



PART THREE

Government and the law in Australia

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At the citizenship ceremony, you pledge to uphold and obey the laws of Australia. Australia's system of government is a parliamentary democracy. It is important for you to understand this system of government, how laws are made in our parliamentary democracy and how they are administered. It is also important to understand how you, as a citizen, will have a say in running the country.

How do I have my say?

Voting

As outlined in Part 2, in Australia, citizens aged 18 years or over must enrol to vote in federal, state and territory elections and referenda on constitutional change.

In Australia's parliamentary democracy, citizens have a say on how Australia is governed by voting for a person to represent them in parliament. If you are not correctly enrolled, you are not able to vote in an election.

Voting is compulsory in Australian elections, or if there are referenda on constitutional change.

The Australian Electoral Commission (AEC) is a Commonwealth agency responsible for conducting federal elections and referendums, and maintaining the Commonwealth electoral roll. The AEC is independent of the government. Political parties or people in government cannot influence the decisions of the AEC.

In Australia, voting in an election is by secret ballot, so you are free and safe to vote for any candidate. No one is allowed to know whom you have voted for, unless you choose to tell them. If you do not vote in an election and do not have a good reason for not voting, you may have to pay a fine. Compulsory voting is a way to make sure that the people have a say in who will govern and represent them in parliament.

Raising matters with your representatives

Australian citizens can contact their elected representative to raise their concerns about government policy. In this way, all Australians can have a say in forming the laws and policies of a government. If a citizen tells his or her elected representative a law needs to be changed, the elected representative should consider what has been suggested.

How did we establish our system of government?

Federation

After British settlement and before 1901, Australia was made up of six separate, self-governing British colonies.

Each colony had its own constitution and laws relating to defence, immigration, postage, trade and transport. However, this created difficulties between the colonies. For example, trade and transport between the colonies was expensive and slow, and enforcing the law across borders was difficult. The separate colonies also had weak systems of defence.

As a result, people wanted to unite the colonies to form a single nation. More importantly, Australia's national identity was beginning to form. Sporting teams were representing Australia internationally and an Australian culture was developing in popular songs, poems, stories and art.

Uniting the nation was a difficult task, but over time, the idea of one Australian nation became a reality. On 1 January 1901, the colonies were united into a federation of states called the Commonwealth of Australia.

The Australian Constitution

The *Commonwealth of Australia Constitution Act 1900* (Australian Constitution) is the legal document that sets out the basic rules for the government of Australia.

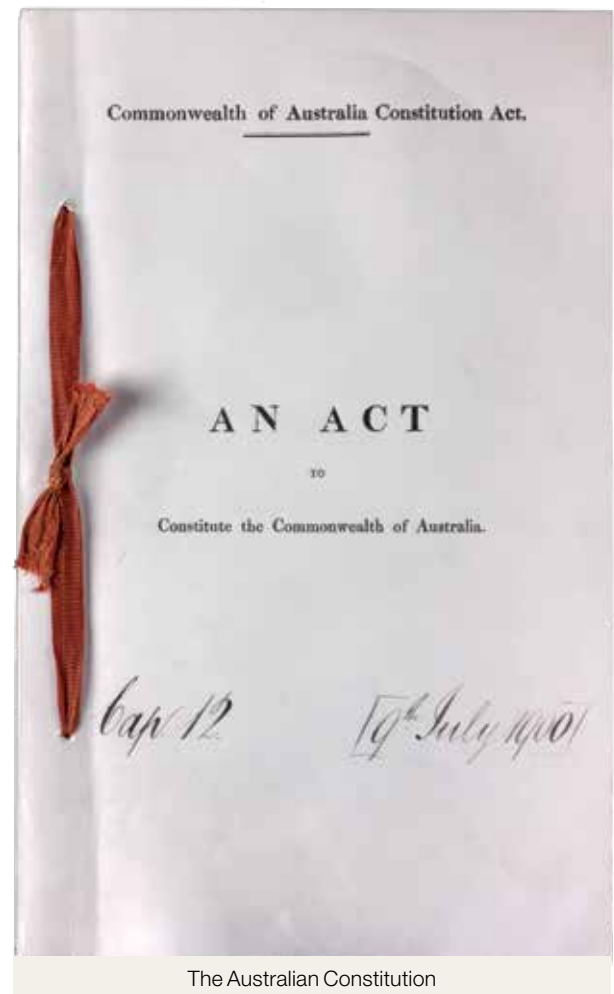
The Australian Constitution was originally passed as part of a British Act of Parliament in 1900.

On 1 January 1901, the Australian Constitution came into effect and the Australian colonies became one independent nation: the Commonwealth of Australia.

The Australian Constitution established the Parliament of the Commonwealth of Australia, consisting of a House of Representatives and a Senate. The Constitution also established the High Court of Australia, which has the ultimate power to apply and interpret the laws of Australia.

The Australian people can change the Australian Constitution by voting in a referendum, such as the 1967 Referendum where more than 90 per cent of Australians voted 'Yes' to allow Aboriginal peoples to be counted in the Census.

In a referendum, there needs to be a 'double majority' for the Australian Constitution to be changed. That is, both the majority of voters in a majority of states and a majority of voters across the nation must vote for the change.



The Australian Constitution

How is the power of government controlled?

The Australian Constitution divides the power of government between the legislative (Parliament), executive (for example the Prime Minister and the Cabinet) and judicial powers (judges), to stop one person, or one group, from holding all the power.

Legislative power

Legislative power is the power to make laws. Parliament has the power to make and change the laws in Australia. Parliament is made up of representatives who are elected by the people of Australia.

Executive power

Executive power is the power to put the laws into practice. The Executive includes the Prime Minister, Australian government ministers and the Governor-General. Ministers are responsible for government departments.

Judicial power

Judges have the power to interpret and apply the law. Courts and judges are independent of parliament and government.

These powers are written into the Australian Constitution.

Who is Australia's Head of State?

Australia's Head of State is the Queen of Australia, Her Majesty Queen Elizabeth II.

The Queen of Australia appoints the Governor-General as her representative in Australia, on advice from the Australian Prime Minister. The Governor-General acts independently of all political parties. The Queen does not have a day-to-day role in government.

In each of the states there is a governor who represents the Queen in a role that is similar to the Governor-General.

Constitutional monarchy

Australia is a constitutional monarchy, which means that the Queen is Australia's Head of State, but has to act in accordance with the Constitution. As the Queen does not live in Australia, her powers are delegated to the Governor-General in Australia.

The Australian system of parliamentary democracy reflects British and North American traditions combined in a way that is uniquely Australian. In the Australian system, the leader of the Australian Government is the Prime Minister.



Her Majesty Queen Elizabeth II

The role of the Governor-General

The Governor-General is not part of the government and must remain neutral.

The Governor-General's role includes:

- signing all Bills passed by the Australian Parliament into law (this is called Royal Assent)
- performing ceremonial duties
- approving the appointment of the Australian Government and its ministers, federal judges and other officials
- starting the process for a federal election
- acting as Commander-in-Chief of the Australian Defence Force.

The Governor-General also has special powers known as 'reserve powers' that can only be used in specific circumstances.

Who are some of Australia's leaders?

Head of State

The Queen of Australia

Governor-General

The representative of the Head of State in Australia

Governor

The representative of the Head of State in each Australian state

Prime Minister

The leader of the Australian Government

Premier

The leader of a state government

Chief Minister

The leader of a territory government

Government minister

A Member of Parliament chosen by a government leader to be responsible for an area of government

Member of Parliament (MP)

An elected representative of the people in the Australian Parliament or a state parliament

Senator

An elected representative of a state or territory in the Australian Parliament

Mayor or Shire President

The leader of a local government

Councillor

An elected member of a local council

How is Australia governed?

The Australian Government

The Australian Government is also called the Federal Government or the Commonwealth Government. The Government is made up of members of the Australian Parliament, which has two Houses:

- the House of Representatives
- the Senate.

In a federal election, Australian citizens vote to elect representatives to each House of Parliament.

The House of Representatives

The House of Representatives is one of the Houses in the Australian Parliament. Other names for the House of Representatives are the Lower House or the People's House.

Australia is divided into federal electorates. Members of Parliament (MPs) represent the people in their electorate.

The number of MPs for each state and territory is based on the number of people in that state or territory. Overall, there are over 150 members elected to the House of Representatives.

Members of Parliament and senators debate proposals for new laws in the Australian Parliament. The role of the House of Representatives is to consider, debate, and vote on proposals for new laws or changes to the laws, and discuss matters of national importance.



The House of Representatives

The Senate

The Senate is the other House in the Australian Parliament. The Senate is sometimes called the Upper House, the House of Review or the States' House. Voters from each state also elect senators to represent them in the Senate. All states are equally represented in the Senate regardless of their size or population. There is a total of 76 senators. Each state elects 12 senators, and the Australian Capital Territory and Northern Territory elect two senators each.

Senators also consider, debate and vote on new laws or changes to the laws, and discuss matters of national importance.



The Senate

State and territory government

There are six states and two mainland territories in Australia. Each state government has its own parliament and constitution. State and territory governments are based in their capital cities. The leader of a state government is the Premier and the leader of a territory government is the Chief Minister.

State governments operate in a similar way to the Australian Government. In each state, a Governor represents the Queen of Australia. In the Northern Territory, an Administrator is appointed by the Governor-General. The role and responsibilities of the Administrator are similar to those of a state Governor.

States have rights recognised by the Constitution while territories do not. States have the power to pass laws in their own right while self-governing territory laws can be altered or revoked by the Australian Government at any time.

In state and territory elections, Australian citizens vote to elect a representative for their area. These representatives become members of the relevant state or territory parliament.

Local government

The states and the Northern Territory are divided into local government areas which may be called cities, shires, towns or municipalities. Each area has its own local council. Councils are responsible for planning and delivering services to their local community. Citizens in each local government area vote to elect their local councillors.

What do the three levels of government do?

The main difference between the three levels of government is that, although some responsibilities may overlap, generally each level of government provides different services.

The Australian Government is responsible for:

taxation
national economic management
immigration and citizenship
employment assistance
postal services and the communications network
social security (pensions and family support)
defence
trade and commerce
airports and air safety
foreign affairs (relations with other countries).

State and territory governments are primarily responsible for:

hospitals and health services
schools
roads and railways
forestry
police and ambulance services
public transport.

Local governments (and the Australian Capital Territory Government) are responsible for:

street signs, traffic controls
local roads, footpaths, bridges
drains
parks, playgrounds, swimming pools, sports grounds
camping grounds and caravan parks
food and meat inspection
noise and animal control
rubbish collection
local libraries, halls and community centres
certain child-care and aged-care issues
building permits
social planning
local environmental issues.

What role do political parties play in the way Australia is governed?

A political party is a group of people who share similar ideas about how a country should be governed. They work together to have the party's ideas turned into laws. The main political parties in Australia are the Liberal Party of Australia, the Australian Labor Party, the Nationals and the Australian Greens.

Most parliamentarians belong to political parties. Some do not belong to any political party, and they are called 'independents'.

In Australia, people are free to join a political party if they choose.

How is the Australian Government formed?

After a federal election, the Australian Government is generally formed by the party or coalition of parties with the majority of members in the Houses of Representatives. The leader of this party becomes the leader of the Australian Government: the Prime Minister.

After a federal election, the party or coalition of parties with the second largest number of members in the House of Representatives forms the Opposition. Its leader is called the Leader of the Opposition.

The Prime Minister recommends members of the House of Representatives or Senators to become ministers in the Australian Government. The Governor-General approves the appointment of the Prime Minister and ministers.

Government ministers are responsible for an area of government (called a portfolio), such as employment, Indigenous Affairs or the Treasury. Ministers with the most important portfolios make up the Cabinet, which is the key decision making body of government.

How are laws made?

The Australian Parliament has the power to make or change laws in Australia to benefit the nation.

If a member of the Australian Parliament proposes to introduce a new law or change an existing one, this proposal is called a 'Bill'.

The House of Representatives and the Senate consider, debate and vote on whether they agree with the Bill.

If the majority of members in each House of Parliament agree to the Bill, it goes to the Governor-General.

The Governor-General signs a Bill so that it becomes law. This is called 'Royal Assent'.

State and territory parliaments make their own laws in a similar way.



How are laws enforced?

The courts

The courts in Australia are independent. A court will decide if a person has or has not broken the law and decide the penalty. Courts can only base their decision on the evidence before them.

Judges and magistrates

The judge or magistrate is the highest authority in a court. They are independent and no one can tell them what to decide.

Judges and magistrates are appointed by the government, but the government cannot take their jobs away if it disagrees with their decisions.

Juries

In Australia's court system, people are considered innocent until they are found guilty in a court. Every person has the right to be represented by a lawyer in court.

A court will use a jury in some cases to decide if a person has broken the law. The role of a jury is to decide in court if a person is innocent or guilty. A jury is a group of ordinary Australian citizens randomly chosen from the general population. The judge explains the law to the jury. In a criminal trial, if the jury finds a person guilty, the judge decides the penalty.

The police

The police maintain peace and order in the community. It is their job to protect life and property. They are independent of the government. If the police believe that someone has broken the law, they can arrest them and bring them before a court of law. The police may give evidence in court, but the court decides if a person is guilty or not.

The states and the Northern Territory have their own police forces. They deal with crimes under state and territory laws.

Australia also has a national police force called the Australian Federal Police (AFP). The AFP investigates crimes against federal laws, for example, drug trafficking, crimes against national security and crimes against the environment. The AFP is also responsible for general police work in the Australian Capital Territory.

The police and the community have a good relationship in Australia. You can report crimes and seek assistance from your local police.

In Australia, it is a serious crime to bribe the police. It is a crime to even offer a bribe to a police officer.

Criminal offences in Australia

It is important for you to be familiar with the laws in Australia. If you break an Australian law that you did not know about, you could be charged, as not knowing the law is no excuse.

Some of the most serious crimes include murder, assault, sexual assault, violence against people or property, armed robbery or theft, having sexual relations with children or young people who are aged below the legal age of consent, dangerous driving of a motor car, possession of illegal drugs, and fraud.

Everyone has the right to experience positive and safe relationships with their families, friends and loved ones. As in other countries, violence towards another person is illegal in Australia and is a very serious crime. This includes violence within the home and within marriage, known as domestic or family violence. Domestic and family violence includes behaviour or threats that aim to control a partner by causing fear or threatening their safety. Domestic and family violence can include hitting, isolating a family member from friends and family, or threatening children or pets. Domestic and family violence is not accepted and is against the law.

A person who commits these crimes can go to jail, whether they are a man or a woman. No one should accept being treated badly or harmed.

If you or someone you know is in danger you should contact the police. More information is available at www.respect.gov.au and www.1800respect.org.au

Traffic offences

Road and traffic rules are controlled by state and territory governments. People can be fined or sent to prison for breaking traffic laws. To drive a car in Australia, you must have a local driver's licence and the car must be registered.

Everybody travelling in a car must wear a seatbelt. Babies and young children must be in an approved car seat. Traffic laws are very strict. It is illegal to drive after taking drugs or if you are above the blood alcohol limit. It is also against the law to use a hand-held mobile device while driving.