Implementing treaties in Australian law [1]

The rights protected under the International Covenant on Civil and Political Rights (ICCPR) are, in almost every country in the world, implemented by a domestic guarantee of rights, often called a ‘bill of rights’. Many such guarantees of rights, most notably in the constitution of South Africa, cover not only civil and political rights, but also the economic and social rights recognised in the International Covenant on Economic, Social and Cultural Rights (ICESCR). At the Federal level, Australia remains the only democracy in the world not to have passed a law directly implementing the ICCPR.

In 2009, the Federal Government initiated a National Human Rights Consultation. Australia has implemented some of its human rights treaty commitments, and international human rights law has a direct impact on our daily lives. For example, the Commonwealth Racial Discrimination Act 1975 implements the Convention on the Elimination of All Forms of Racial Discrimination into Australian law, and the Commonwealth Sex Discrimination Act 1984 implements some (but by no means all) of the rights for women contained in the Convention on the Elimination of All Forms of Discrimination Against Women.

Australia has been much slower in implementing other international human rights obligations. For example, there is no national legislation that implements our obligations under the Convention on the Rights of the Child. Australia has announced that it considers the rights protected by the ICESCR to be adequately protected under existing Australian law, a claim disputed by some commentators. Australia has not effectively implemented the rights protected under the ICCPR. In 1986 the Australian Human Rights Commission was established in response to Australia having ratified the ICCPR in 1980.

Although the Commission has powers to investigate some of Australia’s human rights obligations, including alleged violations of the ICCPR, it has no powers of penalty or enforcement. Nor does it have powers to investigate breaches of economic, social or cultural rights. This is insufficient to give effect to the requirement of the ICCPR (and other human rights treaties) that a ratifying state ensure that everyone has access to the rights set out in the treaty, together with effective remedies for breaches.

Hot Tip

The Australian Human Rights Commission was previously named the Human Rights and Equal Opportunity Commission (HREOC). The legal name and the name of the legislation which established the Commission were changed in August 2009.

Federal government position on human rights

The issue of a Bill of Rights of some sort has been avoided as a sensitive political issue in Australia. A direct response to any call for such a guarantee has been typically answered with a claim that the rights protected by the ICCPR and ICESCR are adequately protected by the common law, existing legislation, and the democratic nature of government. Many commentators disagree, and Australia is almost alone in the world in maintaining this view. Recent Federal Governments have differed in the level of their commitment to multilateralism and to international complaints mechanisms.