

2.1.7 Australia's federal government

Australia has a federal structure. This means that it has two or more levels of government operating simultaneously. In fact, Australia has three tiers of government – Federal, State and local. Each of these levels is responsible for matters that fall within their own jurisdiction and capacity to act as dictated by Australia's Constitution and the passage of legislation.

The implementation of international agreements and laws is a Federal matter. This is stated in Section 51 of the Constitution which gives the Federal government the power over external ('international') affairs. Moreover, the High Court of Australia can be persuaded by treaty law when making decisions and can ensure consistency with treaty law. Indeed the Australian Human Rights Commission states:

The High Court of Australia and the Federal Court of Australia have often referred to the international body of law to assist in their interpretation of international rights and obligations as they apply to Australia.

http://www.hreoc.gov.au/human_rights/children_detention_report/report/chap04.htm; accessed on 24.08.2010

The Federal government represents Australia at the UN. When a treaty is signed by Australian government representatives they do this on behalf of the nation as a whole. However, the Federal government will still need to pass domestic legislation consistent with the treaty it has signed for it to have binding effect on the actions of the government. Thus a process of ratification needs to take place.

Australia has an excellent record generally of instigating, signing and supporting UN treaties. At one stage it was considered a world leader in the ratification and adoption of global law. However, this changed markedly in the period 1996–2007. During this time Australia refused to consistently uphold some of its existing international obligations (as in the case of the *Convention on the Rights of the Child* which it has breached and continues to breach by forcing children into detention centres). Furthermore, the Federal government at that time refused to ratify or support the following Treaties and Declarations:

- *Kyoto Protocol on Climate Change*
- *Convention Against Torture and Other Inhumane Treatments*
- *UN Declaration on the Rights of Indigenous People* – Australia was one of only 4 nations to refuse to sign this agreement in Sept 2007 – 143 other nations voted in favour of it. The Rudd government later ratified this agreement.

"In April 2004 Australia and the USA were the only two countries that did not support a motion by the UN human rights commission calling for measures to ensure the world's population receives adequate food"

Kel Dummett, Letters to the Editor, The Age, 28.04.04

The external and internal support of international law

There are two levels at which compliance with international laws, norms, standards and expectations are relevant to Australia: external and internal.

External compliance

At an external level Australia can be an active participant on UN Committees and it can advocate for, and support, UN Resolutions. It can also sign without reservation UN instruments thus demonstrating a commitment to UN processes and agreements. Australia can also uphold world order agreements (that is, bilateral and multilateral treaties). Moreover, Australia as a UN member is expected to donate to the funding of the UN. It can demonstrate its belief in UN processes and procedures by making timely payments to the organisation.

As a part of Australia's commitment to international law and legal processes it is expected that the nation will uphold international standards and expectations. One such expectation is that as an economically advanced nation Australia will assist other nations through its commitment to foreign aid. The UN has established targets under its Millennium Development Goals (MDGs) that nations will contribute a particular proportion of national income to foreign aid and development. At present, Australia falls well short of its goals in this regard.

Internal compliance

Australia can also demonstrate a commitment to international law through shaping its laws consistent with international standards and expectations. The Federal government under s51(29) of the Constitution has the power over 'External affairs'. In practical terms this means that compliance with international treaties (conventions, covenants and protocols) falls within the jurisdiction of Federal government.

When drafting national legislation the Commonwealth government can refer to international treaty law and can draft legislation which is consistent with the principles espoused in the international instrument. Thus for example, Australia's ratification of the *Convention for the Elimination of Discrimination Against Women (CEDAW)* was used to help draft the *Sex Discrimination Act 1984*. However, all sovereign states can choose the level to which they wish to comply with international law. In the example of CEDAW which is specific to women, Australia's *Sex Discrimination Act* makes specific reference to women only in parts and is gender neutral in other parts. In this way a nation can adapt a law to suit its purposes.

All signatories to international laws which then ratify such laws (that is, pass them into domestic legislation) have a compliance duty imposed on them. That is they must report to the UN on its level of commitment to, and compliance with a range of criteria, consistent with the upholding of the international law. In this way Australia must account for its progress towards the realisation of international standards.

In Australia the UNAA or United Nations Association of Australia is active in assessing and commenting on Australia's commitment to and compliance with international laws and standards.

The federal structure in Australia

Due to Australia's federal structure there can sometimes be jurisdictional disagreement with the States about who is to uphold international laws and to what extent each level of government is responsible. This issue of responsibility was raised in 2004 when Australia had not ratified the Kyoto protocols in regards to climate change. NSW wanted ratification, whereas the Commonwealth did not. This issue arises from time to time, as can be seen with the issue of children's rights. Matters to do with children fall within the jurisdiction of the States and Territories whereas the UN CROC has been signed by the Federal government. To get around this issue the States have given their power over children to the Commonwealth in a process known as 'cross-vesting'. Under cross-vesting of powers the States reserve the right to take back their power at any time they wish.

Area of interest	Rating	Explanation
UN General Assembly	B	Lacks the idealism of many members of the Australian public
Human Rights	C	Failed to show any desire for improvement.
Millennium Development Goals (MDGs)	C	Has done the minimum and used the term MDG when it suits
Climate Change	D	Fallen far short of the expectations of the people of Australia the business community, and the international community.
Peacekeeping and Peacebuilding	B	A strong supporter of UN peacekeeping and peacebuilding but tainted by its relationship with the US-led intervention in Iraq in defiance of the United Nations.
Disarmament	C+	Could make a stronger contribution to disarmament by ceasing to rely on the protection of a nuclear weapons umbrella.
Global movement of people	D	Continued to violate fundamental human rights in the detention and treatment of asylum seekers/unauthorised arrivals.
Status of Women	B-	Has taken a number of steps to address gender inequity, but further effort is needed.
Sexual and Reproductive Health	B	Could be performing much better in its global engagement towards population health initiatives.
Youth	B+	Has done well in the areas of youth employment and education, but more effort needed to improve education, employment prospects and housing situation for Indigenous youth.

Table 3 Source: 2007 Report Card on the Australian Government's performance in the United Nations; <http://www.unaag.org.au/>; accessed on 24.08.2010

Since 2007 Australia's compliance with its international obligations has improved. The Kyoto Protocol has been ratified and the UN Declaration on the Rights of Indigenous People has been signed. However, Australia still has a number of human rights issues which are of concern to human rights activists such as Amnesty International. General concerns are that Australia does not have an entrenched Bill of Rights and that Australia's commitment to foreign aid is about two-fifths of the Millennium Development Goals (MDGs) target of 0.7% of Gross National Income (GNI). Amnesty International also has specific concerns about Australia which include:

- The treatment of asylum seekers and the treatment of Indigenous Australians
- Counter-terrorism legislation
- Women's equality, same-sex equality and abortion laws

Review Questions – Australia's federal government

1. Define the term 'federal structure' with respect to Australia's legal structure.
2. Outline why the federal government has the responsibility to represent Australia at the UN.
3. State how Australia can demonstrate a commitment to the UN and international legal processes.
4. Distinguish between external and internal support of the UN that can be shown by Australia.
5. Under which aspect of the Constitution can the Commonwealth government use international treaties to shape domestic legislation?
6. What requirement is imposed on nations that ratify international agreements?
7. How can Australia's federal structure hinder compliance with world order agreements?
8. Describe Australia's record and commitment to upholding its international obligations.
9. How has Australia's commitment to, and record, with respect to international agreements changed since 2007?
10. Discuss and research areas where Australia's international human rights record could improve.