

A. Information concerning the practice of States in relation to the provisional application of treaties

1. Australia

Statement made in the Sixth Committee, Sixty-seventh session (2012), 23rd meeting, 6 November 2012:

In Australia, treaties are subject to a two-step domestic process before Australia formally consents to be bound at international law. The first step is to obtain Executive approval prior to signature of the treaty, and the second step involves submitting the treaty for parliamentary scrutiny prior to ratification and its entry into force for Australia. As provisional application of a treaty means that all or part of an agreement would become legally-binding prior to ratification, it does not sit comfortably with the second step of Australia's treaty-making process, whereby a treaty must undergo parliamentary review before its provisions can enter into force. Generally, Australia does not take action to become legally bound to a treaty until any domestic laws necessary to implement the treaty obligations have been passed. Any new Australian legislation to implement a treaty must be in force on or before the date that a treaty enters into force for Australia.

There may be circumstances where there is a strong policy reason to implement a particular agreement as early as possible. In such situations, the Australian Government may—instead of provisional application—exchange a political, non-legally binding undertaking with its treaty partner to apply provisions in the treaty to cover the period until the ratification process has been completed.

Statement made in the Sixth Committee, Sixty-eighth session (2013), 24th meeting, 4 November 2013:¹

In Australia, for example, there is a two-step domestic process before Australia formally consents to be bound at international law. Accordingly, Australia's practice is not to provisionally apply treaties.

Statement made in the Sixth Committee, Sixty-ninth session (2014), 26th meeting, 3 November 2014:²

Individual States decide whether to provisionally apply treaties in light of the purpose, scope and content of the specific treaty, as well as domestic legal and political considerations. For example, Australia has adopted a dualist approach to the implementation of treaties under which treaties have no effect in Australian domestic law until incorporated formally by legislation. Accordingly, Australia's general practice is not to provisionally apply treaties—but there are exceptions, for example bilateral air services agreements.

¹ Full text available at: https://www.un.org/en/ga/sixth/68/pdfs/statements/ilc/australia_3.pdf.

² Full text available at: https://www.un.org/en/ga/sixth/69/pdfs/statements/ilc/australia_3.pdf.