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# Update Summary

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**UPDATE 190**

**JULY 2024**

## **LOCAL GOVERNMENT SERVICE VICTORIA**

**Maddocks**  
*Solicitors and Notary*

Currently updated by  
Lawrie Groom

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New and updated commentary has been provided by **Lawrie Groom**:

## New Developments

### New:

- **Commonwealth inquiry into local government sustainability**, has been inserted, at [ND.3.290]
- **Local government finance**, has been inserted, at [ND.5.1118]
- **Government's response to corruption report; treatment of donations from high-risk groups such as property developers**, has been inserted, at [ND.5.1120]
- **State Parliament investigation into council funding and services**, has been inserted, at [ND.5.1130]

## Local Government Act 1989

### Updated:

- The "dominant use-for-the-identified-purpose" construction of s 10AA(3)(b) of the *Land Tax Management Act 1956* (NSW) is correct. See *Godolphin Australia Pty Ltd v Chief Commissioner of State Revenue* [2024] HCA 20, at [LGA.154.10].
- The respondents were entitled to restitution of the money paid by mistake which the council was not entitled to receive or to retain. See *Redland City Council v Kozik* [2024] HCA 7, (2024) 98 ALJR 544, (2024) 258 LGERA 388, 390, at [LGA.165B.10].
- A public highway is created, at common law, whenever a "competent landowner manifest[s] an intention to dedicate land as a public road". See *Valmorbida v Les Denny Pty Ltd* [2023] VSC 680, at [LGA.204.10].

### New:

- **Commentary on definition of a road**, has been inserted, at [LGA.3.10]
- **Commentary on section 175**, has been inserted, at [LGA.175.10].

## Annotated Local Government Act 2020

### Updated:

- Care needs to be taken to ensure that an instrument of delegation is an exercise of power under the appropriate Act of Parliament. See *M & S Investments (NSW) Pty Ltd v Affordable Demolitions and Excavations Pty Ltd* [2024] NSWCA 17, at [LG.11.10].
- The members of council staff are appointed to enable the functions of the council under the Act to be performed. See *Owners Corporation Plan No RP*

*015268 v Yarra City Council* [2023] VSC 778, at [LG.48.10].

- The principles of natural justice regulate the exercise of a power conferred on a council when the exercise of that power may prejudice the interests of persons. See *Brisbane City Council v Leahy* [2023] QCA 133; (2023) 255 LGERA 324, at [LG.55.10].
- The payment of GST to the Commonwealth is a voluntary payment, and not a tax. See *Hornsby Shire Council v Commonwealth* [2023] HCA 19, (2023) LGERA 214, at [LG.108.10].
- The High Court in unanimously dismissed the appeal from the decision of the NSW Court of Appeal. See *Cessnock City Council v 123 259 932 Pty Ltd* [2024] HCA 17, at [LG.109.20]
- The election of Councillor Harte on the re-count (following the resignation of Mr El-Halabi) was not affected by fraud. See *Victorian Electoral Commission v Yildiz (Review and Regulation)* [2021] VCAT 1206, at [LG.299.10].

New:

- **Section 24 commentary**, has been inserted, at [LG.24.10]
- **Role of council staff**, has been inserted, at [LG.48.10]
- **Model Litigant Policy for Civil Litigation**, has been inserted, at [LG.313.10]

