

Introduction to the levels of government in Australia

Implications for investors



Australian Government
Australian Trade Commission



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13-14-678

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Welcome

This guide provides investors with a high-level overview of Australia's governance system and how it relates to investment.

Australia is a representative parliamentary democracy with three levels of government.

This multilayer governance system affects a number of sectors and industries that foreign investors may seek to invest in, including natural resources, infrastructure, commercial real estate, tourism and manufacturing.

Foreign investors should have a strong understanding of the responsibilities of each level of government prior to investing in these sectors.

Why Australia

Australia offers investors a powerful combination of solid economic performance, a highly skilled workforce, legal and political stability and close ties to the fast-growing markets of Asia.

It is the sixth-largest country in land area and the 13th largest economy in the world, entering its 25th year of uninterrupted annual economic growth. Australia has 10 per cent of the world's biodiversity and an abundance of natural resources.

The population of 23 million is one of the world's most multicultural, with 30 per cent of the workforce born overseas. While English is the national language, more than 300 languages are spoken in Australian cities. Australia's highly skilled workforce is a reflection of the country's high-quality education system, one of the best in the world.

Three levels of law-making

Australia has three levels of government with defined law-making powers:

Federal Parliament



- › The **federal** or national Parliament, in Canberra, Australian Capital Territory (ACT)

State/Territory Parliaments



- › Six **state parliaments** and two self-governing **territory parliaments** – Northern Territory and ACT

Local Councils



- › Over **560 local councils** (also called shires or municipalities).

The federal, state, Northern Territory and ACT governments all have three arms:

1. A **legislature** (or parliament) responsible for debating and voting on new laws to be introduced
2. An **executive** responsible for enacting and upholding the laws
3. A **judiciary** responsible for, among other things, enforcing such laws.



Members of federal and state/territory parliaments (and local governments) are chosen from and elected by the people. Voting is compulsory for Australian citizens from the age of 18.

Roles and responsibilities

Each level of government has its own responsibilities, which may overlap in some cases.

The division of powers between the federal and state governments is set out in the Australian Constitution. Each state also has its own Constitution setting out its law-making powers.

Federal government law-making powers

The ACT and the Northern Territory are self-governed under Acts passed by the Federal Parliament.

Sections 51 and 52 of the Australian Constitution list the areas over which the federal Parliament can make laws. These include:

- › International and interstate trade
- › Foreign affairs
- › Quarantine
- › Defence
- › Immigration

- › Taxation
- › Banking
- › Insurance
- › Marriage and divorce
- › Currency, weights and measures
- › Post and telecommunications
- › Invalid and old age pensions.

Section 51 also allows state parliaments to refer matters to the federal Parliament.

Federal Parliament



International and interstate trade



Quarantine



Immigration



Banking



Marriage and divorce



Post and telecommunications



Foreign corporations



Foreign affairs



Defence



Taxation



Insurance



Currency, weights and measures



Invalid and old age pensions



Bankruptcy and insolvency

State and territory governments' law-making powers

State parliaments have residual powers under the Australian Constitution, meaning they can make laws on any issue not allocated to the federal Parliament under the Constitution.

State laws usually cover issues such as:

- › Local governments
- › Education and schools
- › Health
- › Some aspects of the environment
- › Emergency services operation (police, fire and ambulance).

Territories are any land within Australia's national border that is not claimed by one of the states. Australia has 10 territories, two of which (Northern Territory and ACT) are self-governing, having been granted similar law-making powers to those of the states under acts of federal Parliament.

There are eight Australian territories that are not self-governing but are governed according to Commonwealth law, usually by an appointed administrator. In the ACT, the local and territorial government functions are combined.

Although the federal government is the main taxation authority, state governments also raise revenue by means of various duties, levies and royalties (for example, payroll taxes, mining royalties and property duties). The federal government funds many state and territory activities and functions, often attaching conditions to the use of the funds.

State/Territory Parliaments



Local governments



Health



Emergency services operation



Electricity



Water and gas supply



Child welfare



Education and schools



Environment



Public transport



Roads and railways



Housing



Prisons

Local government law-making powers

Local governments are established by state governments (and the Northern Territory Government) to look after matters relevant to local communities.

Local councils are not mentioned in the Australian Constitution, although each state has a Local Government Act that provides the rules for the creation and operation of councils. While these Acts vary from state to state, they generally cover how councils are elected and their powers to make and enforce local laws, known as by-laws.

The main task of local governments is to regulate or manage services and activities, adapted to the needs of the community they serve.

These include:

- › Garbage collection and recycling
- › Provision and maintenance of public parks and sporting grounds
- › Libraries
- › Some local planning decisions.

Local Councils



Garbage collection and recycling



Footpaths and cycleways



Parking



Land and coast care programs



Building approvals



Water and sewage



Swimming pools



Aged care



Local roads



Street signs and lighting



Libraries



Pet registration



Building inspections



Parks and sporting fields



Childcare



Town planning



Areas of overlap and cooperation

There is a well-established set of rules under Australian law setting out which governments have law-making powers at different levels. Certain Australian courts are also empowered to determine which layers of government are empowered to make laws.

For example, section 71 of the Australian Constitution empowers the High Court of Australia to resolve inconsistencies between the laws of the federal government and those of a state. Consequently, while Australia's laws operate at different levels, this multilayer system is one which is ordered, well developed and relatively predictable.

However, on some matters the different levels of government may have overlapping or complementary laws that must be considered (see case study).

The Council of Australian Governments

To better facilitate the interaction between the different layers of government, the federal government established the Council of Australian Governments (COAG) in 1992. COAG includes the Prime Minister, state premiers, chief ministers and the President of the Australian Local Government Association (a representative body of Australia's local governments). COAG meets twice a year to discuss intergovernmental matters.

COAG is also a forum through which ministers from various levels of government work together on matters of common concern. As a result of these intergovernmental discussions, uniform national laws have been made to tackle issues such as road transport, food standards and consumer rights.

Examples of overlapping and complementary areas of responsibilities include environmental protection (as detailed in the case study), planning and development, schools and tertiary education, labour relations, healthcare and hospitals, and economic infrastructure.

Visit coag.gov.au for more information.



Case study: How different levels of government collaborate on environment and planning laws

Each level of government is involved in environmental rule-making. Investors or developers of major projects should be engaged with and understand the roles of different government levels.

The federal government administers the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), which covers certain obligations under international environmental treaties. The EPBC Act creates some assessment and approval processes regarding matters of national environmental significance.

The states and territories are involved in the bulk of environmental regulation and approval processes through their respective Acts. For instance, Victoria operates under laws such as the *Environmental Protection Act 1970*, which creates offences for certain behaviours related to the disposal of waste and degradation of the natural environment. Victoria also has a *Planning and Environment Act 1987*, which creates rules and an approvals process for establishing new developments.

Finally, local governments generally regulate, assess and approve the majority of developments within their local government boundaries. They also have some powers to enforce state-level offences.

Implications for foreign investors

Foreign investors should have a strong understanding of the responsibilities of each level of government prior to investing in Australia.

Below are some of the key areas where multiple layers of government will be relevant for foreign investment processes.

Business structures

A preliminary consideration for any foreign investor is determining what business structure they will use or buy into for their investment in Australia. The federal government is the primary administrator of laws on Australian business structures.

The main corporate structure used to establish operations in Australia are companies. Companies are incorporated under the *Corporations Act 2001*, which is administered by the Australian Securities & Investments Commission (ASIC). There are two types of companies in Australia – proprietary companies and public companies. Companies are owned by their shareholders and managed by directors.

There are other structures which investors may use, and which are regulated by state or territorial laws. For instance, partnerships (where two or more individuals or

companies carry on a business together) are regulated by state laws, common law and the contracts which govern the partnership. It is also important to consider state or territorial laws (particularly those relating to stamp duty) when designing trust structures.

Visit asic.gov.au for more information.

Foreign investment approvals and competition law

Australia supports foreign investment and has a long history of welcoming investment that is in the national interest. Through the Foreign Investment Review Board (FIRB), the Australian Government reviews those foreign investment proposals that meet certain criteria to ensure they support Australia's interests. Around 900 business and commercial real estate cases are approved on average each year. Only three of these proposals have been blocked since 2001.

Foreign acquisitions may also be subject to review at the federal level under competition and consumer law in circumstances where the acquisition could have the effect of substantially lessening competition in the Australian market. These laws are administered by the Australian Competition and Consumer Commission (ACCC). Additionally, companies that operate in Australia are subject to a federal competition law regime (as well as some state laws) that strictly regulate the conduct and representations made by businesses.

Visit firb.gov.au and accc.gov.au for more information.

Taxation

All levels of government have revenue-raising powers. The federal government is the main taxing entity in Australia. It raises money by collecting taxes on incomes and company profits, tax on goods and services (GST) and through other charges such as fuel excise and customs duties.

For more information visit the Australian Taxation Office at ato.gov.au.

State and territory governments have a more limited authority to collect taxes. These governments can issue taxes and charges such as stamp duties, payroll tax, motor vehicle registrations, land tax and gambling licences.

In recent years, some industry groups and governments have sought to abolish stamp duty on certain transactions, for example, on particular share dealings, loan security arrangements and business asset transfers. Stamp duty differs across states and territories and as such, investors should seek professional advice to confirm they comply.

Local governments receive grants from federal and state and territory governments. They also raise their own revenues 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.

Employment, discrimination and work health and safety laws

Investors acquiring or investing in businesses that employ staff must be aware of Australia's workplace relations laws.

The federal government has overarching responsibilities for workplace relations under the federal *Fair Work Act 2009* (FWA). This legislation applies to the vast majority of Australian employers and includes rules relating to unfair dismissal, protections from 'adverse action' (essentially, adverse treatment because an employee or contractor has a particular attribute or workplace entitlement), types of agreements, and obligations for employers, employees and unions to bargain in 'good faith'.

Under the federal *Superannuation Guarantee (Administration) Act 1992*, employers are required to make compulsory superannuation contributions on behalf of their employees to complying superannuation funds. A failure by an employer to do so will attract a tax or charge.

State and territory laws also impose obligations on employment matters such as long service leave entitlements and workplace health and safety. In addition, some pre-existing industrial awards and workplace agreements may apply. These are instruments that have been created by an industrial tribunal.

The FWA and anti-discrimination laws in states and territories also specifically prohibit termination of employment for various reasons, including temporary absence from work because of illness or injury; trade union membership or non-membership; race, colour, sex, sexual preference or mental disability.

In recent years, Australian employment industrial relations laws have moved from a state/territory-based system that operated separately in each jurisdiction, to the current predominantly unified federal system. As a consequence, some complex transitional arrangements remain, for example, phasing out state/territory-based minimum wage differences. As such, employers must be careful to consider any transitional arrangements that may apply to their employees.

Visit the Fair Work Ombudsman at fairwork.gov.au for more information on fair work legislation.



Land acquisition and use

There are four systems of land ownership and title registration in Australia:

- › Old System Title
- › Torrens Title
- › Crown Land Title
- › Native Title.

The vast majority of commercial and residential land in Australia is held under the Torrens Title system.

Before foreign investors can purchase or lease land in Australia, they have to consider any approvals that may be required from the FIRB (discussed above). The FIRB has specific rules and policies around whether or not a foreign person can invest in Australian land (whether through acquisition or leasing). The process involves notifying the FIRB of the transaction details, who may then allow or reject the proposed investment.

A purchaser of real property in Australia may need to undertake a certain level of due diligence depending on the required use of the land. States and territories have legislation which mandates that the vendor must disclose certain pieces of information. For example, in Victoria the *Sale of Land Act 1962* mandates that the vendor of real property produce a Vendor's Statement which discloses things relating to title, encumbrances, rates and more.

Crown land is often involved with mining and rural land acquisitions and can be the subject of Native Title claims. Native Title is the term used to describe certain common law rights held by Indigenous Australians regarding traditional land and water. The federal government regulates Native Title through the *Native Title Act 1993*.

Federal, state and territorial government legislation also exists to protect items of Australian heritage (natural, cultural and historic) such as sites and objects of significance.

For more information on land title, visit australia.gov.au/content/land-titles.

For detailed information on land tenure and usage in northern Australia, visit austrade.gov.au/landtenure.

Water use

The right to access water in Australia is a statutory right governed by different legislative schemes in each state and territory. In most jurisdictions, water rights are distinct from the land with which they are connected, thus representing items of tradeable rights separate from the land.

The federal government provides oversight in areas where waterways cross state and territory boundaries. The federal *Water Act 2007* sets out a detailed regime for the use and management of Australia's water resources, most significantly by requiring the development of a 'Basin Plan'.

Visit environment.gov.au/water for more information.

Environmental protection

Australia has a robust legislative framework for environmental protection. Projects are assessed under the environmental laws and regulations of the state or territory in which they occur. Projects that impact on matters of national environmental significance are also assessed by the federal government under the *EPBC Act*. In addition, local governments can also have environmental regulations that need to be considered, particularly for smaller-scale developments.

Environmental regulation is mainly at the state and territory level in Australia. Through state-based legislation and environmental protection agencies, each state or territory regulates and manages systems for pollution control, contamination, hazardous materials, waste disposal and biodiversity protection.

The federal government has proposed a One-Stop-Shop policy aimed at simplifying environmental approvals for business, while maintaining high environmental standards. The policy will accredit state and territory approval processes, allowing businesses to conduct a single environmental assessment and approval process that satisfies both state and territory legislation and national environmental law.

In addition, specific tourism developments over A\$50 million that are subject to the *EPBC Act* can apply to the Minister for Trade and Investment for Tourism Major Project Facilitation Status.

For more information on the One-Stop-Shop for environmental approvals, visit environment.gov.au/epbc/one-stop-shop.

Local planning

State and territory governments and local governments primarily control the development and use of land across Australia, through a combination of legislation and planning policies and instruments. The regulatory framework differs between states/territories and between local governments.

Local governments generally regulate, assess and approve the majority of developments within their local government boundaries, with the following two exceptions:

1. Projects of regional or state significance or major developments and infrastructure projects can fall within the jurisdiction of the state government. In most states, certain projects, categories of projects or development sites are designated as state-significant projects by various planning instruments or by declaration of the relevant Minister for Planning. Projects that fall within these categories will be assessed by the relevant Planning Department within the state government and be approved by the relevant Minister for Planning. Different assessment and approval requirements will apply to those projects assessed at the state level.
2. Matters of national environmental significance may require referral to federal government departments (for example, the Department of the Environment).

Local environmental plans designate zones for all land under local jurisdiction (for example, residential, commercial or industrial), and then prescribe the types of development that will be permitted or prohibited within each zone. Where development is permitted, the local environmental plans also determine the level of consent required.

Visit the Australian Local Government Association at alga.asn.au for more information on local planning.

Supply chain regulation

The federal government has created some laws relating to the production, management and supply of products along supply chains. These laws relate to import and export conditions, quarantine and laws for managing the country's biosecurity system.

These regulatory regimes rely on cooperation between the federal government and state and territory governments, as well as importers, exporters, industry and consumer groups and the wider community. For example, in 2011, the federal government introduced a new regulatory framework, the Exporter Supply Chain Assurance System, to strengthen Australia's live cattle export trade.

Within Australia, industry groups contribute through planning, preparedness and response activities in cooperation with governments. Under Australian law, all food production and processing must comply with the Australia New Zealand Food Standards Code.

Visit foodstandards.gov.au for more information on the Food Standards Code.

Research and development and intellectual property protection

Research and development (R&D) is supported by Australian governments through some financial incentive schemes and support, as well as a robust intellectual property (IP) protection regime.

The federal government operates an R&D Tax Incentive program to help businesses offset some of the costs of R&D. The program aims to help more businesses do R&D and innovate. The scheme operates by means of a tax offset for certain eligible entities.

The federal government also provides funding for research in advanced manufacturing, services and technologies through its support of, for example, organisations such as the Commonwealth Scientific and Industrial Research Organisation (CSIRO) and universities.

The states and territories provide financial support for R&D through initiatives that focus on industries of importance in the particular location. For example, the South Australian Government has invested in BioSA, a biotechnology business incubator.

Additionally, Australia has a robust IP protection regime. Federal legislation provides for the registration and protection of IP such as trademarks, patents and industrial designs. Copyright is also protected under federal law, without requiring registration. There is separate legislation providing protection for original circuit layouts (that is, the representation of the three-dimensional location of the electronic components of an integrated circuit) and for unique plant varieties.

Visit ipaustralia.gov.au for information on IP Australia, the listed federal government agency within the Department of Industry, Innovation and Science.

How we can help

The Australian Trade Commission – Austrade – contributes to Australia’s economic prosperity by helping Australian businesses, education institutions, tourism operators, governments and citizens as they:

- › develop international markets
- › win productive foreign direct investment
- › promote international education
- › seek consular and passport services.

What we provide

Working in partnership with Australian state and territory governments, Austrade provides international investors with the information needed to establish or expand a business in Australia. Services for international investors include:

- › initial coordination of investment enquiries and assistance
- › information on the Australian business and regulatory environment
- › market intelligence and investment opportunities
- › identifying suitable investment locations and partners in Australia
- › advice on Australian government programs and approval processes.

JURISDICTION	GOVERNMENT AGENCY / DIVISION NAME	WEBSITE
Commonwealth	Austrade	austrade.gov.au/invest
Australian Capital Territory	Innovation, Trade and Investment	business.act.gov.au
New South Wales	NSW Department of Industry	industry.nsw.gov.au/invest-in-nsw
Northern Territory	InvestNT	investnt.com.au
Queensland	Trade & Investment Queensland (TIQ)	tiq.qld.gov.au/invest
South Australia	Department of State Development	statedevelopment.sa.gov.au/investment
Tasmania	Department of State Growth	cg.tas.gov.au/home/investment_attraction
Victoria	Invest Victoria	invest.vic.gov.au
Western Australia	Department of State Development	dsd.wa.gov.au/invest-in-wa

austrade.gov.au/invest