

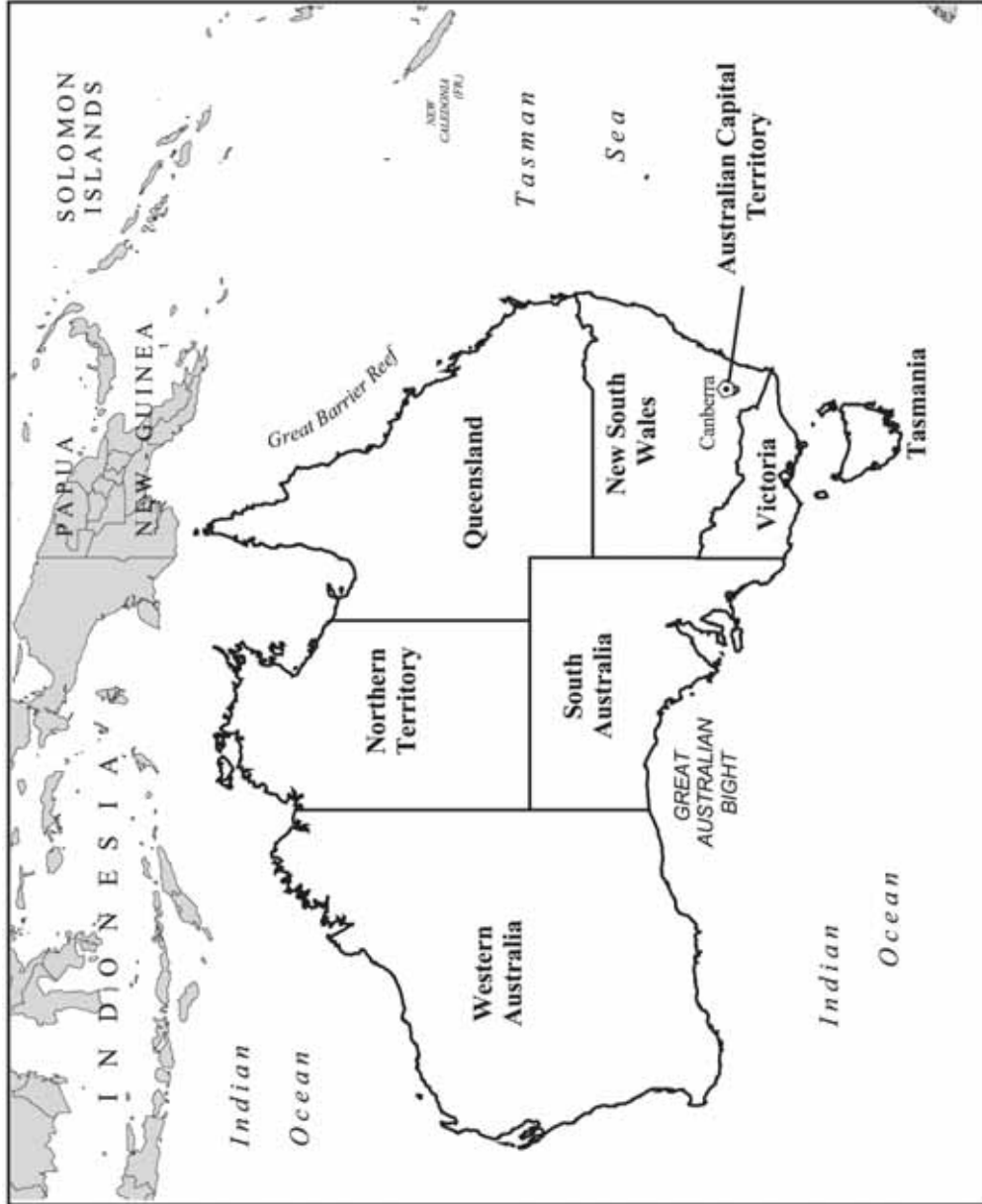
Australia

Capital: Canberra
Population: 20 Million
(2004 est.)

Boundaries and place names are representative only and do not imply any official endorsement.



Sources: CIA World Factbook; EBRI Ltd.
From Atlas of the World



Australia

(Commonwealth of Australia)

CHERYL SAUNDERS

1 HISTORY AND DEVELOPMENT OF FEDERALISM

Australia was settled as a series of British colonies between 1788 and 1829. By that time, aboriginal peoples had inhabited the area for at least 50,000 years. Between 1850 and 1891 six separate self-governing colonies emerged, each with a constitution and institutions of government of its own. Throughout this period there also was some pressure for union, for economic, defence and other purposes. The final and most serious phase of the federation movement took place during the 1890s. The terms of federation and of the constitution on which it was based were negotiated in two major constitutional conventions in 1891 and 1897–98. The conventions were attended by delegations of Members of Parliament from each of the colonies. The constitution that emerged from this process was approved by referendum in each of the Australian colonies before it came into effect as an Act of the British Parliament.

In designing the constitution, the framers drew on the constitutional arrangements of both Britain and the United States. After some debate, they adopted the principles and institutions of responsible government – already in operation in the six colonies – for the new national government, the Commonwealth of Australia. Like Britain, they saw no need for constitutional protection of political rights. The federal system and the constitutional framework, however, were modelled on those of the United States.

The constituent parts of the Australian federation are the Commonwealth and the six Original States of New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania. In addition, Australia has two self-governing mainland territories, the Northern Territory and the Australian Capital Territory. The territories are not full partners in the federation, but are treated as polities in their own right for many purposes.

2 CONSTITUTIONAL PROVISIONS RELATING TO FEDERALISM

Australia may be characterized as a dual federation in the sense that each sphere of government has a complete set of institutions; legislature, executive and, with some qualifications, courts. Accordingly, the constitution provides for the federal division of executive and judicial as well as legislative power.

The Australian constitution assigns enumerated powers to the Commonwealth (Section 51), leaving the residue to the states. The listed Commonwealth powers cover essential national functions, including: defence and external affairs; major commercial functions, ranging from inter-state and overseas trade and commerce to the resolution of inter-state industrial disputes by conciliation and arbitration; and some social functions, including marriage and matrimonial causes. Most Commonwealth powers are concurrent, in the sense that the states also may exercise them. If a valid Commonwealth law and a state law are inconsistent, the Commonwealth law prevails.

In the 100 years since federation, Commonwealth powers have tended to expand, through usage and judicial interpretation. A turning point was a decision of the High Court in 1920 to give Commonwealth powers their literal meaning unconstrained by assumptions about the nature of the federation. Powers that subsequently proved particularly adaptable, thus providing a broad base for Commonwealth action, include the powers relating to taxation, corporations and external affairs.

Despite the 1920 decision, judicial doctrine now recognizes some implied limits on the power of the Commonwealth and the states to legislate. In particular, the Commonwealth may not discriminate against or between states or threaten their existence or capacity to function. In recent years, the High Court has accepted that legislative power may be subject to other implied limitations, drawn from the system of representative and responsible government established by the constitution.

The Australian Senate is the principal means by which the states are represented in central institutions. The Senate is the upper house of

the Commonwealth legislature. Under Section 7 of the constitution, Original States are entitled to equal Senate representation. Originally each state had six Senators, but the number gradually increased to 12 over the first century of federation.

The composition of the Senate ensures that the smaller states have greater representation in the Commonwealth Parliament than their proportion of the population would suggest. Otherwise, however, the Senate does little to represent the states, individually or collectively. Senators are directly elected, and vote on party lines. Since 1949, Senators have been elected under a system of proportional representation, using each state as a single electorate, which enables Senators to take account of the interests of the state as a whole if they wish to do so. More significantly, these arrangements tend to produce a Senate in which neither major party has a majority (since proportional representation facilitates the election of candidates from minor parties on whom the major parties cannot rely for support). The effect has been to enhance the institutional role of the Commonwealth Parliament, at inevitable cost to the operation of the traditional model of responsible government. In 2003 the government put forward a proposal to reduce the veto power of the Senate by enabling disputes to be resolved through a joint sitting of both houses. The proposal was not well received by the public, however, and it seems unlikely that it will be taken further.

The states are represented at the centre in other ways as well. First, Section 24 of the constitution guarantees each state a minimum of five members of the House of Representatives, irrespective of population. In practice, the federal Cabinet invariably includes at least one minister from each state, although this is not a constitutional requirement. Second, the Commonwealth is supposed to consult the states on the appointment of High Court judges. And, third, procedures for amending the constitution, discussed below, also ensure the representation of states as constituent entities.

Constitutionally, the Commonwealth and the states have full power to tax for their own purposes, with the following exceptions. First, the power to impose customs and excise duties is conferred exclusively on the Commonwealth. Second, Commonwealth tax laws cannot discriminate against states or parts of states. Third, neither sphere of government can tax the other's property. Fourth, neither level of government can tax to impose a discriminatory burden on inter-state trade. Finally, the states are extra-territorially limited in the imposition of taxation, as in other matters.

From the outset, the Australian federation was characterized by fiscal imbalance, which has worsened over time. Initially the cause was

the inability of the states to impose customs and excise duties. Two factors in particular exacerbated the imbalance. The first was the expansion of the definition of duties of excise through judicial interpretation to preclude the states from imposing any taxes on goods. The second was the de facto transfer of income tax to the Commonwealth following World War II when the wartime income tax scheme was extended indefinitely.

The mechanism for fiscal transfers from the Commonwealth to the states has become correspondingly more important. There is a vague constitutional requirement for the distribution of surplus revenue which became a dead letter within the first decade of federation. Successive transfer arrangements have taken the form of both general and specific purpose grants and varied between formula-based arrangements and tax sharing. The distribution of general revenue funds between the states is calculated according to revenue-raising capacity and expenditure needs. In 1999, a Commonwealth commitment to entitle the states to receive all the revenues of the new goods and services tax ushered in yet another phase in the Australian history of revenue redistribution. The commitment is in place, but it is still too early to tell whether it will last.

Australia has a three-way separation of powers at the federal level, but it is clear that the separation is significantly more marked in relation to judicial power than in relation to the other two arms of government. With one qualification, federal executive institutions in Australia are typical of those usually associated with responsible government in the British tradition. A Governor-General formally represents Queen Elizabeth II and in that capacity fulfils the function of a largely non-executive Head of State, acting on government advice. The government is drawn from the Parliament and relies on the confidence of the House of Representatives for its continuation in office. The qualification follows from the composition and powers of the Senate. The dismissal of a government by the Governor-General in 1975, after the Senate had rejected a supply bill, is a reminder that the Senate has the capacity to force from office a government with the confidence of the House.

Responsible government also operates in each of the states and in the self-governing territories. All states except Queensland have a bicameral Parliament, although not all upper houses are as powerful as the federal Senate. The coincidence of view between government and Parliament that characterizes responsible government facilitates inter-governmental arrangements in Australia. The operation of the Australian federation relies in part on an extensive network of ministerial councils and a rich diversity of cooperative schemes designed to secure

the uniformity or coordination of legislation and policy. Inevitably, these procedures distract from the authority of individual Parliaments and enhance the role of executive government.

Most disputes about the legal meaning and operation of the constitution are justiciable – i.e., of a kind that can be resolved by the courts, which are the final mechanism for their resolution. As a general rule, disputes over inter-governmental arrangements are not resolved by the courts unless an intention to establish legal relations can be derived from the terms of the arrangement. As a common law federation, Australia uses the ordinary court system for the purpose and has not established specialist courts.

The Australian constitution provides for a dual system of courts, except in two respects. First, the High Court of Australia, as Australia's highest court, is the final court of appeal in both federal and state jurisdiction (Section 73). It also has an extensive original jurisdiction in significant federal matters, including constitutional matters. Second, the constitution allows the Commonwealth Parliament to confer federal jurisdiction on state courts (Section 77(iii)). This power was used extensively during the first 70 years of federation, but towards the end of the twentieth century, its use decreased as the Commonwealth implemented a court hierarchy of its own. This departure from a dualist model, coupled with the appellate role of the High Court, has had significant effects. The High Court has held that the constitution provides some protection for the integrity of state courts, as potential recipients of federal jurisdiction. The court structure also has contributed to the conclusion that Australia has a unified common law, although statute law varies between states.

Only a small proportion of disputes between governments reaches the courts. Most are resolved through political means. Resolution is assisted when the same party is in government in the jurisdictions concerned. It is correspondingly more difficult when the protagonists come from different parties. Ministerial Council and other inter-governmental meetings of, for example Solicitors-General, also provide fora where disputes can be resolved.

From the outset, the Australian constitution provided a mechanism for its own amendment (Section 128). The mechanism reflects both the federal character of the constitution and the processes by which, initially, it was brought into force. Amendment involves two stages, initiation and approval. Proposals for change must be initiated by the Commonwealth Parliament, in the form of a Constitution Alteration bill. Generally, such a bill is passed through both Houses, with absolute majorities. A deadlock procedure enables a bill that has been rejected by one House to be passed by the other House twice. Bills passed in

this way may be put to referendum. Double majorities are needed to approve them: a national majority and a majority in a majority of states. In exceptional cases, where alteration would affect the proportional representation of the state in the Commonwealth Parliament, or would affect state boundaries, majorities also are required in the state concerned.

The constitution has proved relatively resistant to change by this procedure. The Commonwealth Parliament is likely to initiate only proposals of interest to the Commonwealth government of the day. Only eight of the 44 proposals that have been put to referendum have been approved, and at least two of these were very minor. The rate of rejection has been attributed to the narrow procedure for initiation, lack of understanding of proposals, often fiercely partisan referendum campaigns, and the conservatism of the Australian electorate. The result has been to place increasing weight on judicial interpretation of the constitution and on inter-governmental cooperation.

Like most federations, Australia has a form of economic union that leaves some room for economic initiative at the state level. Key elements of the Australian economic union include the conferral of most economic powers on the Commonwealth, a requirement for the Commonwealth to act without preference in matters of tax and commerce, and exclusive Commonwealth powers over customs and excise, and currency and coinage. The centrepiece is Section 92, which provides that inter-state trade, commerce and intercourse are to be “absolutely free.” For the first 90 years of federation, this was the most extensively litigated section of the constitution. In 1988, judicial review of the meaning of this section returned to what seems to have been the intention of the framers of the constitution. It is now established that Section 92 protects inter-state trade and commerce from discriminatory practices of a protectionist kind. It does not necessarily preclude the implementation of state policies that have an incidental impact on inter-state trade, as long as the impact is not disproportionate.

Most federations also seek to establish a degree of unity amongst their people through common citizenship and other means. The Australian constitution does relatively little in this regard. There was no legal category of Australian citizenship until 1949, and there is no reference to citizenship in the constitution. Some protection for inter-state mobility is, however, provided by Sections 92 and 117. The latter precludes discrimination against “subjects of the Queen” on the grounds of state residence. These two sections of the constitution were once grandly described by one High Court Justice as the “constitutional pillars of the legal and social unity of the Australian people.”

3 RECENT POLITICAL DYNAMICS

Ongoing issues in most federations include the judicial interpretation of the federal division of powers and fiscal arrangements. Australia is no exception. A series of other more specific issues also has had a bearing on the division of powers, as well as being important in their own right. One with implications for both the Australian economy and the process of inter-governmental cooperation concerns the regulation of companies. While the Commonwealth has power to make laws with respect to corporations (Section 51(xx)), it is not comprehensive. In particular, it does not allow the Commonwealth Parliament to make laws for the incorporation of companies. For many years, therefore, the Australian Corporation Law was based on a complex cooperative scheme. In 1999 and 2000, however, High Court decisions cast doubt on the validity of aspects of the scheme including the conferral of state jurisdiction on the federal court and state power on federal officials. The new arrangements that took their place were based on the power of the Commonwealth Parliament to make laws on matters “referred” to it by state parliaments. Subsequent use of the reference power for other matters, including anti-terrorism laws, suggest that this procedure is likely to be used more frequently for inter-governmental arrangements, despite its relatively light use in the past.

Internationalization and globalization have had a substantial impact on the dynamics of the Australian federation. Most obviously, the proliferation of treaties associated with internationalization has placed strains on both the division of federal power and on executive-legislative relations. In the face of internationalization, the High Court held that the federal “external affairs” power (Section 51(xxix)) enables Parliament to legislate to implement any international legal obligations undertaken by Australia. In effect, this means that the Commonwealth can intervene in areas solely of state concern, the most sensitive of which include the environment and human rights. As this jurisprudence developed, relations between the Commonwealth and the states over international affairs were resolved through a series of agreed principles and procedures, recognizing the Commonwealth’s final authority but providing mechanisms for prior consultation. The establishment of an inter-governmental Treaties Council subsequently reinforced these arrangements. In addition, new procedures were put in place in the Commonwealth Parliament to enable more timely and effective parliamentary involvement in the treaty-making process. The new procedures have been reviewed once and seem to be working well.

One other development, also linked with globalization, might be mentioned. Towards the end of the 1980s there was concern that, despite the constitutional requirement for freedom of inter-state trade, the Australian market was too small and too fragmented to meet the growing challenge of international economic competition. One response was reform of inter-governmental decision-making procedures and, in particular, the Ministerial Council system. Another was a series of measures to improve the effectiveness of the internal market. One such measure involved the introduction of a scheme for the mutual recognition by each jurisdiction of the standards of the others for goods and professional services. Mutual recognition has been quietly successful as a mechanism for increasing the mobility of goods and occupations without unduly inhibiting the regulatory capacity of the states. The scheme subsequently was extended to include New Zealand as well.

No new states have been established in Australia since federation. The most likely candidate for statehood is the large self-governing Northern Territory. Over the decade of the 1990s, debate took place about whether the Northern Territory would become a state. The debate exposed some uncertainties about the operation of the constitutional provisions in relation to new states. These included the extent to which, for example, the federal division of powers can be varied in relation to new states. In the event, the movement failed. A controversial process of designing a constitution for the new state culminated in a “no” vote by Northern Territorians. Statehood is, however, still an issue – a new Northern Territory government, elected in 2001, has undertaken to revive the idea in due course.

One final current political issue concerns the creation of an Australian republic. Over the decade of the 1990s, debate took place about whether and how to break Australia’s links with the British Crown. Although a 1999 referendum on severing ties with the Crown was defeated, the issue remains on the public agenda, pending a national government with the interest to pursue it. It is relevant to federalism because, under the constitution, the Queen is directly represented not only at the national level but in each of the states by Governors appointed on the advice of state Premiers. In order to become a republic, it is therefore necessary for Australia to agree on alternative arrangements at the state as well as the Commonwealth level. There is also a question of whether the Queen represents a unifying influence and, if so, the significance for the dynamics of Australian federalism of breaking the link with the Crown. This is one additional complication to be taken into account in designing a model for an Australian republic.

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Table I
Political and Geographic Indicators

Capital city	Canberra
Number and type of constituent units	<p>6 States: New South Wales, Queensland, South Australia, Tasmania, Victoria, and Western Australia</p> <p>1 Capital Territory: Australian Capital Territory</p> <p>1 (mainland) Territory: Northern Territory</p> <p>(Note: Australia also has 7 external territories: Ashmore and Cartier Islands, Christmas Island, Cocos (Keeling) Islands, Coral Sea Islands, Herald Island, MacDonal Islands and Norfolk Island.)</p>
Official language(s)	English
Area	7 682 300 km ²
Area – largest constituent unit	Western Australia – 2 525 500 km ²
Area – smallest constituent unit	Australian Capital Territory – 2 400 km ²
Total population	20 038 615 (January 2004 est.)
Population by constituent unit (% of total population)	New South Wales 34%, Victoria 25%, Queensland 19%, Western Australia 10%, South Australia 8%, Tasmania 2%, Australian Capital Territory 2%, Northern Territory 1%
Political system – federal	Federation – Parliamentary System
Head of state – federal	Queen Elizabeth II (1952), represented by Governor-General Michael Jeffery (August 2003), appointed by the Queen on the advice of the Prime Minister.
Head of government – federal	Prime Minister John Winston Howard (1996/1998), Liberal Party (Note: Leader of coalition government of Liberal Party and National Party). Prime Minister is an elected Member of Parliament and leader of the party winning the most seats in the House of Representatives or a leader of a majority coalition. The Cabinet is appointed from among the MPs by the Governor-General on the advice of the Prime Minister.
Government structure – federal	<p>Bicameral: Parliament</p> <p><i>Upper House</i> – Senate, 76 seats. 12 are elected for each of the 6 states, and 2 each for the Australian Capital Territory and the Northern Territory. State Senators are elected for 6-year terms, with half of the seats renewed every 3 years. Territory Senators are elected for 3-year terms.</p> <p><i>Lower House</i> – House of Representatives, 150 members, elected in single-seat constituencies on basis of preferential voting to serve for a 3-year term</p>

Table I (continued)

Number of representatives in lower house of federal government of most populated constituent unit	New South Wales – 50
Number of representatives in lower house of federal government for least populated constituent unit	Tasmania – 5 (Note: No original state can have fewer than 5 representatives.) Capital Territory – 2 Northern Territory – 2
Distribution of representation in upper house of federal government – Senate	Each of the 6 states has 12 representatives in the Senate. The 2 territories each have 2 seats.
Distribution of powers	The constitution assigns 42 powers to the Commonwealth including foreign affairs, defence, citizenship, immigration, naturalization, international commerce and inter-state trade, customs, finance, banking, insurance, currency, family law, social welfare, and nationwide public services. (Most Commonwealth powers are concurrent in that the states may also exercise them.) Education is the biggest state function, but the states also tend to provide the major public services, law and order, public housing, regulation of industry and labour, and property services. Local government legislation is also a state matter. In the event of inconsistency between federal and state laws the federal law prevails.
Residual powers	Residual powers belong to the states.
Constitutional court (highest court dealing with constitutional matters)	High Court. The Chief Justice and six other justices are appointed by the Governor-General.
Political system of constituent units	Bicameral (with the exception of Queensland and the Northern Territory which are unicameral): Legislative Assemblies directly elected to serve for 3 or 4-year terms.
Head of government – constituent units	<i>Head of state</i> – Governor. Appointed by the Queen on the advice of the Premier (in the case of the states). No Head of State for the Australian Capital Territory. For the Northern Territory, the head of state is an Administrator appointed by the Governor-General on the advice of the Chief Minister of the Northern Territory. <i>Head of government</i> – Premier (in the case of the states) – Leader of party with the most seats in the legislature, appoints Cabinet, both serving for a 3 or 4-year term.

Table II
Economic and Social Indicators

GDP	US\$541.2 billion at PPP (2002)
GDP per capita	US\$27 500 at PPP (2002)
National debt (external)	US\$170.6 billion (est. 2001)
Sub-national debt	N/A
National unemployment rate	6.1% (proj. 2003) ¹
Constituent unit with highest unemployment rate	Tasmania – 8.8%
Constituent unit with lowest unemployment rate	New South Wales – 6.1%
Adult literacy rate	99% ²
National expenditures on education as % of GDP	6.7% (2001)
Life expectancy in years	78.9
Federal government revenues – from taxes and related sources	US\$101.5 billion (2000)
Constituent unit revenues – from taxes and related sources	US\$20.2 billion (2001)
Federal transfers to constituent units	US\$26 537 billion (2001)
Equalization mechanisms	Federal transfers based on state revenue and expenditure on the recommendation of the Commonwealth Grants Commission (CGC).

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Notes

- 1 Annual average
- 2 Age 15 and above