



FACT SHEET 7:

Australia and human rights treaties

Australia does not generally agree to be bound¹ by a human rights treaty unless it is satisfied that its domestic laws comply with the terms of the treaty. Australia has agreed to be bound by the ICCPR and the ICESCR as well as other major human rights instruments, including:

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Political Rights of Women
- International Convention on the Elimination of all forms of Racial Discrimination
- Convention on the Elimination of all forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Reduction of Statelessness
- Convention relating to the Status of Stateless Persons
- Convention Relating to the Status of Refugees
- Slavery Convention of 1926
- Supplementary Convention on Slavery
- Convention on the Rights of Persons with Disabilities

While Australia has agreed to be bound by these major international human rights treaties, they do not form part of Australia's domestic law unless the treaties have been specifically incorporated into Australian law through legislation.² Some provisions of a treaty may however already exist in national legislation. For instance, many of the provisions contained in the Convention on the Rights of People with Disabilities are mirrored in Australian law through the *Disability Discrimination Act 1992* (Cth).

This principle reflects the fact that agreeing to be bound by a treaty is the responsibility of the Executive in the exercise of its prerogative power, whereas law making is the responsibility of the parliament.

Section 51(xxix) of the Australian Constitution, the 'external affairs' power, gives the Commonwealth Parliament the power to enact legislation that implements the terms of those international agreements to which Australia is a party.³

For further information on the treaties and conventions that Australia has signed see the Department of Foreign Affairs and Trade (DFAT) Treaty Database [<http://www.dfat.gov.au/treaties/index.html>].

¹ States can agree to be bound by a treaty by ratifying it or acceding to the treaty. 'Ratification' is the process by which a signatory state to a treaty confirms that it intends to be bound by that treaty. This is usually done by the signatory state signing the treaty. 'Accession' occurs when a state, which did not ratify a treaty, formally accepts its provisions.

² *Kioa v West* (1985) 159 CLR 550.

³ *Commonwealth v Tasmania* (Tasmanian Dam Case) (1983) 158 CLR 1.