

1. General factual and statistical information about the reporting State

A. Demographic, economic, social and cultural characteristics of the State

1. Australia is a stable, democratic society with a skilled workforce and a strong, competitive economy. A profile of Australia can be found on the Department of Foreign Affairs and Trade's website: <<http://www.dfat.gov.au/geo/australia/>>.

Geography

2. In land area, Australia is the sixth largest nation after Russia, Canada, China, the United States of America and Brazil. It has, however, a relatively small population of approximately 20.5 million. Despite the vast size of the continent, the majority of Australians live on the coast and in major cities—around 75 per cent of Australia's population lives in urban areas. Australia is the only nation to govern an entire continent and its outlying islands.

History

3. Aboriginal and Torres Strait Islander peoples inhabited Australia for more than 60,000 years before the arrival of British settlers and convicts in 1788. The size of the pre-colonial Indigenous population is not known with accuracy, but estimates range from 300,000 to one million people, comprising between 500 and 700 tribal groups and speaking approximately 250 different languages.

4. Between 1788 and 1859, six separate British colonies were established around Australia—NSW, Victoria, Tasmania, SA, WA and Queensland. These colonies were quasi-sovereign bodies, equal in status and politically independent of each other, with their own representative parliaments. European colonisation led to the wide spread dispossession of Australia's Indigenous population from its traditional lands.

5. During the 1850s, settlement in Australia was boosted by gold rushes. Scarcity of labour, the vastness of the bush, and new wealth based on farming, mining

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and trade all contributed to the development of uniquely Australian social institutions and sensibilities.

6. In 1901 the Australian colonies federated to become the Commonwealth of Australia, however Australia remained a part of the British Empire. The Statute of Westminster, adopted by Australia in 1942, formally ended most of the constitutional links between the UK and Australia, and the final constitutional ties were removed with the passing of the *Australia Act* in 1986. The British monarch remains the monarch of Australia.

Cultural Diversity

7. Australia's culturally diverse society includes its Indigenous peoples and settlers from countries all around the world. Immigration is an important feature of Australian society. Since 1945, over six million people have come to Australia as new settlers. Migrants have made a major contribution to shaping modern Australia. People born overseas make up almost one quarter of the total population. Information on Australia's ethnic and demographic characteristics is available in Annex 1 'Statistical data and human rights indicators'.

Economy

8. With high growth, low inflation and low interest rates, Australia has a vibrant economy. There is an efficient government sector, a flexible labour market and a very competitive business sector. With its abundant physical resources, Australia has enjoyed relatively high living standards since the Nineteenth Century. It has made a comparatively large investment in social infrastructure, including education, training, health and transport.

B. Constitutional, political and legal structure of the State

General political structure

The Australian federal system

9. Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the various federal institutions and the six States—NSW, Victoria, Queensland, WA, SA and Tasmania—and three self-governing Territories—the ACT, the NT and the Territory of Norfolk Island, established under federal law. In each of these political units there is a parliament elected by the people, an executive, responsible to that parliament which is formed by the majority party or parties, and an independent judiciary.

The Constitution

10. The Australian Constitution is principally concerned with the establishment of the federal organs of government and with the distribution of constitutional power between the Commonwealth and State governments.

11. The Constitution combines responsible democratic parliamentary government based on the Westminster model—the system which had previously existed in the federating colonies—with a division of legislative power between the Commonwealth Government and State governments, the Commonwealth Government being given a list of specific powers and the States retaining the undefined residue.

12. Most of the heads of power enumerated in the Constitution are concurrent; that is, both the Commonwealth Government and the State governments may legislate on these subjects. If both the Commonwealth Government and a State government legislate on the same subject and the two pieces of legislation are inconsistent, then the State legislation will be invalid to the extent of the inconsistency and the Commonwealth legislation will prevail. Where the Commonwealth legislation legitimately covers the whole field on any subject matter, State legislation on the same subject matter will be invalid.

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13. Among the more important matters which fall within the area of concurrent Commonwealth and State power are interstate and overseas trade and commerce, taxation (other than duties of customs and excise), banking and insurance.

Federal government

14. Under the Australian Constitution the legislative power of the Commonwealth of Australia is vested in the Parliament of the Commonwealth, which consists of the Queen, the Senate and the House of Representatives. The Queen is represented throughout the Commonwealth of Australia by the Governor-General.

15. The Upper House is known as the Senate and has 76 members. The Senate was intended to represent the interests of the people of the States as part of a federal system. Membership of the Senate is not determined by population or by size of territory. The less populated States and the States smaller in size have as many members, currently 12, as the more populated or larger States. Thus, in the Senate, all States have equal standing and an equal voice. Section 7 of the Constitution provides that Senators for each State are directly chosen by the people of the State voting as one electorate. Since December 1975, four territorial senators in total represent the two self-governing territories, the ACT and the NT, in the Senate.

16. The Lower House is known as the House of Representatives. The House of Representatives has 147 members elected on a popular basis from single member electorates. The number of members chosen to represent each State is in proportion to its population.

17. In general, legislation must be passed by both Houses before being presented to the Governor-General for assent and becoming law.

18. Australia's electoral system is based upon the democratic principle of universal adult suffrage. The qualifications for enrolment to vote are identical for both Houses. If an Australian citizen is 18 years of age and eligible, it is compulsory to enrol and to vote. The qualifications for enrolment to vote in State and Territory

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elections are similar. The following people are not eligible to enrol to vote in federal elections:

- people of unsound mind who are incapable of understanding the nature and significance of enrolment and voting
- people who have been convicted and are under sentence for an offence punishable by imprisonment, and
- people who have been convicted of treason and not pardoned.

19. The Constitution also recognises a system of responsible government under which the Ministers of the Crown sit in and are directly responsible to Parliament, and can retain office only while they have the ‘confidence’ of the Lower House. There is therefore a direct line of accountability from the people who elect the Members of Parliament to the Executive.

20. Following a general federal election, the Governor-General commissions a member of the Parliament to be Prime Minister. The person chosen is the leader of the party, or one of a coalition of parties, which obtained a majority of seats in the House of Representatives or the person who is able to obtain the general support or ‘confidence’ of a majority of that House. Other Ministers of the Australian Government are appointed by the Governor-General on the recommendation of the Prime Minister from among the Members of Parliament.

21. In theory the powers of the Governor-General are extensive. In practice, however, under the provisions of the Constitution, as well as by the conventions of responsible government in British Commonwealth countries, the Governor-General’s executive functions are exercised almost exclusively on the advice of Ministers of State and it is the Australian Government that accepts the political responsibility for those acts. In exercising statutory powers and functions, and many constitutional powers and functions, the Governor-General acts on the advice of the Federal Executive Council.

State government

22. Each of the six Australian States has its own constitution, a parliament elected by the people, an executive responsible to that parliament formed by the majority party or parties in parliament, and an independent judiciary. Each State legislature has a general power to make laws for the peace, order and good government of the State although the wording of that general power varies slightly in some States. The extent of the legislative powers of each of these parliaments is defined by the Australian and State Constitutions.

23. The Queen is represented in each of the Australian States by a Governor. A Governor of a State has functions in relation to that State similar to the functions conferred on the Governor-General in relation to the Commonwealth Government.

Territory government

24. In addition to the States, there are also a number of Australian territories. Australia has 10 territories in all. The ACT and the NT are self-governing and have separate representative and administrative institutions and their own system of courts. The Commonwealth Government retains the power to legislate for all the territories and is responsible for the administration of the non-self governing territories.

The Law in Australia—nature and composition

25. In Australia, the law consists of:

- Acts passed by the Commonwealth Parliament acting within the scope of its powers under the Australian Constitution, together with delegated or subordinate legislation made under such Acts
- Ordinances made in respect of the ACT, the NT, Norfolk Island and the other territories, together with delegated or subordinate legislation made under such Ordinances
- Acts passed by State parliaments and the Legislative Assemblies of the NT, the ACT and Norfolk Island, together with delegated or subordinate legislation made under such Acts

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- that much of the common or statute law of England as was received and still applies to Australia and remains unrepealed, and
- the Australian common law, which developed from the English common law and is interpreted and enunciated by the Courts.

The judiciary

26. The independence of the judiciary and its separation from the legislative and executive arms of government is regarded as of great importance in Australia. Judges act independently of the Australian Government in interpreting and applying the law. In the case of federal judges, their security of tenure is guaranteed by the Constitution. In the States and Territories, legislation provides security of tenure for judges.

The court system

27. The judicial power of the Commonwealth of Australia is vested in the High Court of Australia, in other federal courts created by the Commonwealth Parliament and in the State and Territory courts invested by Parliament with federal jurisdiction.

28. The Australian Constitution vests two types of jurisdiction in the High Court: original and appellate. Original jurisdiction is conferred under s.75 of the Constitution in respect of all matters: (a) arising under any treaty; (b) affecting consuls or other representatives of other countries; (c) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party; (d) between States, or between residents of different States, or between a State and a resident of another State; and (e) in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth Government or of a Federal court. Under s 76 of the Constitution, the federal Parliament may also make laws conferring original jurisdiction on the High Court in certain other matters, including matters arising under or involving the interpretation of the Constitution. The High Court shares some of its jurisdiction under this section with the Federal Court of Australia. The High Court is also the final court of appeal in Australia.

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29. The Federal Court of Australia was created by the *Federal Court of Australia Act 1976* (Cth). The Court has both original and appellate jurisdiction, conferred by laws made by the Commonwealth Parliament. The Court may hear appeals from judgments of other courts, including the State and Territory courts in limited circumstances and the Federal Magistrates Court. The Federal Court's jurisdiction includes any matter arising under a law made by the Commonwealth Parliament and matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth.

30. The Family Court of Australia, established under the *Family Law Act 1975* (Cth), is a specialist court dealing with matrimonial and associated proceedings including guardianship, custody and access to and maintenance of children.

31. The creation of the Federal Magistrates Court through the *Federal Magistrates Act 1999* (Cth) has also provided the Australian community with an accessible forum for the resolution of less complex family law and general federal law disputes. Australia did not previously have a lower level federal court. The jurisdiction of the Federal Magistrates Court includes family law and child support, administrative law, bankruptcy, consumer protection law, privacy law, migration and copyright.

32. State and Territory courts have original jurisdiction in all matters brought under State or Territory laws, and in matters arising under Commonwealth laws, where jurisdiction has been conferred on the courts by the Commonwealth Parliament. Most criminal matters, whether arising under Commonwealth, State or Territory law, are dealt with by State or Territory courts.

33. The Supreme Courts are the highest State and Territory courts and deal with the most important civil litigation and the most serious criminal cases. Courts of Appeal (Full Courts of the Supreme Courts) exercise appellate jurisdiction from the lower State courts and appeals from a decision of a single judge of the Supreme Court.

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34. The intermediate courts, which are presided over by a single judge, decide the great majority of serious criminal offences where a jury is required to decide the facts of a case. They also deal with civil litigation up to certain monetary limits.

35. The courts of summary jurisdiction are presided over by a magistrate and deal with matters summarily, that is, without a jury. They deal with most of the ordinary (summary) offences, such as traffic infringements and street offences. Magistrates also conduct committal proceedings in respect of the more serious offences to determine whether there is a *prima facie* case to be determined by a judge and jury. In most jurisdictions, these courts also deal with civil litigation for debt recovery, smaller claims by one citizen against another or against a company, as well as some maintenance, custody and property disputes.

Small claims courts and tribunals have been established in all States and Territories to enable minor legal disputes to be dealt with quickly, cheaply and informally.