

How Government Works. Australian Style

A 'Landscape Atlas' of the structural elements of the ECD system in Australia – A rapid compilation

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February 2023



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Annex 1 How Government Works



Australian Style

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Australia's Federal Structure

Australia is a federation of six states which, together with two self-governing territories, each have their own constitutions, parliaments, governments and laws.

There are a lot of great resources that explain how government works 'Australian style' including the unique features of our Federation – see for example, the [Parliamentary Education Office website](#).

The following are short explainers that help in understanding the information presented in this atlas – particularly in relation to the split between Commonwealth and State/Territory responsibilities for funding/delivery of programs and services and in terms of system-specific administration and accountability.

The levels of government

Australia has three levels of government that work together to deliver governance across Australia.

The Australian Constitution, which sets out the legal framework by which Australia is governed, creates a federal system of government, which means power is shared between the federal government and state governments.

The three levels of government are:

- **Federal Parliament** — the national or central government which is usually called the **Federal Government, Commonwealth Government or Australian Government**. It is a federal parliamentary constitutional monarchy. It is made up of three branches: the executive (the Prime Minister, the Ministers, and government departments), the legislative (the Parliament of Australia), and the judicial (the courts).
- **6 state and 2 mainland territory parliaments** — States and territories also have parliaments (legislative) and executive and judicial branches. There are 6 state and 2 territory executive governments. State executive governments are made up of a Premier and state ministers. Territory executive governments are 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.
- **Local government** — the Australian Constitution does not include local councils. While the structure, powers and responsibilities of the Australian and state governments were established during federation, local government was not identified as a Commonwealth responsibility. It is State and Northern Territory responsibility, with over 500 local councils across Australia (DITRDCA, 2022c).

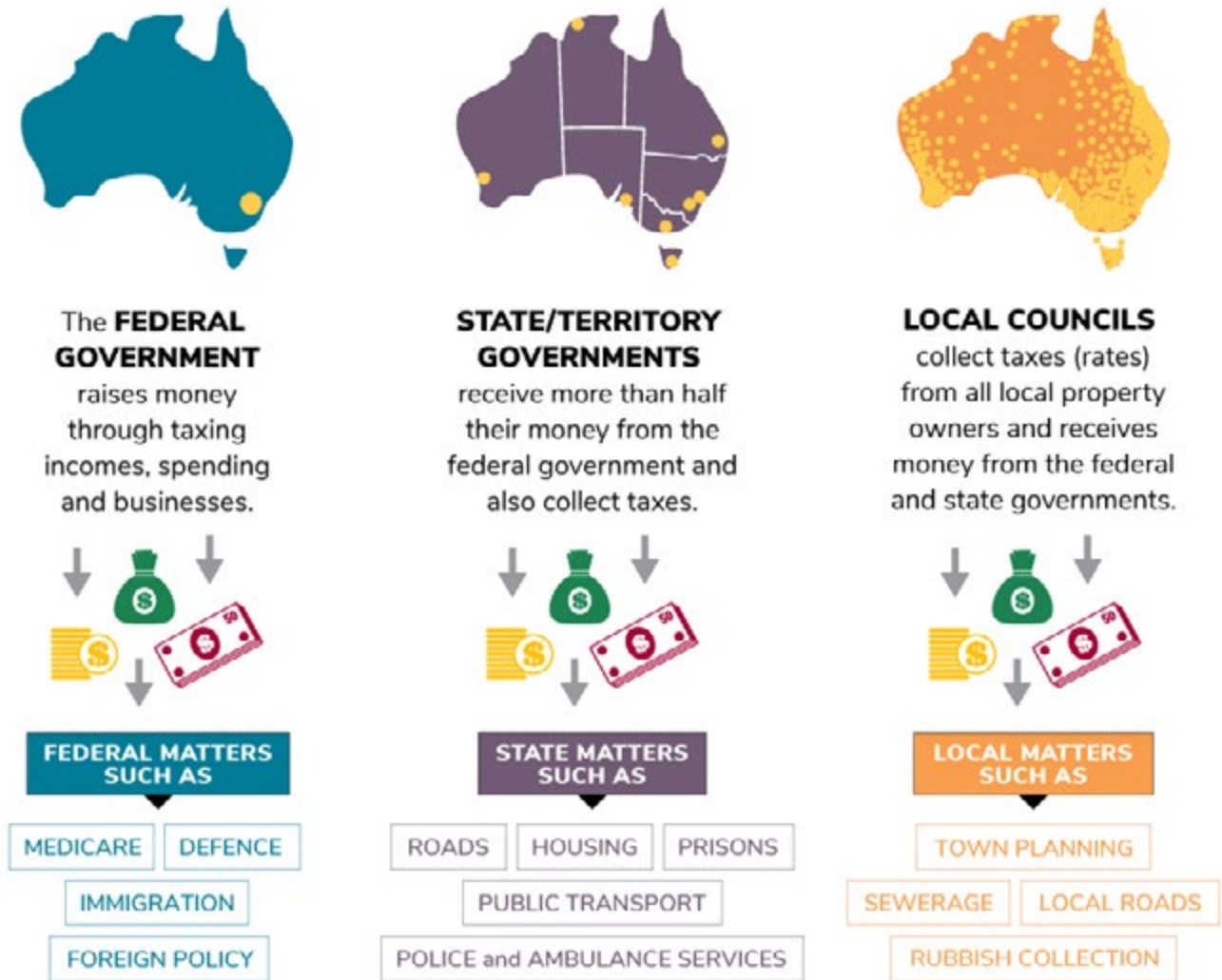
The division of responsibilities

How the federal and state parliaments work together is sometimes referred to as the division of powers. Each level of government has its own responsibilities, and in some cases these responsibilities are shared.

In terms of the division of federal and state responsibilities, a very simple characterisation could be:

- **Australian Government** — Under the Constitution, the federal Parliament has law making and decision-making power for 39 specific areas, things that affect the whole nation. The federal executive – the Prime Minister and ministers – is the main decision-making body of the Australian Government and is responsible for putting federal laws into action. It also makes sure 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 bill – proposed law – before it is considered by the Parliament. The Federal government collects the majority of taxes, and therefore holds the most money and has a large role in funding the States. It also sets national policies and frameworks that guide implementation by the States.
- **State Government** — State parliaments have power for all other matters, make laws for their state or territory, and have given local councils the task of looking after the particular needs of their local communities. The States receive Federal funding and deliver infrastructure, programs and services – depending on State Government priorities. Additional funding will be directed to State priorities at their discretion.
- **Local Government** — make local laws (by-laws) for their region or district. Local government is funded through State governments (with funding originally sourced from the Federal Government) and are charged with delivering on local and state government priorities.

Figure 1: Three levels of government: governing Australia - Source: (PEO, 2022)



<https://peo.gov.au/understand-our-parliament/how-parliament-works/three-levels-of-government/three-levels-of-government-governing-australia/>

Because the federal Parliament and the state parliaments can make laws in the same areas, sometimes these laws conflict. Section 109 of the 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.

For more information about how Australia's Federation and structures visit the [Parliamentary Education Office website](#).

For all Commonwealth legislation visit the [The Federal Register of Legislation](#) (the Legislation Register). It is the authorised whole-

of-government website for Commonwealth legislation and related documents. It contains the full text and details of the lifecycle of individual laws and the relationships between them. The Legislation Register is managed by the Office of Parliamentary Counsel in accordance with the Legislation Act 2003. It includes: Acts; Legislative instruments; Notifiable instruments; Bills and Gazettes.

The Federal/State split means there are significant divisions in roles and responsibilities that can complicate attempts at greater national coherence and consistency. The complexity of arrangements also reinforces silos and can create unintended consequences.



Collaborations across government

Commonwealth and state and territory ministers often work collaboratively on issues specific to their portfolio areas through intergovernmental meetings. Examples include National Cabinet and Ministerial Councils.

National Cabinet

National Cabinet is a forum for the Prime Minister, Premiers and Chief Ministers to meet and work collaboratively. National Cabinet has replaced the previous Council of Australian Governments (COAG).

See: <https://federation.gov.au/>

National Cabinet is chaired by the Prime Minister. The Commonwealth and state and territory governments individually have flexibility to determine the best way to achieve any agreed outcomes made by National Cabinet in their jurisdiction.

A representative of Local Government is invited to meet with National Cabinet once each year.

Ministerial Councils

Ministerial Councils are established on an ongoing and regular basis, which provide Ministers with a formal channel to resolve key priorities. Ministerial Councils include:

- Agriculture
- Attorney's General
- Community Services
- Council on Federal Financial Relations
- Data and Digital
- Disability Reform
- Education
- Emergency Management
- Energy and Climate Change
- Environment
- Health
- Housing and Homelessness
- Infrastructure and Transport
- Joint Council on Closing the Gap
- Skills and Workforce
- Trade and Investment
- Veterans' Affairs
- Water and Murray Darling Basin
- Women and Women's Safety.

Accountability mechanisms

There are a range of political, legal and bureaucratic accountability mechanisms that are built into government driven systems.

Examples of government accountability include:

- **Ministerial Responsibility for their Department**
- **Government departments being accountable to Parliament – as representatives of the people**
- **Representative democracy – where we vote for the government – to exercise the will of the people**
- **Accountability through Senate Estimates processes**
- **Government departments annual reporting on data, expenditure, activity, etc.**

There are also a range of functions to aid in accountability including:

- **Ombudsman**
- **Commissioners**
- **Auditors General**

At the level of service provision, accountability for action by and on behalf of government is underpinned by:

- **legal accountability**
- **legislation (laws made by Parliament)**
- **judicial review – e.g. Administrative Appeals Tribunals**
- **common law (decisions made by Courts)**
- **contractual accountability**
- **sector specific regulations and accreditation processes**
- **professional registration bodies**

While there are impressive lists of accountability mechanisms available, accountability for quality, accessibility, efficiency and impact is located a long way from the child or family as the service user. In systems where government is the primary customer or funder of outsourced services, direct accountability to the service user (families and children) can be missing where meeting the needs of the funder holds more sway than meeting the needs of the beneficiary or client.

“...accountability for quality, accessibility, efficiency and impact is located a long way from the child or family as the service user.”

The laws that underpin Australia's ECD System

In addition to the structures and tenants of our system of government, there are a range of laws that underpin Australia's ECD system. This includes International, Commonwealth and State-specific laws.

Examples of International Law (international human rights treaties) include:

- [Convention on the Rights of the Child \(CRC\)](#)
- [International Covenant on Economic Social and Cultural Rights \(ICESCR\)- external site](#)
- [Convention on the Elimination of All Forms of Racial Discrimination \(CERD\) – external site](#)
- [Convention on the Elimination of All Forms of Discrimination Against Women \(CEDAW\) – external site](#)
- [Convention on the Rights of Persons with Disabilities \(CRPD\)– external site](#)
- [Attorney-General's 'Right to Health' Guide](#)

Examples of areas governed by federal legislation include:

- **Family Law Act**
- **Family Assistance Act**
- **Paid Parental Leave**
- **Disability**
- **Human Rights**

Examples of areas governed by specific state laws include:

- **Child Protection**
- **Human Rights (state level)**
- **Public Health**
- **Child Safe Laws**
- **Information Sharing legislation**



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