Treaty making process in Australia [1]

Under the Australian Constitution, treaty making is the responsibility of the Executive; the Parliament has no formal role in treaty making. In 1996, the Australian Government introduced a new process for treaty making. As a result, all treaty actions are now tabled in Parliament, with a National Interest Analysis, for Parliamentary consideration. There is a Joint Standing Committee on Treaties in the Commonwealth Parliament, and a Commonwealth-State Treaties Council. In August 1999 the Federal Government reported that the new process was working well. However, consultation between States and Territories on the one hand, and Commonwealth Departments and agencies on the other, was identified as needing improvement.

Hot Tip

Under the Westminster system, the Executive, made up of the Ministers of government, is one of the three ‘arms’ of government. The other two are the Parliament, and the Courts or the Judiciary. The distinction between the three arms of government, namely the Executive, Parliament and the Judiciary, is known as the ‘separation of powers’ and is recognised in the Federal Constitution.

Tabling treaty actions

All treaties and related actions, including amendments to and withdrawal from treaties, are tabled in Federal Parliament at least 15 sitting days before the Government takes binding action (with special procedures in cases of exceptional urgency). In most cases this means that treaties are tabled for consideration after signature but before the final step, such as ratification, which would bind Australia under international law.

National Interest Analyses

Each treaty is tabled with a National Interest Analysis [2] giving reasons why Australia should become a party to the treaty. Where relevant, this contains a discussion of economic, environmental, social and cultural effects.

Typically the National Interest Analysis sets out:

- proposed binding treaty action
- reasons Australia would take to the proposed treaty action
- obligations Australia would assume under the treaty
- manner of implementation
- costs
- outcomes of community consultations.

Treaties Council and Committees

The Joint Standing Committee on Treaties [3] (JSCOT) is a parliamentary committee which considers tabled treaties and National Interest Analyses, and other questions relating to international instruments that are referred to it by either House of Parliament or a Minister. While the Treaties Council is little used, JSCOT is active and conducts inquiries, including public hearings, and reports to Parliament. The Treaties Council was established as an adjunct to the Council of Australian Governments (COAG) to consider, at a ministerial level, treaties of relevance to the States and Territories. Similar national consultation takes place at a departmental level through the Commonwealth-State-Territory Standing Committee on Treaties. The Committee has been considerably more active than the Council, meeting twice yearly to identify and monitor treaties of significance for States and
Australian Treaties Library

The Australian Treaties Library [4] was established as part of the 1996 treaty-making reforms. It disseminates treaty information to the public through the internet.

Australia’s treaty tabling arrangements

1. Treaty text
2. Cabinet or Ministerial Agreement
3. Federal Executive Council Approval
4. Signature
5. Consultations continue on final treaty action, including any necessary legislation or changes to practice, with State and Territory Governments, peak industry bodies and NGOs.
6. Cabinet or Ministerial Agreement
7. National Interest Analysis (NIA) prepared. States and Territories consulted in the development of NIAs in which they have a major interest and views reflected.
8. Relevant number of copies of a treaty text and NIA submitted to Treaties Secretariat for tabling in Parliament.
9. Table treaty in Parliament at least 15 sitting days prior to Australia taking binding action. Joint Parliamentary Committee on Treaties may consider treaty.
10. Final treaty action through exchange of notes, ratification, accession etc. following Federal Executive Council Approval where appropriate.


Links