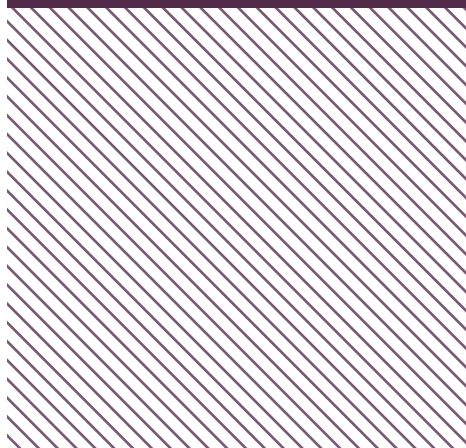
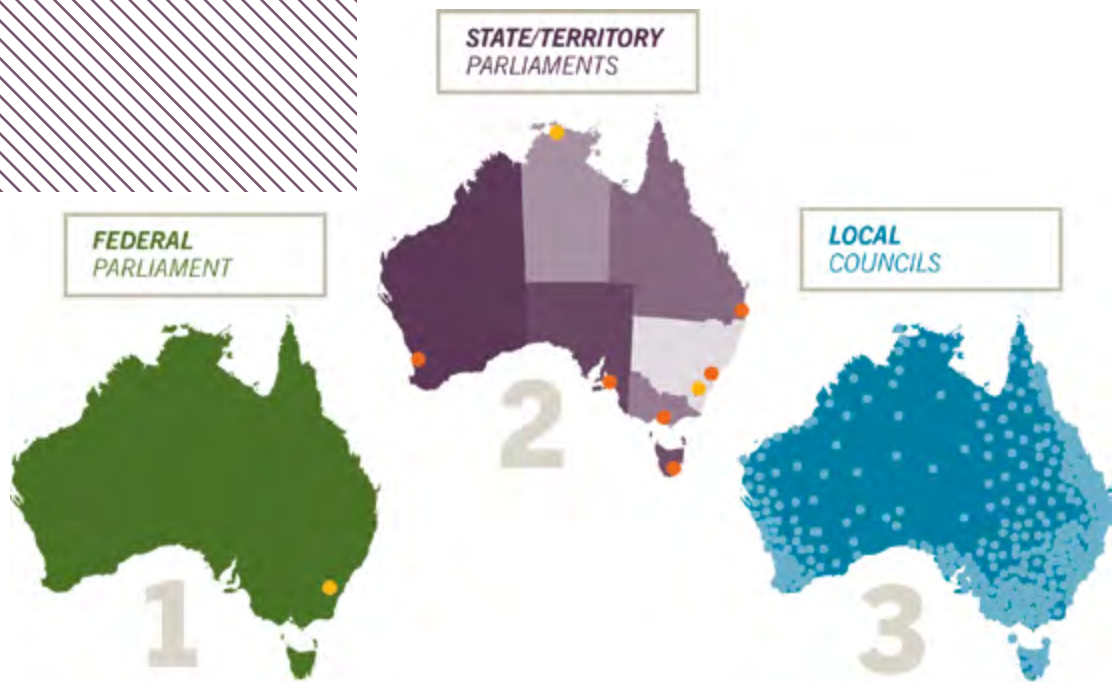


Governing Australia: three levels of law-making



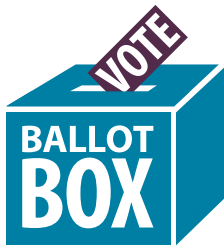
Australia has three levels of law-making —sometimes referred to as three levels of government—that work together to provide Australians with the services they need



The three levels are:

- **federal Parliament**—legislates, or makes laws, for the whole of Australia
- six **state** and two mainland **territory parliaments**—make laws for their state or territory
- over 560 **local councils**—make local laws, called by-laws, for their region or district.

Each level of government has its own responsibilities, although in some cases these responsibilities overlap.



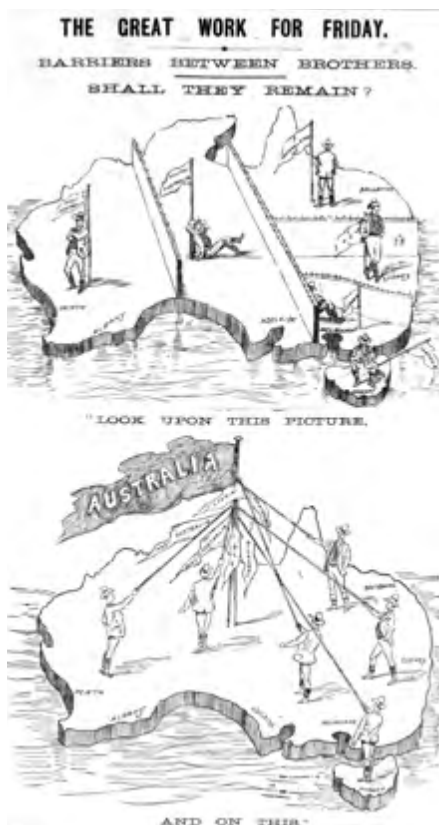
Australians aged 18 years and over vote to elect representatives to federal, state/territory parliaments and to local councils to make decisions on their behalf. This means Australians have someone to represent them at each level of government.



PARLIAMENT



In Australia the term ‘parliament’ refers to an assembly of elected representatives, which has one or two houses, and which makes laws for the country or state/territory. Most parliaments have a head of state—the Queen, who is represented by the Governor-General or state governor.



A sketch from Melbourne newspaper, *The Argus*, urges the colonies to unite, 1898

History

The three level system of Australian Government was an outcome of federation in 1901, when the six British colonies—New South Wales, Western Australia, Queensland, Victoria, South Australia and Tasmania—united to form the Commonwealth of Australia. Up until the 1850s each colony was run by a non-elected governor appointed by the British Parliament.

By 1860 all the colonies, apart from Western Australia, had been granted partial self-government by Britain (Western Australia became self-governing in 1890). Each had its own written constitution, parliament and laws, although the British Parliament retained the power to make laws for the colonies and could over-rule laws passed by the colonial parliaments. By the end of the 19th century, many colonists felt a national government was needed to deal with issues such as defence, immigration and trade.

For federation to happen, it was necessary to find a way to unite the colonies as a nation with a central or national government, while allowing the colonial parliaments to maintain their authority. The Australian Constitution, which sets out the legal framework by which Australia is governed, resolved this issue by giving Australia a federal system of government. This means power is shared between the federal government and state governments.

Under the Constitution the states kept their own parliaments and most of their existing powers but the federal Parliament was given responsibility for areas that affected the whole nation. State parliaments in turn gave councils the task of looking after the particular needs of their local communities.

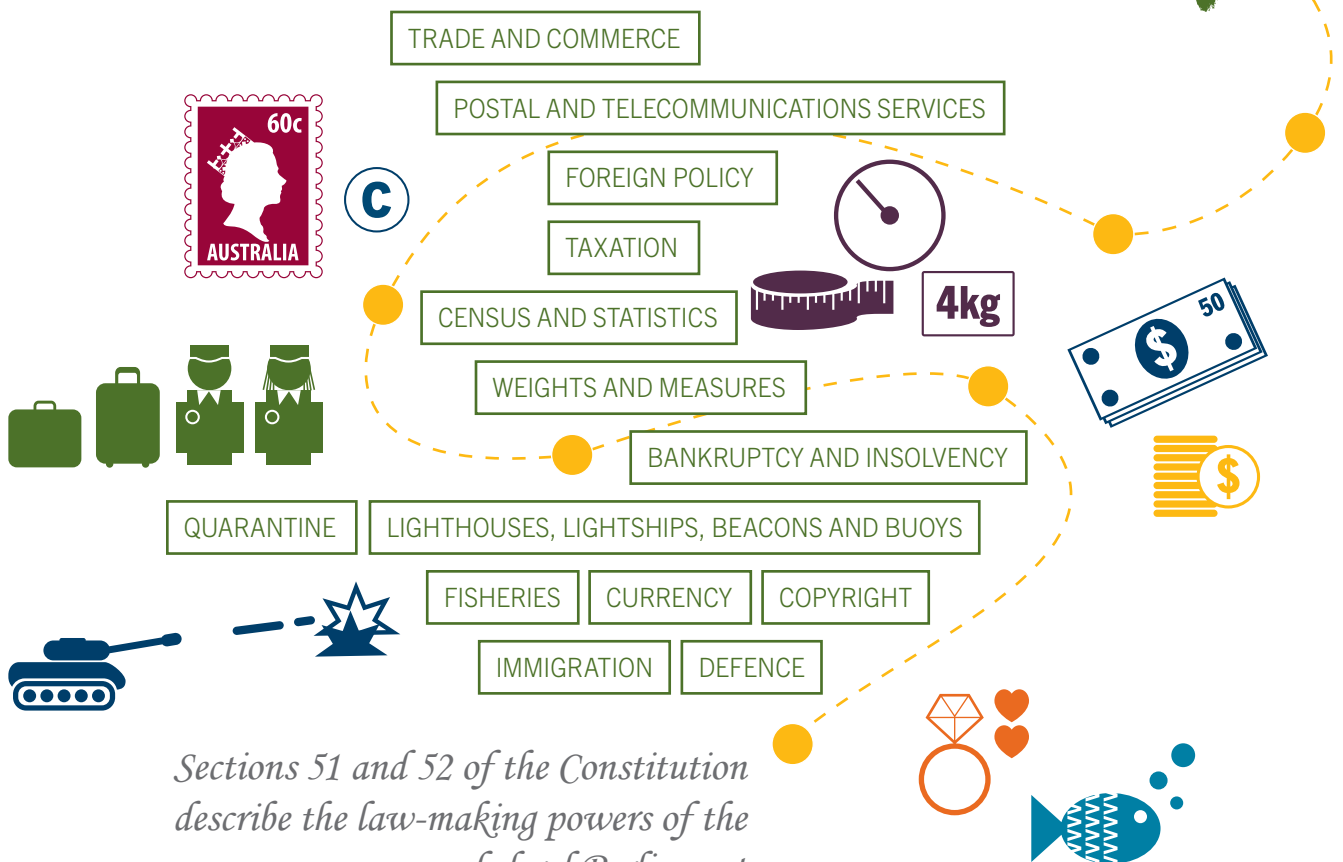
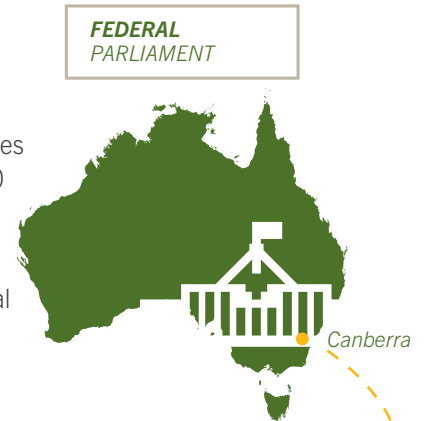


Making laws

Federal Parliament

The Constitution established a Commonwealth, or federal Parliament, which is bicameral. This means it consists of two houses: the Senate and the House of Representatives. Laws can only be passed or changed with the approval of both houses and the Royal Assent of the Governor-General. The 226 members of Parliament—150 in the House of Representatives and 76 in the Senate—are responsible for making federal laws.

Sections 51 and 52 of the Constitution describe the law-making powers of the federal Parliament. For example section 51 lists 40 areas over which the federal Parliament has legislative (law-making) power. These include:



Sections 51 and 52 of the Constitution describe the law-making powers of the federal Parliament



Under section 51 of the Constitution, state parliaments can refer matters to the federal Parliament. That is, they can ask the federal Parliament to make laws about an issue that is otherwise a state responsibility. Any federal law then made about the issue only applies in the state or states who referred the matter to federal Parliament or who decide to adopt the law.

Section 52 of the Constitution stops state parliaments from making laws

in some areas, including defence and communication. This means the federal Parliament has exclusive power to make laws in these areas. States are also barred from charging customs duties, which guarantees free trade within Australia. The creation of a single Australian market was a key reason for federation—before 1901 each colony taxed goods imported from the other colonies, which made trade difficult and was considered bad for their economies.

State and Territory Parliaments

Australia has six state parliaments. It also has two territory parliaments known as Legislative Assemblies. These parliaments are located in Australia's eight capital cities:

LOCATION OF STATE/TERRITORY PARLIAMENTS



Each state, apart from Queensland, has a parliament that consists of two houses. In 1922 Queensland Parliament agreed to abolish its upper house, the Legislative Council, which was made up of non-elected members appointed by the Queensland governor. Queensland Parliament kept the Legislative Assembly, making it unicameral (single-house).

The Northern Territory and the Australian Capital Territory parliaments are also unicameral – both have one house called the Legislative Assembly. The Australian Capital Territory is unique in Australia because its parliament combines the functions of local and state government.

Section 122 of the Constitution gave federal Parliament the power to make laws for the territories. Until they were granted self-government, the Northern Territory and Australian Capital Territory were administered or managed by the federal government. Federal Parliament gave the territories self-government by passing the *Northern Territory (Self-Government) Act 1978* and the *Australian Capital Territory (Self-Government) Act 1988*

OTHER TERRITORIES

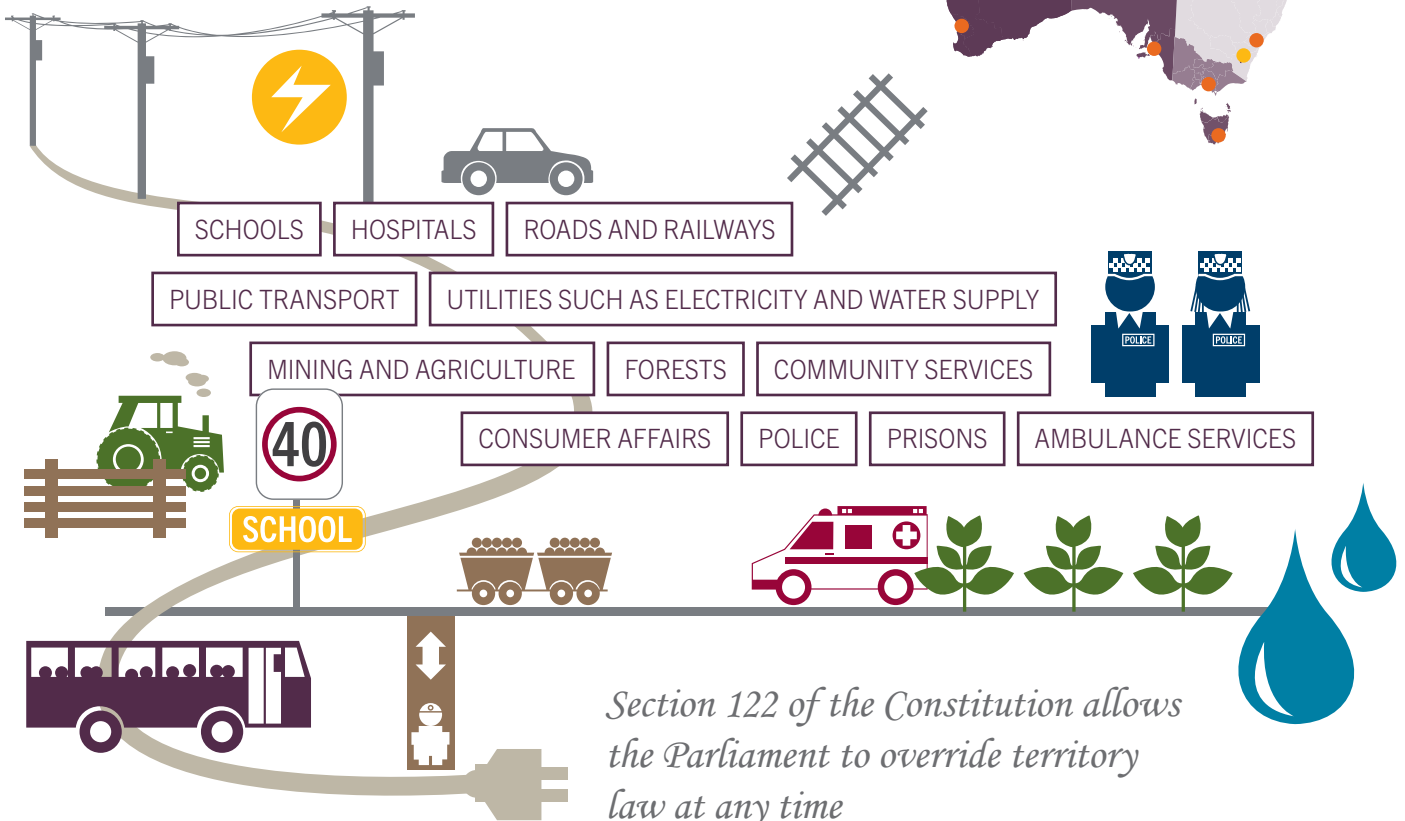
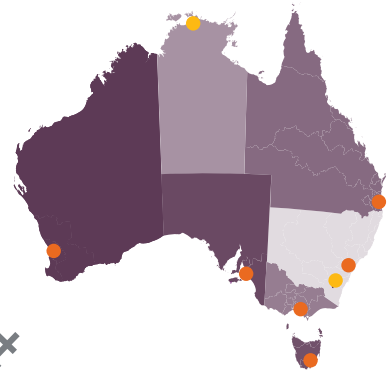
There are eight Australian territories in addition to the Northern Territory and Australian Capital Territory. The following territories are governed according to Commonwealth law, usually by an appointed Administrator:

- Ashmore and Cartier Islands
- Australian Antarctic Territory
- Christmas Island
- Cocos (Keeling) Islands
- Coral Sea Islands
- Jervis Bay Territory
- Territory of Heard Island and McDonald Islands.

Norfolk Island was established as a self-governing territory by the Norfolk Island Act 1979. The Norfolk Island Legislative Assembly has the power to make laws for the peace, order and good government of the Island.

**STATE/TERRITORY
PARLIAMENTS**

State and territory parliaments make laws that are enforced within their state or territory. By defining federal powers, the Australian Constitution reserved or left most other law-making powers to the states. As a rule, if it is not listed in sections 51 and 52 of the Constitution, it is an area of state responsibility. State laws relate to matters that are primarily of state interest such as:



Section 122 of the Constitution allows the Parliament to override territory law at any time

1997

In 1997 federal Parliament passed a law to overturn the Northern Territory's *Rights of the Terminally Ill Act 1995*, which made euthanasia legal in the territory. The territory law, which took effect in 1996, allowed terminally ill patients to decide when to die. After a special conscience vote, both houses of federal Parliament passed the *Euthanasia Laws Act 1997*. The House of Representatives voted 88 to 35 in favour of the bill, while in the Senate it was passed by a vote of 38 to 33. As a result of this law, the self-government acts of the territories were amended to prevent the territory parliaments making laws about euthanasia.

On some matters the federal Parliament and the state parliaments may make laws about the same things, for example, roads and health. However, section 109 of the Australian Constitution states that if the federal Parliament and a state parliament pass conflicting laws on the same subject, then the federal law overrides the state law, or the part of the state law that is inconsistent with it.

Section 122 of the Constitution allows the Parliament to override a territory law at any time. The federal Parliament has only used its power under section 122 on a few occasions and only in cases where the territory law has created much debate or controversy within the Australian community.

Up until 2011 the self-government Acts covering the Northern Territory and the Australian Capital Territory gave federal ministers the right to veto or change territory laws without referring the matter to federal Parliament. This veto power was used by Prime Minister John Howard in 2006 to disallow the Australian Capital Territory's civil union laws. Federal Parliament has now amended the self-government Acts to remove this veto power.

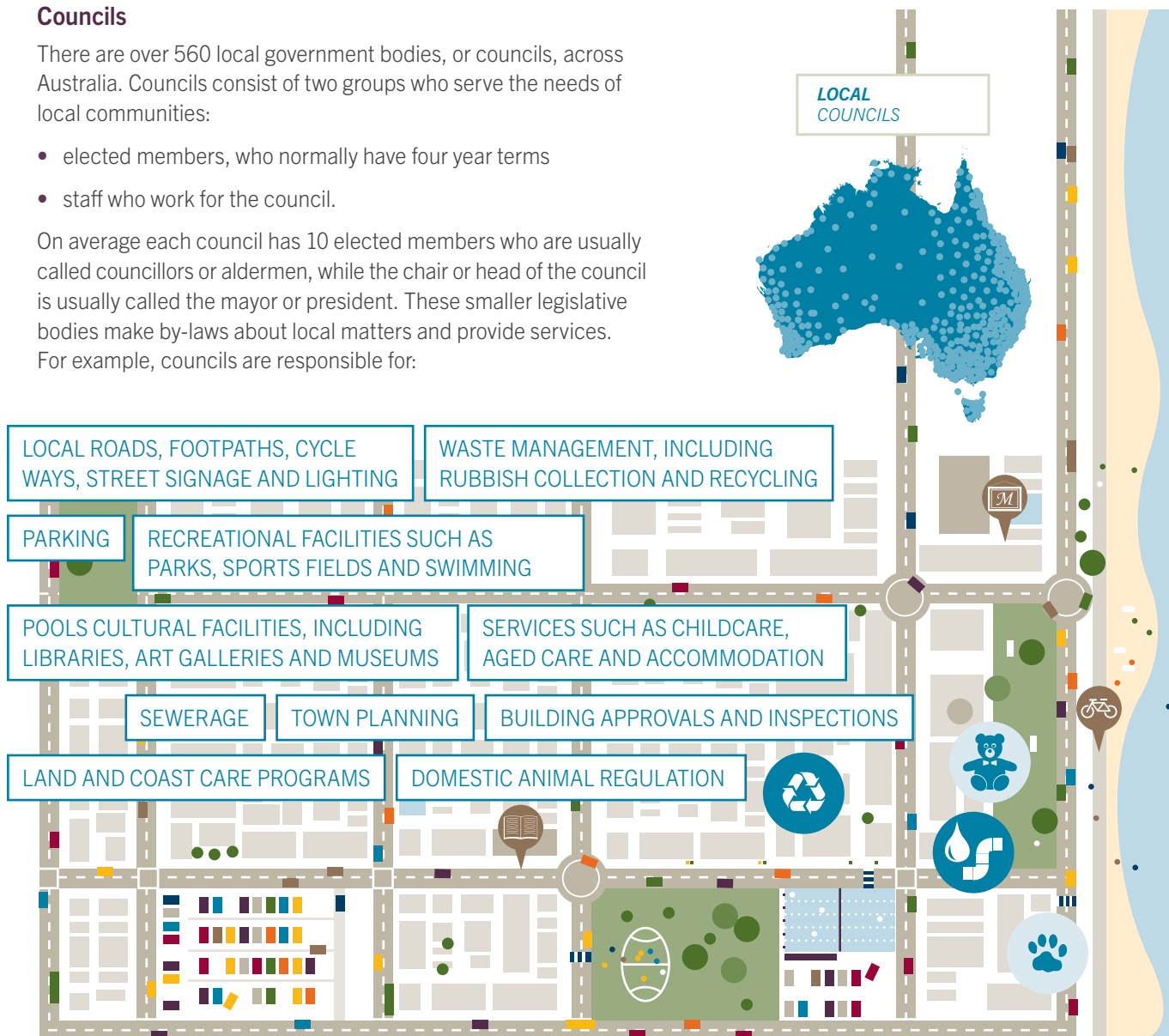
Councils

There are over 560 local government bodies, or councils, across Australia. Councils consist of two groups who serve the needs of local communities:

- elected members, who normally have four year terms
- staff who work for the council.

On average each council has 10 elected members who are usually called councillors or aldermen, while the chair or head of the council is usually called the mayor or president. These smaller legislative bodies make by-laws about local matters and provide services.

For example, councils are responsible for:



One of the main tasks of local government is to regulate or manage services and activities. For example, councils are responsible for traffic lights, and dog and cat management. These tasks would be difficult for a state government to manage because they are local issues.

Councils can deliver services adapted to the needs of the community they serve. For instance, the needs of residents in inner-city Sydney will be different to those of people living in rural Queensland. By providing these services and facilities, councils make sure local communities work well from day to day.

From the 1840s colonial parliaments began to hand over responsibility for local issues to local councils. The first council was established in Adelaide in 1840, followed in 1842 by the City of Sydney and Town of Melbourne councils. From the 1850s onwards, the number of elected councils grew rapidly.

Today, local authorities include city councils in metropolitan and regional urban centres, and shire councils which serve rural areas. On average each council looks after about 28 400 people; however, the size varies. For example, Brisbane City Council is responsible for a population of nearly one million, while Jerilderie Shire in New South Wales has a population of less than 2000 people.

Local councils are not mentioned in the Australian Constitution, although each state has a local government Act (law) that provides the rules for the creation and operation of councils.

While these Acts vary from state to state, in general they cover how councils are elected and their power to make and enforce local laws, known as by-laws. A by-law is a form of delegated legislation because the state government gives, or delegates, to councils the authority to make laws on specific matters. As councils derive their powers from state parliaments, council by-laws may be overruled by state laws.

FEDERALISM

Many geographically large countries, including Australia, Canada, the United States, Germany, Mexico and India, are federations. Each has three levels of governance, which allows decisions to be made by the most appropriate level.

For example, a council is best placed to decide whether its local community needs new cycle paths; a state government can identify and make decisions about policing and public transport needs; the federal government is in the best position to coordinate the defence of Australia or to negotiate trade agreements with other countries on behalf of Australian exporters.

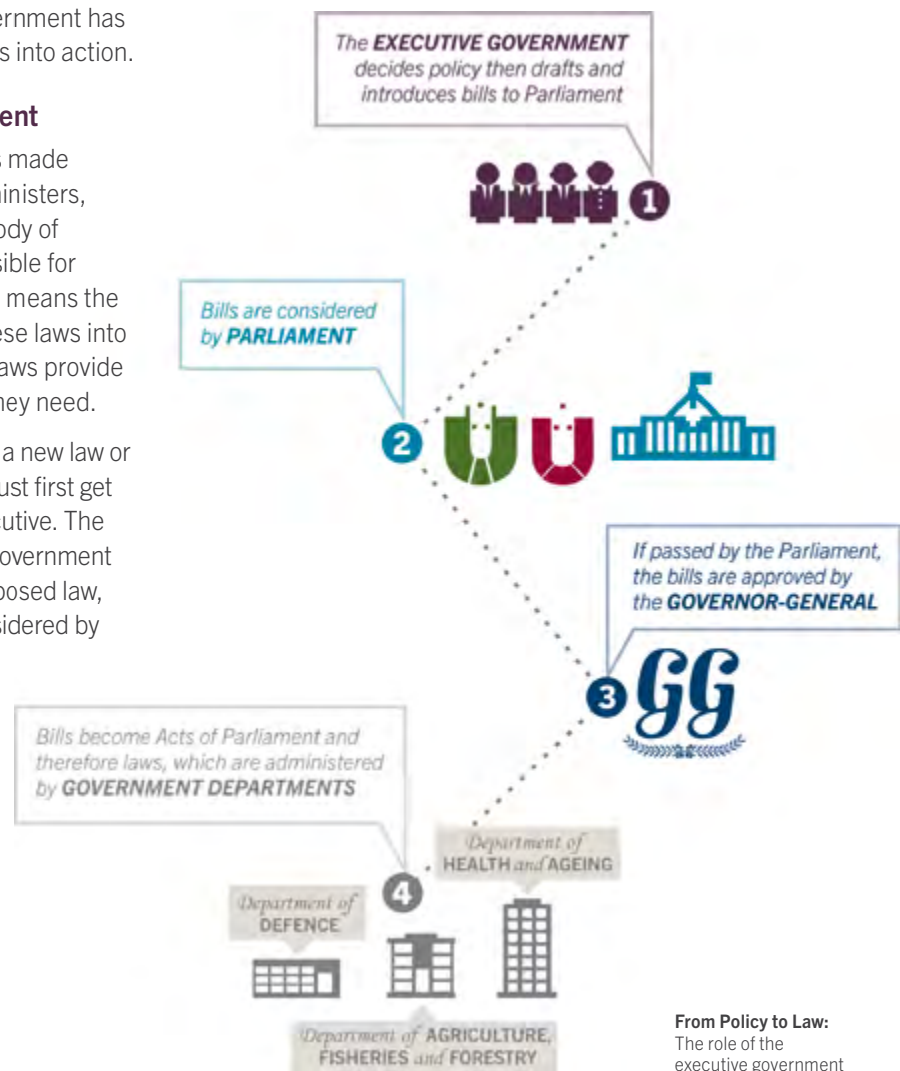
Putting laws into action

Each of the three levels of government has its own executive that puts laws into action.

Federal executive government

The federal executive, which is made up of the Prime Minister and ministers, is the main decision-making body of the government and is responsible for implementing federal law. This means the executive government puts these laws into action. It also makes sure the laws provide Australians with the services they need.

If a minister needs to introduce a new law or change an existing one, they must first get the approval of the federal executive. The minister then works with their government department to prepare the proposed law, known as a bill, before it is considered by the Parliament.





Each minister is given a portfolio or area of responsibility, and is in charge of a department. For example the Minister for Immigration and Citizenship is in charge of the Department of Immigration and Citizenship. This department provides services related to:

- visiting, studying and working in Australia
- permanent residency and migration to Australia
- Australian citizenship
- managing Australia's borders.

The Minister for Immigration is responsible for seeing that immigration laws are operating effectively across the country.

The executive government needs money to put laws into action. It raises money by collecting taxes on incomes and company profits, and through other charges such as fuel excise and customs duties.

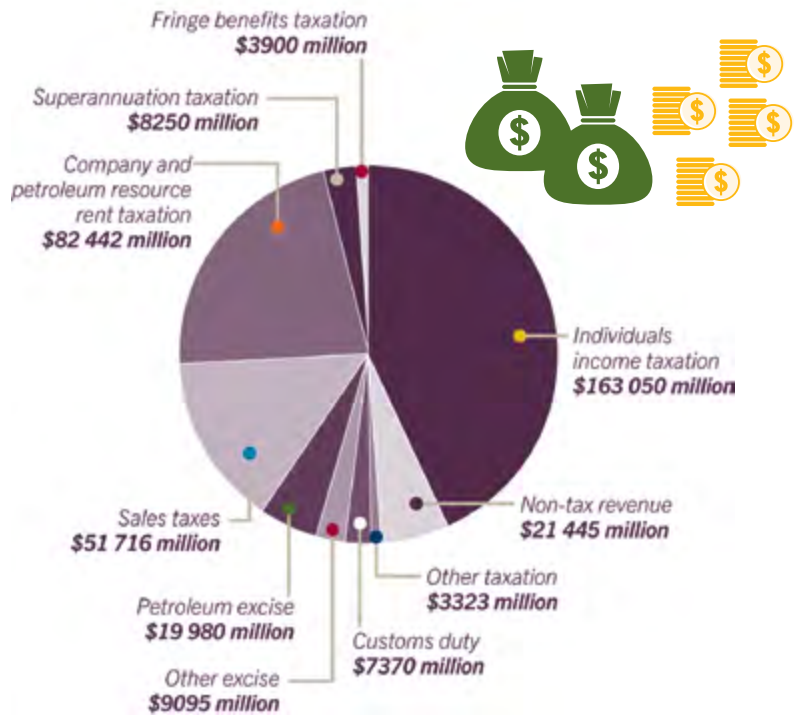
Once a year the Treasurer delivers the Budget to Parliament, which explains how the government will raise and spend this money, including the specific amount of money given to each department. The government must gain approval for its Budget from Parliament. It does this by asking Parliament to pass a series of bills called Appropriation Bills.

Ministers are responsible for managing the proportion of the Budget that has been given to their department. They use this money to administer the laws and programs that fall within their portfolio. The executive government also gives money (revenue) collected through the tax on goods and services (GST) to the states and territories to help fund their provision of services.

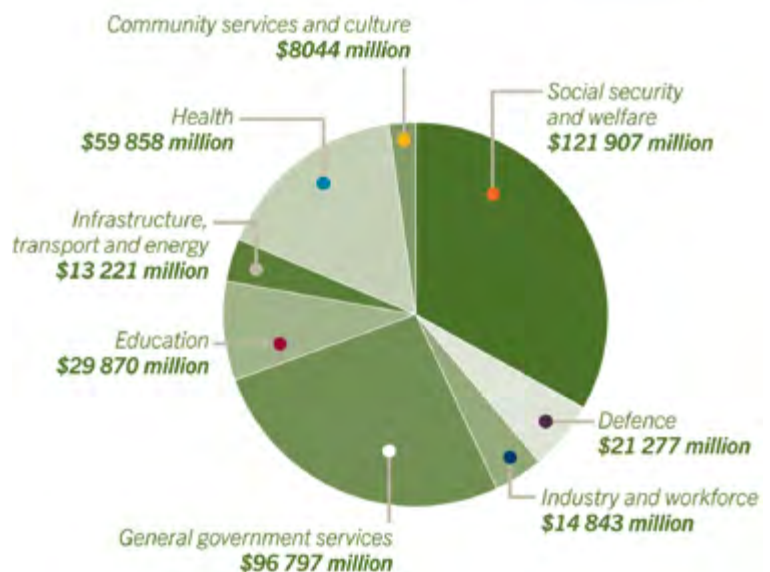
The charts on this page show where the federal government gets its money from and what it is spent on

FEDERAL GOVERNMENT TAXATION AND SPENDING EXAMPLES

WHERE THE MONEY COMES FROM



HOW TAXPAYERS' MONEY IS SPENT



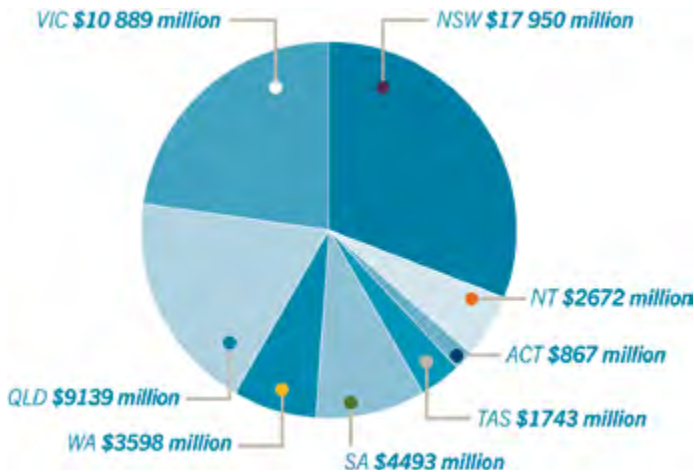
State and territory executives

States and territories also have executive governments; there are six state and two territory executive governments. State executive government is made up of a premier and state ministers. Territory executive government is made up of a chief minister and territory ministers. These ministers are elected members of the state or territory parliament, and come from the party or coalition of parties that forms government in the lower house. State and territory executives decide on policy and new laws, including how to put state or territory laws into action.

State and territory executive governments get about half their money, including their share of the goods and services tax (GST), from the federal executive government. They also generate revenue from taxes and charges such as:

- stamp duty (a tax on legal documents)
- payroll tax (a tax on the total amount of salaries paid by an employer)
- motor vehicle registration
- land tax (a tax paid by certain land owners on the unimproved value of their property, including holiday homes, investment properties and vacant land)
- gambling licenses.

STATE SHARES OF GST REVENUE EXAMPLE



The states and territories spend this revenue to administer, or manage, laws and to provide goods and services to the people of their state or territory. State and territory ministers, like federal ministers, are responsible for managing the budget given to their department.

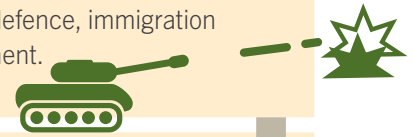
The local executive

Elected councillors decide on policy and make by-laws for their community at council meetings. These decisions are then administered, put in place, by the chief executive officer and other non-elected employees of the council.

Local governments receive part of their income in grants from federal and state/territory executive governments. Councils also raise their own revenue through local taxes such as rates (tax on the value of property), sewerage and water charges, dog licences, and user fees for sporting facilities and libraries.

FEDERAL

The federal government raises money to run the country by collecting taxes on incomes, goods and services, and company profits and spends it on national matters: for example, trade, defence, immigration and the environment.



STATE/TERRITORY

State/territory governments also raise money from taxes but receive more than half their money from the federal government and spend it on state/territory matters: for example, schools, housing and hospitals, roads and railways, police and ambulance services.



LOCAL

Local councils collect taxes (rates) from all local property owners and receive grants from federal and state/territory governments and spend this on local matters: for example, town planning, rubbish collection, water and sewerage, local roads and pet control.



Radio Licence Case 1935

Until 1974 the federal government charged households a fee or listener's licence for each radio set they owned. The fees were used to finance radio stations. In 1934 Dulcie Williams from Surry Hills in Sydney refused to pay the listener's licence on the grounds broadcasting is not mentioned in the Constitution. In doing so she challenged the federal Parliament's right to make laws about broadcasting.

The case went to the High Court, who found in favour of the government based on section 51 (v) of the Constitution. This section gives federal Parliament responsibility for 'postal, telegraphic, telephonic and other like services'. The Court decided broadcasting could be defined as being like a telegraphic or telephonic service because it involved sending communications over a distance by electronic means.

The High Court's interpretation of section 51 (v) means that today the federal Parliament can make laws about all forms of communication, including television and the internet. For example, it has passed laws to regulate the use of the internet, tackle cyber crime and invest in infrastructure such as the national broadband network.



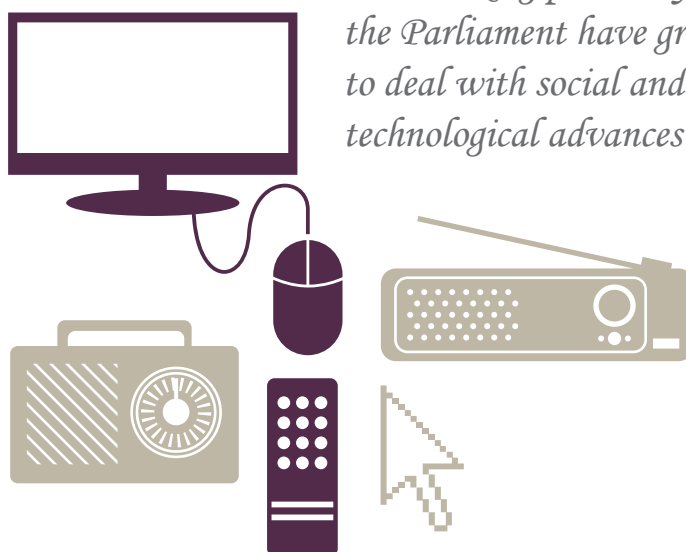
Changes in the federal and state relationship

Since Federation some rulings made by the High Court have strengthened the law-making powers of the federal Parliament. Established under section 71 of the Australian Constitution, the High Court can resolve disagreements between the federal and state governments over their law-making powers. If a law is contested (challenged), it is up to the High Court to determine whether the Constitution gives the relevant parliament the power to make this law. A law judged by the High Court to be unconstitutional is then invalid (over-ruled).

The states' reliance on federal government funding to pay for activities such as schools and hospitals has also shifted the federal-state balance. Federal funding grants make up about half of the states' total revenue. Under section 96 of the Constitution, the federal Parliament can 'grant financial assistance to any State on such terms and conditions as it thinks fit'. This allows the federal government to give 'tied' grants to state governments, directing the state government on how to spend the money. The federal government can then influence the way things are done in areas such as education, health, housing and urban development, which are primarily state responsibilities.

The law-making powers of the federal Parliament have also grown to deal with the huge social and technological advances that have occurred since federation. As Australian society has changed so too have the issues facing federal Parliament. For instance, the drafters of the Constitution could not have foreseen the digital revolution or how central this would become to our society, impacting the way we live, work and communicate. In 1901 there were only 33 000 telephones in Australia and no radio, television, computers or the internet. Today the federal Parliament makes laws about all of these services. It is able to do this under section 51 (v) of the Constitution, which gives Parliament responsibility for 'postal, telegraphic, telephonic and other like services'.

Law-making powers of the Parliament have grown to deal with social and technological advances



Since Federation some rulings made by the High Court have strengthened the law-making powers of the federal Parliament



The High Court interprets the Constitution and existing laws

Cooperation

As law and its administration become more complicated, members of the federal, state and local executives are required to work together in order to solve problems.

In 1992 the federal government established the Council of Australian Governments (COAG), which includes the Prime Minister, state premiers, chief ministers and the president of the Australian Local Government Association, who meet twice a year to discuss intergovernmental matters. In 2008 the federal government set up the Australian Council for Local Government, so it could work directly with local government as well.

Ministers from the various levels of government also work together on matters of common concern. For example, the Australian Health Ministers' Advisory Council meets regularly to negotiate a coordinated national approach to health policy.

As a result of intergovernmental discussions, uniform national laws have been made to tackle issues such as road transport, food standards and consumer rights. By introducing uniform national laws, the three levels of government can operate together with a greater level of efficiency – an evolution of the Australian system of government that is likely to continue into the future.

Uniform Tax Case 1942

Before World War II both federal and state governments collected income tax. In 1942, in order to run the war effort, the federal government became the sole collector of income tax. It did this by passing laws which raised the federal tax rate and gave some of the proceeds back to the states on the condition they drop their income tax. States receive this money in the form of funding grants. Technically a state could still collect its own income tax but this would mean its people would be taxed twice and the state would forfeit its funding grants.

Four states—Western Australia, Victoria, South Australia and Queensland—challenged the legislation. The High Court ruled it was valid on the grounds that section 51 (ii) of the Constitution gives the federal Parliament power to make laws relating to taxation, even though in practice the legislation removed a state power. It also ruled that under section 96 of the Constitution, the federal government could attach conditions to funding grants, and therefore it was legal to only give compensation to states that stopped collecting income tax.

Intended as a wartime measure, the arrangement has remained in place ever since. As a result the states are now more dependent on the federal government for revenue.



National Archives of Australia: AG135, K16/2/83/4
Photo credit: Tasmanian Wilderness Society

Protesters at Franklin Dam site 1982

Tasmanian Dam Case 1983

In 1978 the state-owned Tasmanian Hydro-Electric Commission announced plans to dam the Franklin River and flood a large wilderness area in south-west Tasmania. Four years later the area was declared a World Heritage site under the World Heritage Convention, to which the federal government is a signatory (which means that Australia has agreed to the convention).

The federal Parliament then passed laws to stop clearing and excavation within the newly listed Tasmanian Wilderness World Heritage area. The Tasmanian government challenged the legislation in the High Court, arguing the federal Parliament did not have the power to stop the construction of the dam.

In 1983 the High Court ruled that, under its external affairs power, the federal Parliament could make laws relating to international treaties which Australia had signed. The external affairs power, listed in section 51 (xxix) of the Constitution, allows the federal Parliament to enter into international treaties and agreements on behalf of Australia.

Although the federal Parliament has no law-making powers over Tasmania's rivers, dams or environment, the court decided the federal legislation was valid because it allowed the government to meet its commitments under an international treaty (the World Heritage Convention).

When the Constitution was written treaties mainly related to peace and trade but today they also deal with matters that are defined as state responsibilities, for example human rights, environmental protection and discrimination. As a result of the High Court ruling, the federal government can now make laws in these areas in order to honour treaty agreements.

More information

PEO resources

Videos

www.peo.gov.au/multimedia/videos.html

Fact Sheet Series

www.peo.gov.au/learning/fact-sheets.html

Closer Look Series

www.peo.gov.au/learning/closer-look.html

Pocket Constitution

www.peo.gov.au/resources/pocket-constitution.html

Other resources

The Australian Constitution

www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Constitution

Senate Briefs

www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/senate_briefs

House of Representatives Infosheets

www.aph.gov.au/About_Parliament/House_of_Representatives/Powers_practice_and_procedure/00_-_Infosheets

The Commonwealth Budget

www.treasury.gov.au/Policy-Topics/BudgetingAndExpenditure

Local government and the Commonwealth: an evolving relationship

www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp1011/11RP10

Australia, State, Territory and Local governments

www.gov.au

Parliament of New South Wales

www.parliament.nsw.gov.au

Parliament of Victoria

www.parliament.vic.gov.au

Queensland Parliament

www.parliament.qld.gov.au

Parliament of Western Australia

www.parliament.wa.gov.au

Parliament of South Australian

www.parliament.sa.gov.au

Parliament of Tasmania

www.parliament.tas.gov.au

Australian Capital Territory Legislative Assembly

www.parliament.act.gov.au

Northern Territory Legislative Assembly

www.nt.gov.au

