

LIBERTY VICTORIA

PRESS STATEMENT

HUMAN RIGHTS IGNORED AGAIN: THE SENATE SHOULD REJECT THE ADMINISTRATIVE DECISIONS (EFFECT OF INTERNATIONAL INSTRUMENTS) BILL

The Senate is about to debate the Administrative Decisions (Effect of International Instruments) Bill. The Government should withdraw the Bill while there is still time.

This Bill is wrong in principle. Its passage would expose as mere window-dressing Australia's proclaimed commitment to human rights and the observance of international obligations.

The international human rights treaties which Australia signs and ratifies provide an important vehicle for the protection of the rights of Australians. When Australia takes that step, it is undertaking to the world, and to its own citizens, that it will seek to promote the rights and freedoms embodied in the treaty.

Occasionally, a treaty is incorporated directly into domestic legislation – as occurred, for example, with the *Racial Discrimination Act* 1975. But, in most cases, what really matters is to ensure that decision-making by Government departments and agencies has proper regard to the terms of a treaty, whenever it is relevant.

Decisions made by Government officials have far-reaching effects on the lives of many Australians. One need only think of decisions relating to health, education, social security and immigration.

As the High Court in *Minister for Immigration and Ethnic Affairs v. Teoh* (1995) 183 CLR 273 held that –

- (a) administrators should take into account Australia's international human rights obligations where relevant to the decision at hand;
- (b) Australians have a legitimate expectation that such decision-making will be carried out in accordance with those human rights principles.

The concept of "legitimate expectation" was well-known to administrative law before the decision in *Teoh's* case. Importantly, it does not require a decision-maker to reach a particular decision.

What it means is that, where Australia has undertaken international human rights obligations, Australians can reasonably expect that the Government will have regard to the terms of those obligations in the conduct of its own affairs. The *Teoh* decision should be left alone. To interfere with it, as this Bill aims to do, would be a fundamental breach of faith with the Australian community.

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