

# COMPILATION OF CONSTITUTIONAL AND LEGISLATIVE PROVISIONS ON TREATY PRACTICE OF THE COMMONWEALTH OF AUSTRALIA<sup>1</sup>

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<sup>1</sup> We are grateful for the kind assistance of David Mason, Executive Director, Treaties Secretariat of the Department of Foreign Affairs and Trade of the Government of Australia, and his staff, in compiling this information.



## IMPORTANT NOTES

This document forms part of the “**Compilation of Constitutional and Legislative Provisions on Treaty Practice of Selected States and International Organisations**” (**Compilation of Provisions on Treaty Practice**) which has been published as an online resource by the British Institute of International and Comparative Law (the Institute) and the Centre for International Law, National University of Singapore (CIL). The full Compilation is available at [www.biicl.org](http://www.biicl.org) and [www.cil.nus.edu.sg](http://www.cil.nus.edu.sg)

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This document was last amended in December 2012.

## 1. Commonwealth of Australia Constitution Act 1900

[Extracts of relevant provisions]

### Section 1:

The legislative power of the Commonwealth shall be vested in a Federal Parliament, which shall consist of the Queen, a Senate, and a House of Representatives, and which is hereinafter called The Parliament, or The Parliament of the Commonwealth.

...

### Section 51:

The Parliament shall, subject to this Constitution, have power to make laws for the peace, order, and good government of the Commonwealth with respect to:

...

(xxix) external affairs;

...

### Section 61:

1. The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

...

### Section 75:

In all matters:

(i) arising under any treaty...

the High Court shall have original jurisdiction.

...

**Notes:**

- The full text of Australia's Constitution can be accessed on the website of the Parliament of Australia at:  
[http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Constitution](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution)
- The pdf format is available at:  
[http://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/~/\\_media/05%20About%20Parliament/52%20Sen/523%20PPP/constitution%20pdf.ashx](http://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/~/_media/05%20About%20Parliament/52%20Sen/523%20PPP/constitution%20pdf.ashx)
- There are no statutory provisions concerning treaty practice.

## 2. Other Documentation

### **A Cabinet Handbook, Seventh Edition, March 2012 (Australian Government, Department of the Prime Minister and Cabinet)**

In the Section headed “Issues for the Cabinet”, paragraphs 45-48, see in particular **paragraph 46** which reads:

46. The following is an indication of the kind of issues that would normally require consideration by the Cabinet (including by reference to the relevant Cabinet committee):

...

(g) the most significant international business, including international treaties and agreements;

...

#### **Note:**

The full text of the Cabinet Handbook can be accessed on the website of the Department of the Prime Minister and Cabinet of the Australian Government at: [http://www.dpmc.gov.au/guidelines/docs/cabinet\\_handbook.pdf](http://www.dpmc.gov.au/guidelines/docs/cabinet_handbook.pdf)

### **B “Signed, Sealed and Delivered – Treaties and Treaty-making: Officials’ handbook”, produced by the Treaties Secretariat of the Department of Foreign Affairs and Trade, Canberra.**

This is a manual issued for internal government use, containing instructions to officials on such matters as how government work on treaties is organized, mandate to negotiate, negotiation and finalisation of the text, Executive Council approval, signature, scrutiny by Parliament, entry into force, and what to do following entry into force. It is updated annually, most recently in July 2012. It is not available online.

### **C The Australia International Treaty Making Information Kit**

This education-information kit has been put together by the Department of Foreign Affairs and Trade in the interests of improving understanding of Australia's participation in the treaty process. It is available on the internet in the Australian Treaties Library of the Australasian Legal Information Institute at:  
<http://www.austlii.edu.au/au/other/dfat/reports/infokit.html>

It should be noted that this kit was last updated in 2000, so some of the materials may not reflect current practice in all details but remain of historical interest with regard to the major reforms of 1996-1999.

### **3. Official online sources of national treaty status information**

#### **A The Australian Treaties Database**

The Australian Treaties Database (ATD) is an online resource for researching treaties to which Australia is a signatory, or where Australia has taken other treaty action. It may be accessed on the website of the Department of Foreign Affairs and Trade of the Australian Government at: <http://dfat.gov.au/treaties/>

#### **B The Australian Treaties Library**

The [Australian Treaties Library](#) disseminates treaty information to the public in a freely accessible form through the Internet. It is a fully searchable, hypertext-linked resource that includes treaty texts ([Australian Treaty Series](#)), indexes, status lists, and explanatory material. It was developed and is maintained by the Australasian Legal Information Institute with funding and material provided by the Australian Department of Foreign Affairs & Trade.

It may be accessed on the website of the Australasian Legal Information Institute at: <http://www.austlii.edu.au/au/other/dfat/>

#### **C JSCOT**

The Joint Standing Committee on Treaties (JSCOT) of the Parliament of Australia publishes information about its business relating to treaties. It may be accessed on the website of the Parliament of Australia at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/House\\_of\\_Representatives\\_Committees?url=jsct/index.htm](http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/index.htm)