa.

The Australian Government will never take a position of seeking to deny the issuing of passports or trying to curb, physically, or in any other way, access by its nationals to South Africa. But we constantly draw attention to the continuing iniquity of the apartheid system in that country and the way in which even though in some individual sports efforts have begun to be made to civilise the practical administration of those sports, nonetheless, in an environment where the treatment of blacks and whites is so inherently unequal, where the financial allocations to education, sporting facilities and health are so manifestly unequal, it is just impossible to have normal conditions in that abnormal society. That is the prevailing moral force, if you like, of the position that we, among others, have adopted.

On 8 May 1989 Senator Evans provided some written supplementary information, part of which read as follows (Sen Deb 1989, Vol 133, pp 1967–8):

The Gleneagles declaration or "Statement on Apartheid in Sport by Commonwealth Heads of Government" was drawn up on London in June 1977 for the purpose of regulating sporting contacts between Commonwealth countries and South Africa.

The Gleneagles declaration is not a formal agreement requiring ratification but a firm international political commitment to which successive Australian Governments of whatever political persuasion have scrupulously adhered.

It is up to individual Government signatories to determine what steps are practical to fulfil their basic commitments to the Gleneagles declaration which requires them to withhold any form of support for and to take every practical step to discourage contact or competition by their nationals with sporting organisations, teams or sportspeople from South Africa.

On 22 December 1989 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, provided the following written answers to questions on notice (HR Deb 1989, Vol 170, p 3671):

International obligations, whether legal or not, undertaken by Australia do not impose on individual Australian citizens an obligation of compliance unless those international obligations are given effect in Australian domestic law. The Gleneagles Agreement, which was accepted by the former Fraser Government, has not been given domestic legal effect.

Acceptance by the Australian Government of the Commonwealth Statement on Apartheid in Sport, also known as the Gleneagles Agreement, which was issued in London on 15 June 1977, did not require either signature or ratification.

Arrangements other than treaties – memoranda of understanding – statement of intent

On 1 July 1988 the Deputy Prime Minister and Attorney-General, Mr Lionel Bowen, and the New Zealand Deputy Prime Minister and Minister of Justice, Mr Geoffrey Palmer, issued a joint news release, part of which read as follows:

Mr Bowen and Mr Palmer today announced the signing of a Memorandum of Understanding between Australia and New Zealand on the harmonisation of business law.

The memorandum, signed in Darwin this morning, will have immediate effect.

The two Ministers said the signing of the memorandum was an important step forward for closer economic relations between Australia and New Zealand.

"Harmonisation of business law is a major part of the plan for our future relationship under the ANZCERTA AGREEMENT," they said.

Under the memorandum of understanding, the two Governments will establish a program for the examination of a number of areas of business law and regulatory practices.

On 1 November 1988 the Minister for Resources, Senator Cook, issued a news release, part of which read as follows:

Australia and Papua New Guinea will closely cooperate on quarantine arrangements under a Memorandum of Understanding (MOU) signed by the two Governments today at Wewak, in PNG.

The MOU was signed for Papua New Guinea by Mr John Giheno, Minister Assisting the Prime Minister, and for Australia by the Minister for Resources, Senator Peter Cook.

Speaking at a news conference at Townsville, in northern Queensland, after the signing, Senator Cook said that for many years Australia and Papua New Guinea had enjoyed close cooperation in monitoring and controlling plant and animal pests and diseases.

"However, until now, these arrangements have been informal," he said.

"For some time, both countries have believed there would be mutual benefit in establishing a more formal bilateral mechanism for considering quarantine issues of mutual concern."

Senator Cook said the MOU provided for the development of regional quarantine strategies, joint surveys and patrols, and annual consultations between quarantine officials.

"It will also provide for harmonisation of quarantine procedures to facilitate traditional movement of people in the Torres Strait, and a general exchange of information on plant and animal pests and disease occurrence, survey techniques and treatments to reduce or eliminate risks.

On 23 February 1989 the Minister for Resources, Senator Cook, issued a news release, part of which read as follows:

Australia and Indonesia have agreed to work toward cooperative quarantine arrangements under a joint statement of intent signed by the two Governments today in Jakarta.

The document was signed for Indonesia by the Indonesian Minister for Agriculture, Mr Wardoyo, and for Australia by the Minister for Resources, Senator Peter Cook.

Following the signing, Senator Cook said both countries would benefit significantly from any cooperative arrangements on quarantine.

"The two Governments can now work toward a formal Memorandum of Understanding or similar arrangement, to provide for this type of close quarantine cooperation."

Under the agreement officials of the plant and animal health and quarantine services of both countries will meet annually for the next three years to discuss matters of mutual concern. The meeting will alternate between Australia and Indonesia.

Senator Cook said matters to be considered include the exchange of information on the occurrence of pests and disease of common concern and on techniques and treatments to reduce or eliminate quarantine risks.