

Australia

Self-rule

INSTITUTIONAL DEPTH AND POLICY SCOPE

Australia is a federation with a strong regional tier consisting of six states plus two territories that became autonomous in 1978 and 1989.¹ All states and territories have a single local tier (Sansom 2009)² except for New South Wales which has second tier counties, but their average population in 2010, at just over 120,000, does not meet our threshold for a regional tier.³

The constitution enumerates federal legislative powers in trade and commerce, taxation, defense, banking, census and statistics, currency, weights and measures, naturalization, marriage and divorce, copyright and patents, foreign affairs, railways, and immigration (C 1900, Art. 51). These federal powers are concurrent with state powers, in that states may exercise such powers as long as state law is not inconsistent with Commonwealth law (C 1900, Art. 109). States and territories legislate on all other policies, including health, education, social welfare, criminal and civil law, local government, and citizenship (C. Saunders 2002, 2005; Watts 1999a, 2008).⁴

¹ Between 1989 and 2005 the Aboriginal and Torres Strait Islander Commission (ATSIC) advised government agencies on their policies that affected aboriginal people. The ATSIC consisted of thirty directly elected regional councils and a board of commissioners elected from sixteen zones each incorporating two or three regional councils (Aroney 2010: 35; Law No. 150/1989). The Torres Strait Regional Authority (TSRA), established in 1994, has a board consisting of 20 elected representatives that advises the federal government on its programs for the Torres Strait region (Law No. 100/1994).

² C 1889, Art. 52, C 1902, Art. 51, C 1934 (SA), Art. 64A, C 1934 (TA), Art. 45A, C 1975, Art. 74A–B, and C 2001, Arts. 70–71.

³ All state capitals, with the exception of Hobart (Tasmania), have their own laws which establish city-state intergovernmental committees with members from the city and state governments to coordinate specific tasks (Law No. 48/1988, No. 47/1998, No. 5/2001, No. 23/2010, and No. 2/2016). For example, the city of Adelaide (South Australia) provides members for the capital city committee responsible for strategic development of Adelaide (Law No. 47/1998, Art. 6-10), the city of Melbourne (Victoria) provides members for a docklands co-ordination committee (Law No. 5/2001, Arts. 27A–27K), and the city of Sydney (New South Wales) provides members for a Sydney planning committee (Law No. 48/1988, Arts. 33–38). The laws on state capitals also stipulate that the jurisdictions of the councils of state capitals is limited to the central business districts and inner neighborhoods. An exception is the city of Brisbane (Queensland) which may exercise its powers outside Brisbane but only with the written approval of the state minister or in agreement with other local governments (Law No. 23/2010, Arts. 11–12; Sansom 2009).

⁴ Until 1967 Aboriginal relations were a state matter. In 1967 a constitutional amendment gave the federal government concurrent competences in Aboriginal affairs (Saunders 2005: 24). Aboriginal peoples are able to exercise land rights through local land councils which fall under the authority of states or territories. Land councils deal mostly with land claims, exploitation of land resources, and, to some extent, Aboriginal culture, but are not a form of general purpose governance. Land councils were set up in 1976 (Law No. 191/1976). By 2010, sixteen acts had been passed. See also Museum of Australian Democracy. “Documenting a Democracy: Aboriginal Land Rights (Northern Territory) Act 1976.”

The Northern Territory and the Australian Capital Territory (Canberra) were directly governed by the federal government from 1910 (Law No. 20/1910 and No. 25/1910). Unlike a state, the powers of a territory are not constitutionally guaranteed and the governor-general could withhold assent or recommend amendments to its proposed laws (Law No. 58/1978, Arts. 6–9; No. 106/1988, Art. 35). Since December 2011, decisions of the territorial assembly can be overruled by a majority of both houses of the federal parliament instead of the governor-general (Law No. 166/2011). Also, the federal parliament retains authority over uranium mining and Aboriginal lands—powers it does not possess in the states. Notwithstanding these limitations, the Northern Territory gained self-government in 1978, followed by the Australian Capital Territory in 1989. The territories now have extensive authority over a range of policies similar to the states, with the exception that territories do not have control over immigration or citizenship (Law No. 58/1978, Art. 31 and No. 106/1988, Art. 37).⁵

FISCAL AUTONOMY

The tax system is unusually centralized for a federation. The federal government emphasizes uniformity of public services across the country and uses conditional grants to achieve this. Tax administration and collection are centralized, representing 80 percent of revenues. According to the constitution (C 1900, Art. 51), states have concurrent tax authority with the federal government on personal income tax, company tax, and sales tax, but federal tax legislation is paramount (Watts 2008). Territories have similar fiscal powers (Law No. 58/1978, Art. 44 and No. 106/1988, Art. 37). Centralization dates from the Second World War, when the federal government appropriated control over income tax for persons, enterprises, and non-residents. Subsequent court decisions eliminated states' rights to control sales and excise taxes (Eccleston and Krever 2017: 99–103). The federal government sets the base and rate for major taxes after consultation with the states.^β In return, states receive conditional and unconditional grants, which together make up the bulk of their revenues (Twomey and Withers 2007). In 1999 states agreed to scrap some of their own taxes in return for a greater share of unconditional grants (Ruiz-Palmero 2017: 111–129).⁶

States and territories have tax authority over non-major taxes, including payroll taxes (since 1971) and property, motor vehicle, gambling, and insurance taxes, for which they can set the base and the rate.

BORROWING AUTONOMY

Representatives from federal and state governments sit on the Australian Loan Council which was created in 1923 to coordinate federal and state borrowing (Craig 1997; Grewal 2000). Initially

<<http://foundingdocs.gov.au/item-sdid-57.html>>.

⁵ A referendum held in the Northern Territory in 1998 on the question whether the Northern Territory should become a state was rejected by 51.9 per cent of the voters (Aroney 2010: 35).

⁶ Fiscal centralization was halted, and perhaps reversed in 2008, when the federal government and the states agreed to cut back the number of conditional grants from about ninety to five and made their distribution subject to joint discussion (Braun 2011).

states were still allowed to borrow for defense and temporary purposes without the approval of the Loan Council but these exceptions were removed in 1936 (Grewal 2000; Von Hagen et al. 2000). In 1983 the federal government relaxed controls in response to states' demands for more borrowing autonomy. States could then refinance securities and loans and borrow almost freely (Craig 1997). The following year the Loan Council adopted a "global limit approach" which allocated borrowing limits to states based on their population (Grewal 2000; Von Hagen et al. 2000). However, compliance was voluntary, and the limits were quickly disregarded.

In the early 1990s extensive borrowing autonomy contributed to fiscal crises and credit downgrading in several states (Robinson 2001). In response, state governments adopted balanced budgets and the voluntary global limit approach was replaced by a binding, ex post constraint on borrowing (Joumard and Kongsrud 2003; Robinson 2001; Ruiz-Palmero 2017: 111–129). The "financial agreement between the Commonwealth, states and territories (approval) act 1994" (Law No. 106/1994) requires each state to submit net financing requirements for the forthcoming year which the Loan Council considers in the light of each state's fiscal position, infrastructure needs, and macro-economic projections (Craig 1997; Ruiz-Palmero 2017: 111–129; Von Hagen et al. 2000). If the Loan Council believes that adjustment is necessary it enters into negotiations with the state. The new arrangement is supplemented by more stringent reporting requirements (Joumard and Kongsrud 2003).

The financial management of the territories fell under control of the federal government until the introduction of self-government in 1978 for the Northern Territory and in 1989 for the Australian Capital Territory at which time they were subject to the same rules as states.^a

REPRESENTATION

States and territories hold elections at least once every four years, except Queensland, which has a three-year parliamentary term.⁷ Each state and each territory has a parliament and an executive appointed by, and accountable to, the assembly. There is also a (mostly ceremonial) governor appointed by the Queen on the recommendation of the Australian federal government (Saunders 2005).⁸

From 1947 the Northern Territory had an assembly, the majority of whom were government appointees. Directly elected members became the majority in 1960, and from 1965 the executive head was elected by the assembly. In 1974 the assembly of the Northern Territory became entirely elected with a fully accountable executive.⁹ The Australian Capital Territory held its first direct elections in 1989, and the executive is appointed by its assembly.

⁷ C 1889, Arts. 2 and 38, C 1902, Arts. 5 and 11A, C 1934 (SA), Arts. 4 and 27, C 1934 (TA), Arts. 10 and 19, C 1975, Arts. 15 and 34, C 2001, Arts. 7, 10, and 23, Law No. 58/1978, Art. 13, and Law No. 106/1988, Art. 66B.

⁸ C 1889, Art. 50, C 1902, Art. 5A, C 1934 (SA), Art. 65, C 1934 (TA), Art. 10, C 1975, Art. 6, and C 2001, Art. 29.

⁹ Northern Territory Government. "Brief History of Administration in the Northern Territory." <<http://www.nt.gov.au/lant/about-parliament/history-of-nt-parliament.shtml>>.

Shared rule

LAW MAKING

States and territories are the unit of representation in the directly elected senate (*L1, L3*), which can veto proposals from the lower house (*L4*). In case of legislative deadlock, the governor-general can dissolve one or both chambers. Each state is represented by six or more senators, and territories have two senators each (C 1900, Art. 7; Law No. 39/1974).

The Australian Capital Territory and the Northern Territory have had representation in the lower chamber of the Australian parliament since 1950 (Law No. 18/1922 and No. 57/1948). Until 1966, the member of the House of Representatives for the Australian Capital Territory could vote only on matters directly concerning the territory (*L5*) but thereafter obtained full voting rights.¹⁰ The representative for the Northern Territory was given the right to vote on motions for the disallowance of Northern Territory ordinances in 1936 and in 1959 the vote was extended to any matter relating solely to the Northern Territory (*L5*). In 1968 the representative for the Northern Territory obtained full voting rights.¹¹ The Australian Capital Territory and the Northern Territory gained senate representation in 1975 (Law No. 39/1974; Parker 2015: 58) and this has put both territories on equal footing with states.

EXECUTIVE CONTROL

The first intergovernmental meetings took place after the First World War. The premiers of the states attended, but not the federal government, and the meetings were ad hoc. The first Commonwealth–state intergovernmental forum was the Loan Council (1927), which managed public debt and borrowing. This was followed by ministerial councils for agriculture, transport, immigration, education, and regional development (Parker 2015: 55–57). These councils met regularly and could reach binding decisions leading to federal or federal–state legislation.^a

In 1992—after the arguably “most fundamental rethinking and restructuring of the Australian federal system by political leaders since federation in 1901” (Fletcher and Walsh 1992: 592)—ministerial councils were brought under the umbrella of the Council of Australian Governments (COAG), which includes the prime minister, state premiers, territory chief ministers, and the president of the Australian Local Government Association (ALGA). On average one intergovernmental body was established each year between 1970 and 1992 and this increased to four during the 2000s (Australia 2011). By 2006 there were over forty Commonwealth–state ministerial councils and forums. In December 2013 the COAG agreed to re-organize these into eight councils which meet no more than twice per year.¹² Decisions are usually made by consensus,

¹⁰ Museum of Australian Democracy. Documenting a Democracy. “ACT Representation (House of Representatives) Act 1974.” <<http://foundingdocs.gov.au/item-sdid-116.html>>.

¹¹ Museum of Australian Democracy. Documenting a Democracy. “Northern Territory Representation Act 1922.” <<http://foundingdocs.gov.au>>.

¹² Council of Australian Governments. <<https://www.coag.gov.au>>. The eight councils are on federal

but few councils permit decision by majority, though in such cases the dissenting minority is not bound to implement the decision (Australia 2014; Hueglin and Fenna 2006: 226–228; Phillimore and Harwood 2015).

There is also horizontal coordination. Since 2006, the premiers and chief ministers of all states and territories regularly meet in the Council for the Australian federation, whose objective is to reach consensus on inter-jurisdictional issues where Commonwealth involvement is considered unnecessary or premature (Schnabel 2020: 19; Twomey and Withers 2007).

FISCAL CONTROL

Fiscal intergovernmental relations have always been highly institutionalized, but until 1998 there was no formal binding mechanism.^a The premiers' conference is the most senior forum and meets at least once a year to deliberate fiscal transfers, but it does not reach binding decisions on finance. The Loan Council assists the premiers' conference in its fiscal discussions. Since 1933 the Commonwealth Grants Commission, a standing body of independent experts, has advised the federal government on equalization transfers (Australia 2009; Law No. 54/1973; Phillimore and Harwood 2015).¹³

In 1999 the Council on Federal Financial Relations¹⁴ was set up to oversee implementation of the intergovernmental agreement that changed the base and rate of a new general sales tax. Decisions are made by unanimity, and representatives of the territories have equal voting rights (Eccleston and Krever 2017: 101–103; Schnabel 2020: 80). Intergovernmental transfers between the Commonwealth and the states and territories were significantly reformed in 2008, which led to the adoption of the Federal Financial Relations Act (Australia 2008). This act regulates intergovernmental transfers and performance indicators through national agreements in health care, education, skills and workforce development, disability services, affordable housing, and indigenous reform (Koutsogeorgopoulou and Tuske 2015; Law No. 11/2009; Phillimore and Harwood 2015; Ruiz-Palmero 2017: 111–129).¹⁵

BORROWING CONTROL

Borrowing by states and territories is regulated by the Australian Loan Council. The Loan Council meets once per year, often at the same time as the premiers' conference (Grewal 2000). The Loan Council comprises one representative of the Commonwealth—the prime minister or a nominee—and one representative of each state—the state premier or a nominee. Decisions in the Loan Council are made by qualified majority, with the Commonwealth holding two votes plus a casting vote. Hence it takes five states to form a majority against the Commonwealth (Craig 1997: 186;

financial relations, disability reform, education, energy, health, industry and skills, law, crime and community safety, and transport and infrastructure.

¹³ Australian Government, Commonwealth Grants Commission. <<https://www.cgc.gov.au/>>.

¹⁴ Until 2009 its name was the Ministerial Council for Commonwealth–State Financial Relations. Between 2009–2013 the council's name was the Standing Council for Federal Financial Relations.

¹⁵ Council on Federal Financial Relations. <<http://www.federalfinancialrelations.gov.au/>>.

Hueglin and Fenna 2006: 228; Von Hagen et al. 2000: 12).

Until the 1980s, the Loan Council could determine the amount, timing, and interest rates of state borrowing and states could only borrow under prior authorization. In 1983, the federal government significantly reduced the role of the Loan Council by introducing the global limit approach (see borrowing autonomy, discussed earlier). Pressed by excessive state borrowing in the early 1990s, the federal government replaced the voluntary global limit approach with a binding 1994 financial agreement (Law No. 106/1994) which reintroduced the Loan Council's authority to make binding rules (Australia 2008; Ruiz-Palmero 2017: 111–129; Saunders 2005: 35; Webb 2002).

Until 1994 both territories held observer status in the Loan Council. The 1994 financial agreement (Law No. 106/1994) promoted both territories to full voting membership, so from 1995 onward the territories' score on borrowing control matches that for states.

CONSTITUTIONAL REFORM

Constitutional amendments require absolute majorities in both chambers of parliament and then must gain the support of a majority of the national electorate and a majority of states and territories in a referendum (C 1900, Art. 128). If there is disagreement between the chambers, the objections of one chamber can be overridden if the amendment passes the other chamber by absolute majority after a reflection period of at least three months and succeeds in a national referendum under the double majority rule above.

Territorial governments have multilateral constitutional shared rule. Between 1975 and 1977, they were represented in the senate but could not hold a referendum. From 1978, a revision of Art. 128 of the Australian constitution entitled the Australian Capital Territory and the Northern Territory to vote in a referendum, which puts the territories on equal footing with the states. However, territories are not consulted over amendments to their acts.

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Self-rule in Australia

			Institutional depth	Policy scope	Fiscal autonomy	Borrowing autonomy	Representation		Self-rule
							Assembly	Executive	
States	I	1950-1983	3	4	2	1	2	2	14
	I	1984-1994	3	4	2	3	2	2	16
	I	1995-2018	3	4	2	2	2	2	15
Northern Territory	I	1950-1959	1	0	0	0	0	0	1
	I	1960-1964	1	0	0	0	2	0	3
	I	1965-1977	1	0	0	0	2	2	5
	I	1978-1983	2	3	2	1	2	2	12
	I	1984-1994	2	3	2	3	2	2	14
	I	1995-2018	2	3	2	2	2	2	13
Australian Capital Territory	I	1950-1988	1	0	0	0	0	0	1
	I	1989-1994	2	3	2	3	2	2	14
	I	1995-2018	2	3	2	2	2	2	13

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Shared rule in Australia

		Law making						Executive control		Fiscal control		Borrowing control		Constitutional reform		Shared rule
		L1	L2	L3	L4	L5	L6	M	B	M	B	M	B	M	B	
States	1950-1983	0.5	0	0.5	0.5	0	0	2	0	1	0	2	0	3	0	9.5
	1984-1994	0.5	0	0.5	0.5	0	0	2	0	1	0	0	0	3	0	7.5
	1995-1998	0.5	0	0.5	0.5	0	0	2	0	1	0	2	0	3	0	9.5
	1999-2018	0.5	0	0.5	0.5	0	0	2	0	2	0	2	0	3	0	10.5
Northern Territory	1950-1974	0.5	0	0	0	0.5	0	0	0	0	0	0	0	0	0	1
	1975-1977	0.5	0	0.5	0.5	0	0	0	0	0	0	0	0	1	0	2.5
	1978-1983	0.5	0	0.5	0.5	0	0	2	0	1	0	1	0	3	0	8.5
	1984-1994	0.5	0	0.5	0.5	0	0	2	0	1	0	0	0	3	0	7.5
	1995-1998	0.5	0	0.5	0.5	0	0	2	0	1	0	2	0	3	0	9.5
	1999-2018	0.5	0	0.5	0.5	0	0	2	0	2	0	2	0	3	0	10.5
Australian Capital Territory	1950-1974	0.5	0	0	0	0.5	0	0	0	0	0	0	0	0	0	1
	1975-1977	0.5	0	0.5	0.5	0	0	0	0	0	0	0	0	1	0	2.5
	1978-1988	0.5	0	0.5	0.5	0	0	0	0	0	0	0	0	3	0	4.5
	1989-1994	0.5	0	0.5	0.5	0	0	2	0	1	0	0	0	3	0	7.5
	1995-1998	0.5	0	0.5	0.5	0	0	2	0	1	0	2	0	3	0	9.5
	1999-2018	0.5	0	0.5	0.5	0	0	2	0	2	0	2	0	3	0	10.5

National legislature has: L1 = regional representation; L2 = regional government representation; L3 = majority regional representation; L4 = extensive authority; L5 = bilateral regional consultation; L6 = veto for individual region. Total for shared rule includes the highest score of either multilateral (M) or bilateral (B).

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