

MAJOR PROJECTS GUIDANCE FOR LOCAL GOVERNMENT

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1. Introduction

Local government in Australia is a creature of statute. The powers, functions and objectives are specified in legislation, as are the restrictions on the exercise of those powers and functions. At every step of the process in a major infrastructure project, a Council is planning for the use of, or using statutory powers and functions. In doing so, it is critical that the Council understands the powers and functions it is exercising and does not exceed the limits of those powers and functions.

This annexure describes the legal nature, functions and powers of local government across Australia, with a special focus on infrastructure projects. It starts with a general overview of the nature of local government, and then provides further detail on each of the named States and Territory. At the end of this annexure there is a quick reference table summarising the local government functions and powers across each of the jurisdictions.

2. Legal nature of local government

2.1 Constitutional recognition

Local government is not constitutionally recognised by the Commonwealth. Despite local governments having been in existence since 1840, the Commonwealth Constitution refers to only two levels of government: the Commonwealth Government and the governments of the States and Territories. Notwithstanding its exclusion from the Commonwealth Constitution, local government is seen as Australia's 'third arm of government'. Councils are increasingly called upon to assist in the delivery of Commonwealth Government initiatives at the local level, through their membership of the Council of Australian Governments (COAG). One of the most successful partnerships between the Commonwealth and local government has been the Roads to Recovery program.

The structures, powers and functions of local government are determined by each State and Territory. All of the Australian States recognise local government in their respective constitutions. Councils are established as either a body corporate or a body politic (elected body), and generally have the power to do anything a body corporate or a natural person or individual may do. A Council is constituted by its democratically elected councillors and is directly accountable to its local community.

2.2 Powers and functions

Given that local government legislation in each State or Territory is different, the specific legislative functions of local government differ somewhat in each jurisdiction. There are, however, common functions across Australia.

The Australian Local Government Association (ALGA) submission to the Senate Select Committee's Inquiry into Reform of the Australian Federation states:

Amongst its many functions, local government:

- *maintains over 80 per cent of the nation's road network;*
- *provides, operates and maintains a vast range of community infrastructure;*
- *plans communities, keeps them clean, safe and healthy;*
- *cares for the environment through waste management, natural resource management;*
- *administers community education and local environmental programs;*
- *provides an array of regulatory services often on behalf of other levels of government, for example, environmental health and food inspection services;*
- *promotes regional development, tourism and economic and social advancement;*

- *supports emergency services activities; and*
- *provides an increasing array of human services, from services for the young and the elderly (such as Home and Community Care) to the promotion of public health and public safety.*¹

There is a wide variation in the services provided at the local level depending on the capacity of the individual Council. There is a general expectation that local government will maintain local roads and provide domestic waste disposal services. In some States, local government also provides water and sewerage services.

As previously noted, the powers and functions of local government are determined by legislation in each State or Territory. In general, local government is established to provide leadership for the good governance of the local community and is given powers of general competence to achieve this. For example, local government has the general power to do all things necessary, convenient or incidental to the achievement of its objectives and the performance of its functions. Local government also has a number of specific powers, such as the power to sell or lease land, and the power to enter into contracts, which may also be subject to specific conditions and limitations.

An overview of the powers and functions of local government in each of the States and the Northern Territory are set out below.

3. Victoria

3.1 Legal nature

The *Constitution Act 1975 (Vic)* recognises local government (Part IIA). Part 1A of the *Local Government Act 1989 (Vic)* contains the Local Government Charter. This sets out the purpose of local government, how a Council is constituted, and the objectives, role, function and powers of a Council (discussed further in section 3.2, *Powers and functions*).

A Council is a body corporate with perpetual succession and is capable of doing things that a body corporate entity may do by law and which are necessary or expedient for performing its functions and exercising its powers (s 5(2)). A Council consists of its councillors who are democratically elected (s 3B).

3.2 Powers and functions

General powers and functions

The Local Government Charter states (among other things) that:

- the purpose of local government is to provide a system under which Councils perform the functions and exercise the powers conferred by or under the *Local Government Act* and any other Act for the peace, order and good government of their municipal districts (s 3A)
- the primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions (s 3C)
- the role of a Council is to provide leadership for the good governance of the municipal district and the local community (s 3D)
- the functions of a Council include (s3E):

¹ *Submission to the Senate Select Committee's Inquiry Reform of the Australian Federation*, Australian Local Government Association (20 August 2010) p 6.

- planning for and providing services and facilities to the local community
- providing and maintaining community infrastructure in the municipal district
- undertaking strategic and land use planning for the municipal district
- raising revenue to enable the Council to perform its functions
- having the power to do all things necessary or convenient to be done in connection with the achievement of its objectives and the performance of its functions (s 3F)².

Specific powers

In addition to these general powers and functions, a Council has a number of specific powers as set out in the *Local Government Act 1989 (Vic)*. Some examples of these powers are presented in Table 1.

Table 1: Examples of specific local government powers in Victoria		
Power	Source	Comments
Power to sell land	s 189	A Council must comply with the conditions set out in section 189, which include giving public notice of an intention to sell land and obtaining a current valuation of the land.
Power to lease land	s 190	A Council must observe the conditions set out in section 190, such as the need to give public notice of an intention to lease certain kinds of land.
Power to acquire land compulsorily	s 187	The <i>Land Acquisition and Compensation Act 1986 (Vic)</i> is also relevant in this respect.
Power to enter into contracts	s 186	<p>A Council's power to enter into contracts for the purchase of goods or services worth \$150,000 or more, or for the carrying out of works worth \$200,000 or more must be in accordance with this section.</p> <p>A Council must first give public notice of the proposed contract and invite tenders (or undertake an expression of interest process followed by a tender process). A Council must also have a procurement policy (s 186A), which may contain further restrictions on the power to enter into contracts.</p>
Entrepreneurial powers	s 193	A Council may participate in other bodies, acquire shares in other companies or enter into partnership or any arrangement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise with any person or body carrying on any business or transaction capable of being conducted so as to benefit the Council. Before a Council exercises this power, it must assess the total investment involved and the total risk exposure. Depending on the outcome of this assessment, the Council may need to do other things, such as consider a risk assessment report and obtain the approval of the Minister or Treasurer.

² *Local Government Part 1A.*

Table 1: Examples of specific local government powers in Victoria

Power	Source	Comments
Power to borrow	s 144	A Council's power to borrow is subject to the principles of sound financial management. The <i>Local Government Act 1989 (Vic)</i> includes provisions regarding the circumstances in which: the power to borrow money may be exercised (s 145), use of loan funds for different purposes (s 147), securing borrowings (s 148) and overdrafts (s 150).
Power to declare a special rate or special charge	s 163	A Council may declare a special rate or charge for the purpose of defraying expenses in relation to the performance of a function or the exercise of a power that is considered to be of special benefit to the persons required to pay it. A Council must follow the process set out in section 163. Also of relevance are sections 163A (submissions concerning special rates and charges), 163B (objection process), 164 (discontinuance of works and projects for a special rate or charge), 165 (receipt of excess money) and 166 (variation of a special rate or charge).

Specific infrastructure powers

Councils are responsible for:

- managing the local drainage network (for example, section 198 of the *Local Government Act 1989 (Vic)* vests public sewers and drains in Councils)
- ensuring household-generated wastewater is either appropriately treated onsite (for example, with septic systems) or transported through the reticulated sewerage system – the *Public Health and Wellbeing Act 2008 (Vic)* is relevant in this regard
- managing local roads (under section 205 of the *Local Government Act 1989 (Vic)* and the *Road Management Act 2004 (Vic)*)
- providing domestic waste disposal services (where waste management groups are made up of Councils, they also have a role to play under the *Environment Protection Act 1970 (Vic)*).

Councils in Victoria are not responsible for providing water supply services.

4. New South Wales

4.1 Legal nature

The *Constitution Act 1902 (NSW)* recognises local government (s 51).

Chapter 9 deals with how Councils are established and, in particular, section 220 sets out the legal status of a Council. A Council is a body politic of the State with perpetual succession and the legal capacity and powers of an individual. It is not a body corporate. However, in terms of its functions, a Council also has the functions of a statutory corporation, which includes doing all things that body corporate entities may do and that are necessary for, or incidental to, the exercise of its functions.

A Council does not have the status, privileges and immunities of the Crown (s 220(3)).

The elected representatives (that is, councillors) comprise the governing body of the Council.

4.2 Powers

General powers

Under the *Local Government Act 1993* (NSW), a Council has the general powers of an individual.

Chapter 3 of the *Local Government Act 1993* (NSW) sets out a Council's charter, which includes:

- providing adequate, equitable and appropriate services and facilities for the community
- providing community leadership
- having regard to the long term and cumulative effects of its decisions
- bearing in mind that it is the custodian and trustee of public assets
- effectively accounting for, and managing the assets for which it is responsible (s 8(1)).

A Council, in the exercise of its functions, must pursue its charter (s 8(2)).

Chapter 5 of the *Local Government Act 1993* (NSW) describes a Council's functions generally, which are classified as service functions (that is, non-regulatory), regulatory or ancillary. A Council may do all such things as are supplemental or incidental to, or consequential on, the exercise of its functions (s 23).

A Council may provide goods, services and facilities, and carry out activities, appropriate to the current and future needs of the local community and wider public (s 24).

Chapter 6 sets out the service functions of Councils, which include:

- the provision, management or operation of community, public health, cultural, recreational, environmental protection services and facilities
- the provision, management or operation of waste removal services and facilities
- land and property development assistance
- industry and tourism development and assistance.

Chapter 7 sets out the regulatory functions of Councils and Chapter 8 outlines the ancillary functions of Councils (for example, acquisition of land and entry onto land).

A Council also has administrative functions (Chapters 11, 12 and 13), revenue functions (Chapter 15) and functions relating to the enforcement of the *Local Government Act 1993* (NSW) (Chapters 16 and 17). Additionally, a Council has the functions conferred or imposed on it by or under any other Act or law. For example, under the *Roads Act 1993* (NSW), a Council has functions relating to roads.

Specific powers

Examples of specific powers conferred on a Council under the *Local Government Act 1993* (NSW) are included in Table 2.

Table 2: Examples of specific local government powers in New South Wales

Power	Source	Comments
Dealings in public land	Chapter 6, Part 2	A Council has no power to sell community land (s 45), however it may grant a lease or licence of community land in accordance with the Act. 'Community land' is different to public land which is classified as 'operational' land.
Power to acquire land compulsorily	ss 186-190	The <i>Land Acquisition (Just Terms Compensation) Act 1991</i> is also relevant in this respect.
Power to enter into contracts	s 55	A Council must invite tenders before entering into certain contracts. These include contracts for the provision of goods or materials, and for the carrying out of certain works. The <i>Local Government (General) Regulations 2005</i> (NSW) also deal with tendering (r 163-179).
Public private partnership arrangements	ss 400B-400N	A Council must comply with these provisions when entering into a public private partnership or carrying out a project under a public private partnership arrangement.
Power to borrow	s 621-624	A Council must observe any limitations or restrictions on borrowings imposed by the Minister, specifically or generally.
Power to declare a special rate	s 495	A Council may make a special rate for or towards meeting the cost of any works, services, facilities or activities provided by the Council other than domestic waste management works. The special rate is to be levied on land that benefits from, contributes to the need for, or has access to, the Council's works, services, facilities or activities.

Specific infrastructure powers

The *Local Government Act 1993* (NSW) also specifically states that a Council is the owner of works of water supply, sewerage and stormwater drainage installed in or on land by the Council (whether or not the land is owned by the Council) (s 59A), and that a Council has the control of public reserves that are not under the control of, or vested in, any other body or persons and are not held by a person under lease from the Crown, or other public reserves that the Governor, by proclamation, placed under the control of the Council (s 48).

Councils are also responsible for local roads (under the *Roads Act 1993* (NSW)) and for the provision of domestic waste disposal services (this is a specific example of a Council's service function). Some Councils are also responsible for providing water supply and sewerage services (see Part 3, Division 2 of the *Local Government Act 1993* (NSW)).

5. Queensland

5.1 Legal nature

The *Constitution of Queensland 2001* (Qld) recognises local government (s 70).

Chapter 2 of the *Local Government Act 2009* (Qld) sets out the constitution, responsibilities and powers of local governments (except for Brisbane City Council, which is governed instead by the *City of Brisbane Act 2010* (Qld)).

A local government is an elected body that is responsible for the good rule and local government of a part of Queensland (s 8(1)). It has the power to do anything that is necessary or convenient for the good rule and local government of its local government area (s 9(1)), or for performing its responsibilities (s 262(2)). This comprises all the powers that an individual may exercise, including the power to enter into contracts and to sell and lease land. However, a local government can only do something that the State can validly do (s 912).

A local government is constituted by the councillors who are elected or appointed to the local government (s 11(1)).

5.2 Powers

General powers

As noted above, under the *Local Government Act 2009* (Qld), a local government has the general power to do anything that is necessary or convenient for the good rule of its local government area.

It also has the power to do anything that is necessary or convenient for performing a responsibility under a Local Government Act. For example, this can be a law under which a local government performs its local government responsibilities, which includes a local law, a planning scheme, the *Sustainable Planning Act 2009* (Qld), the *Plumbing and Drainage Act 2002* (Qld), the *Water Act 2000* (Qld), and the *Water Supply (Safety and Reliability) Act 2008* (Qld). Specifically, this includes all the powers that an individual may exercise, including, for example, the power to enter into contracts.

Specific powers

In addition to these powers, the *Local Government Act 2009* (Qld) confers the specific powers illustrated in Table 3.

Table 3: Examples of specific local government powers in Queensland		
Power	Source	Comments
Power to deal with and dispose of property	s 262(3)(b)	A local government has the power to acquire, hold, deal with and dispose of land.
Power to acquire land for road purposes	ss 61-67	A local government may acquire land in order to widen a road or acquire land that adjoins a road for use as a footpath (ss 61-67). A local government also has the general power to 'resume' land under the <i>Acquisition of Land Act 1967</i> (Qld).

Table 3: Examples of specific local government powers in Queensland		
Power	Source	Comments
Beneficial enterprises	s 39	A local government may conduct a beneficial enterprise, which is an enterprise that is directed to benefiting, and can reasonably be expected to benefit, over the whole or part of its local government area. A local government may also invest in a beneficial enterprise that is to be conducted with the private sector (s 42). The <i>Local Government (Beneficial Enterprises and Business Activities) Regulation 2010</i> (Qld) is also relevant.
Power to declare a special rate or special charge	ss 92 and 94	These are for services, facilities and activities that have a special association with particular land. Part 6 of the <i>Local Government (Finance, Plans and Reporting) Regulation 2010</i> (Qld) is also relevant
Power to establish a mall	s 80A	A local government may establish a mall in its local government area.
Power to borrow	<i>Statutory Bodies Financial Arrangements Act 1982</i> (Qld)	A local government has the power to borrow.
Power to enter into contracts	s 262(3)(a)	A local government must have regard to 'sound contracting principles' when entering into a contract for the supply of goods or services, the carrying out of work, or the disposal of assets (s 106).

Part 4 of the *Local Government Act 2009* (Qld) contains provisions that relate only to an indigenous regional Council (for example, the Torres Strait Island Regional Council). There are restrictions on the making of certain decisions (called a 'trust change proposal'); such as putting an improvement on trust land and creating an interest in trust land (that is, granting a lease).

Specific infrastructure powers

A local government is responsible for:

- roads (see section 60 of the *Local Government Act 2009* (Qld))
- stormwater drains (see Chapter 3, Part 3, Division 2, of the *Local Government Act 2009* (Qld))
- water and sewerage services (until there is a service provider for a service area under the *Water Act 2000* (Qld))
- waste management works (where required under the *Environment Protection Act 1994* (Qld)).

6. South Australia

6.1 Legal nature

The *Constitution Act 1934 (SA)* recognises local government (s 64A) (the first Australian local Council was the Adelaide City Council in 1840). Chapter 2 of the *Local Government Act 1999 (SA)* sets out the system of local government, namely the principal role, functions and objectives of a Council. The principal role of a Council is to provide for the government and management of its area at the local level. This includes providing and co-ordinating various public services and facilities to develop the community and resources in a socially just and ecologically sustainable manner (s 6(a)).

Chapter 4 states that a Council is a body corporate with perpetual succession (s 35(1)). It consists of the members appointed or elected to the Council (s 35(3)). A Council has the legal capacity of a natural person, and has the power to do anything necessary, expedient or incidental to performing or discharging its functions or duties or to achieving its objectives (s 36(1)).

6.2 Powers

General powers

As noted above, under the *Local Government Act 1999 (SA)*, a Council has the general power to do anything necessary, expedient or incidental to performing or discharging its functions or duties or to achieving its objectives. The functions of a Council include (s 7):

- planning for the development and future requirements of its area
- providing services and facilities that benefit its area, ratepayers, residents and visitors, including general public services or facilities (including electricity, gas and water services, and waste collection, control or disposal services or facilities), health, welfare or community services or facilities, and cultural or recreational services or facilities
- providing infrastructure for its community and for development within its area, including infrastructure that helps to protect any part of the local or broader community from any hazard or other event, or that assists in the management of any area.

Specific powers

In addition to the general powers, a Council has a number of specific powers under the *Local Government Act 1999 (SA)* as set out in Table 4.

Table 4: Examples of specific local government powers in South Australia

Power	Source	Comments
Power to sell or dispose of local government land	s 201	A Council may sell or dispose of an interest in land. However, there are restrictions on the disposal of community land and land forming part of a road.
Power to grant a lease or licence over community land	s 202	A Council may grant a lease or licence over community land (including community land that is, or forms part of, a park or reserve) provided it complies with the conditions of this section.

Table 4: Examples of specific local government powers in South Australia		
Power	Source	Comments
Power to approve the use of community land for business purposes	s 200	Community land can only be used for business purposes unless an alternative use is approved by the Council.
Power to acquire land compulsorily	s 191	A Council may acquire land compulsorily, however this may require the Minister's written approval. The <i>Land Acquisition Act 1969 (Qld)</i> applies to the acquisition of land under this section.
Power to enter into contracts	s 36	A Council has the legal capacity of a natural person and may enter into any kind of contract or arrangement. Section 49 requires a Council to prepare and adopt policies on contracts and tenders relating to the contracting of services, competitive tendering, the use of local goods and services and the sale or disposal of land or other assets.
Power to engage in commercial activities or enterprises	s 46	In connection with a commercial project, a Council may establish a business or participate in a joint venture, trust, partnership or other similar body. This is subject to compliance with prudential requirements for certain activities (s 48). However, a Council must not participate in the formation of a company or acquire shares in a company (s 47).
Power to borrow	s 134	A Council may borrow money and obtain other forms of financial accommodation. A Council cannot delegate its power to borrow money (s 44).
Power to declare a separate rate	s 154	<p>A Council may declare a separate rate on rateable land within a part of the area of the Council, for the purpose of planning, carrying out, making available, supporting, maintaining or improving an activity that is, or is intended to be, of particular benefit to the land, the occupiers of the land, within that part of the area, or to visitors to that part of the area.</p> <p>Separate rates may be declared in respect of a particular activity despite the fact that the activity is not to be directly undertaken or provided by the Council.</p> <p>A separate rate may be declared for a specified period (for example, time taken to carry out a major project).</p>

A Council is responsible for:

- roads (refer to section 208 of the *Local Government Act 1999 (SA)*)
- stormwater – for example, under clause 23 of Schedule 1A, the Minister may vest in a public authority the care, control and management of any stormwater infrastructure. The Stormwater Management Authority has the overall responsibility to liaise with relevant public authorities with a view to ensuring the proper functioning of the State's stormwater management system

- sewerage – for example, where drainage works are leased to a Council by the South Australian Water Corporation under the *Sewerage Act 1923* (SA)
- providing domestic waste disposal services.

7. Western Australia

7.1 Legal nature

The *Constitution Act 1889* (WA) recognises local government (s 52).

Part 2 of the *Local Government Act 1995* (WA) sets out the constituent requirements for local government. A local government is established for each area of the State that is deemed a district (s 2.5 (1)). The local government is a body corporate entity with perpetual succession (s 2.5(2)) and has the legal capacity of a natural person (s 2.5(3)).

Each local government has an elected Council as its governing body, made up of councillors (s2.6).

The role of the Council is to direct and control the local government's affairs and is responsible for the performance of the local government's functions (s 2.7). The role of councillors is to provide leadership and guidance to the community in the district (s 2.10).

Part 3 of the *Local Government Act 1995* (WA) deals with the functions of local government. It describes the general, legislative and executive functions of local government.

7.2 Powers and functions

General powers and functions

The general function of a local government is to provide for the good governance of persons in its district (s 3.1(1)).

The general powers of a local government are legislative or executive in nature and include powers to:

- make local laws – prescribing all matters that are required or permitted to be prescribed by a local law, or are necessary or convenient to be so prescribed – for it to perform any of its functions under the Act (s 3.5(1))
- administer its local laws, and undertake all other things that are necessary, convenient or connected to performing its functions under the Act.

Specific powers

In addition to the general power and functions noted above, a local government has a number of specific powers as set out in the *Local Government Act 1995* (WA).

Some examples are set out in Table 5.

Table 5: Examples of specific local government powers in Western Australia		
Power	Source	Comments
Power to dispose of property	s 3.58	A Council may sell, lease or otherwise dispose of property other than money under this section.
Power to acquire land compulsorily	s 3.55	A Council can only take land under Part 9 of the <i>Land Administration Act 1997 (WA)</i> , if it is in (or is to be regarded as being included in) its own district.
Power to enter into contracts	s 3.57	<p>Prior to entering into a contract of a prescribed kind – under which another person is to supply goods or services – a local government is required to invite tenders.</p> <p>The <i>Local Government (Functions and General) Regulations 1996 (WA)</i> prescribes such contracts as those where the consideration under the contract is, or is expected to be, more than \$100,000 (unless r 11 (2) states otherwise). Under these Regulations, a local government is also required to prepare or adopt, and implement, a purchasing policy in relation to contracts for other persons to supply goods or services where the contract consideration is, or is expected to be, \$100,000 or less or worth \$100,000 or less (r 11A).</p>
Commercial enterprise powers	s 3.59	<p>A Council is required to prepare a business plan, give statewide public notice and consider any related submissions received prior to commencing a major trading endeavour or entering into a major land transaction.</p> <p>The <i>Local Government (Functions and General) Regulations 1996 (WA)</i> is also relevant for the purposes of applying this section (r 10).</p>
Power to borrow	s 6.20	A Council may borrow or re-borrow money, obtain credit or arrange for financial accommodation to be extended to the local government in ways additional to or other than borrowing money or obtaining credit to enable the Council to perform the functions and exercise its powers.
Power to declare a specified area rate	s 6.37	A Council may impose a specified area rate for the purpose of meeting the cost of the provision of a specific work, service or facility, if the ratepayers or residents within the area will benefit from it, have access to it, or have contributed to the need for it.

A local government is also responsible for:

- **roads:** some powers are conferred on a local government under the *Local Government Act 1995 (WA)*, such as the power to close thoroughfares (s 3.50), but the *Main Roads Act 1930 (WA)* is also relevant. A local government has the duty to ensure that the lawful use of any thoroughfare (or other land) is not obstructed (s 3.21 of the *Local Government Act 1995 (WA)*)
- **sewerage:** this is governed by the *Health Act 1911 (WA)*. In particular, all public sewers made at the cost of a local government vest in and belong to the local government, and other public

sewers not made at the local government's cost may also be placed under the local government's control (s 53 of the *Health Act 1911 (WA)*)

- **waste services:** a local government may provide, or enter into a contract for the provision on its behalf of, waste services, under section 50 of the *Waste Avoidance and Resource Recovery Act 2007 (WA)*
- **reserves** (s 3.54 of the *Local Government Act 1995 (WA)*): being land reserved under the *Land Administration Act 1997 (WA)* and vested in or placed under the control and management of a local government.

8. Tasmania

8.1 Legal nature

The *Constitution Act 1934 (Tas)* recognises local government (Part IVA).

Part 3 of the *Local Government Act 1993 (Tas)* sets out the structure, functions and powers of Councils.

A Council is a body corporate with perpetual succession (s 19). It has the functions of providing for the health, safety and welfare of the community, representing and promoting the interests of the community, and providing for the peace, order and good government of the municipal area (s 20(1)). A Council may do anything necessary or convenient to perform its functions (s 20(3)).

A Council consists of its elected councillors (s 25).

8.2 Powers

General powers

As noted above, the *Local Government Act 1993 (Tas)* mandates that a Council may do anything necessary or convenient to perform its functions.

Specific powers

In addition to its general powers, a Council has a number of specific powers as set out in the *Local Government Act 1993 (Tas)*. These are summarised in Table 6.

Table 6: Examples of specific local government powers in Tasmania

Power	Source	Comments
Power to sell and lease land (that is not public land)	s 177	<p>A Council may sell, lease, donate, exchange or otherwise dispose of land owned by it, other than public land, provided it has obtained:</p> <ul style="list-style-type: none"> ▪ a valuation from the Valuer-General or a suitably qualified person, and ▪ a decision made by absolute majority to do so.

Table 6: Examples of specific local government powers in Tasmania

Power	Source	Comments
Power to sell and lease public land	s 178	<p>A Council may sell, lease, donate, exchange or otherwise dispose of public land it owns, provided it has:</p> <ul style="list-style-type: none"> ▪ obtained a decision made by absolute majority to do so ▪ published its intention to do so on at least two separate occasions in a daily newspaper circulating in the municipal area and notifying the public it may object, and ▪ displayed a copy of the notice on any boundary of the public land that abuts a highway, and ▪ adhered to other requirements set out in this section. <p>The Council's decision may also be appealed (in accordance with the <i>Resource Management and Planning Appeal Tribunal Act 1993</i> (Tas)). A Council may lease public land for up to five years without complying with section 178 of the <i>Local Government Act 1993</i> (Tas) (s 179).</p>
Power to acquire land compulsorily	s 176	A Council may acquire land for prescribed purposes in accordance with the <i>Land Acquisition Act 1993</i> (Tas).
Power to enter into contracts	s 333A	<p>A Council's power to enter into contracts is derived from a Council's general power to do anything necessary or convenient to perform its functions. However, a Council must invite tenders for any contract it intends to enter into, for the supply or provision of goods or services valued at or above \$100,000 excluding GST (see also r 23 of the <i>Local Government (General) Regulations 2005</i> (Tas)).</p> <p>A Council must also adopt a code relating to tenders and contracts (s 333B of the <i>Local Government Act 1995</i> (Tas)).</p>
Entrepreneurial powers	s 21	<p>In carrying out its functions, a Council may participate in other bodies, acquire shares in other companies or enter into a partnership or any arrangement for the sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise with any person or body carrying on any business or transaction capable of being conducted so as to benefit the Council. A Council may need to obtain the approval of the Minister before exercising this power.</p> <p>A Council may also establish a controlling authority to carry out any scheme, work or undertaking on behalf of the Council, to manage or administer any property or facilities on behalf of the Council, or to provide facilities or services on behalf of the Council or to carry out any other functions on behalf of the Council (s 29).</p>
Power to borrow	s 78	A Council, for the purpose of raising a loan or obtaining any form of financial accommodation, may decide by an absolute majority to provide various forms of security as set out in this section.

Table 6: Examples of specific local government powers in Tasmania

Power	Source	Comments
		The Council's ability to borrow additional money is subject to the limit on borrowing contained in section 80.
Power to declare a separate rate or separate charge	s 100	<p>A Council may, by absolute majority, make a separate rate or separate charge in respect of land, or a class of land.</p> <p>This is for the purpose of planning, carrying out, making available, maintaining or improving anything that in the Council's opinion is of particular benefit to the affected land or the owners or occupiers of that land. The Council must comply with the provisions of Division 5 of Part 9.</p>

Councils are responsible for roads (refer to the *Roads and Jetties Act 1935 (Tas)*) and domestic waste management (refer to the *Tasmanian Waste and Resource Management Strategy 2009*).

Until recently, Councils were also responsible for water and sewerage provision. However, there are now three regionally based corporations responsible for this, with a fourth common services entity created to service these regional corporations (see the *Water and Sewerage Corporations Act 2008 (Tas)*). These corporations are proprietary companies limited by shares, but only the constituent councils may hold one or more shares or other securities in them.

9. Northern Territory

9.1 Legal nature

There is no constitutional recognition of local government in the Northern Territory as such, with no mention of local government in the *Northern Territory (Self-Government) Act 1978 (Cth)* (which is effectively the Northern Territory's 'constitution'). However, local government is established by the *Local Government Act 2008 (NT)*, which sets out its powers and responsibilities. The preamble to this Act states that 'Local government is a distinct and essential sphere of government'.

For inter-governmental financial purposes, the Northern Territory has been regarded by the Commonwealth as a State since 1 July 1988.

Chapter 2 of the *Local Government Act 2008 (NT)* sets out the role, functions and objectives of Councils. For example, the role of a Council includes acting as a representative, informed and responsible decision-maker in the interests of its constituency (s 11(a)). The Council's functions include planning for the future requirements of its area for local government services and providing services and facilities for the benefit of its area its residents and visitors (s 12(1)). Its objectives include providing open, responsive and accountable government at the local level (s 13).

A Council is a body corporate entity (s 25(1)). As a result, it has full legal capacity to acquire or incur any rights, powers, obligations and liabilities of a body corporate (s 25(3)).

A Council consists of its elected or appointed members (s 33).

9.2 Powers

General powers

As noted above, the *Local Government Act 2008* (NT) has the general powers of a body corporate.

Specific powers

In addition to these general powers, a Council has a number of specific powers as set out in the *Local Government Act 2008* (NT) as set out in Table 7.

Table 7: Examples of specific local government powers in Northern Territory		
Power	Source	Comments
Power to deal with and dispose of property	s 182	This relates to property of which the Council is the owner, but is subject to the Minister's guidelines and the Council not acting in breach of trust or in breach of conditions on which the property was accepted by the council.
Power to assume care, control and management of land	s 179	A Council may, at the request or with the consent of interested persons (for example, an owner of the land), assume the care, control and management of land within its area.
Power to develop and improve land	s 180	A Council may develop and improve land in its ownership or under its care, control and management.
Power to acquire property	s 178	A Council may acquire real or personal property (including intellectual property) by agreement. It may also request the Minister administering the <i>Lands Acquisition Act</i> (NT) to compulsorily acquire land for the Council under that Act.
Power to borrow	s 123	The consent of the Minister may be required to borrow funds.
Power to declare special rates	s 156	A Council may at any time declare rates for a particular purpose.

The *Local Government (Accounting) Regulations* (NT) contain provisions relating to contracts. For example, regulation 29 provides that a Council must not enter into a contract for the provision of supplies to the Council at a cost of more than \$100 000, unless it has first called for tenders for that contract by public notice. Regulation 30 contains some exceptions to this. Regulation 28 deals with quotations, and requires a Council to obtain these if it proposes to obtain supplies at a cost of more than \$10,000 but not more than \$100,000.

The *Local Government Act* (NT) does not specifically confer any entrepreneurial powers (for example, authorising partnerships or joint ventures). However, it covers the following additional matters:

- **roads (s 186):** this includes the power to close roads, but the consent of the Minister responsible for the administration of the *Control of Roads Act* must be obtained before a road is permanently

closed and any other relevant procedural requirements satisfied. Part 7 of the *Local Government (Administration) Regulations* (NT) also deals with the construction and closing of roads

- **reserves (s 183):** if a Council agrees, the Minister may, by Gazette notice, place a reserve in the council's area under the care, control and management of the council. The Council then has the powers and functions of trustees appointed under section 79 of the *Crown Lands Act* (NT)
- **public cemeteries (s 184):** these are specifically referred to under the *Local Government Act* (NT) as being under the care, control and management of the Council in whose area they are situated. A Council has the powers of a Board of Trustees under the *Cemeteries Act* (NT).

Councils are also responsible for domestic waste management. However, water supply and sewerage services are supplied by others (refer to the *Water Supply and Sewerage Services Act* (NT)).

10. Summary

Note: All references are to the local government act in the relevant jurisdiction unless stated otherwise.

Table 8: Summary of local government functions and powers							
Description	Vic	NSW	Qld	SA	WA	Tas	NT
General functions	s 3E	Ch 5	-	s 7	Pt 3	s 20(1)	s 12
General powers	s 3F	s 23	ss 9 and 262	s 36	ss 3.5(1), 3.18	s 20(3)	s 25(3)
Property related powers	Power to sell land (s 189) Power to lease land (s 190) Power to acquire land compulsorily (s 187)	Dealings in public land (Ch 6, Pt 2) Power to acquire land compulsorily (ss 186-190)	Power to deal with and dispose of property (s 262(3)(b)) Power to acquire land for road purposes (ss 61-67) Power to establish a mall (s 80A)	Power to sell or dispose of local government land (s 201) Power to grant a lease or licence over community land (s 202) Power to approve use of community land for business purposes (s 200) Power to acquire land compulsorily (s 191)	Power to dispose of property (s 3.58) Power to acquire land compulsorily (s 3.55)	Power to sell or lease land other than public land (s 177) Power to sell or lease public land (s 178) Power to acquire land compulsorily (s 176)	Power to deal with and dispose of property (s 182) Power to assume care, control and management of land (s 179) Power to develop and improve land (s 180) Power to acquire property (s 178)

Table 8: Summary of local government functions and powers

Description	Vic	NSW	Qld	SA	WA	Tas	NT
Power to enter into contracts	s 186	s 55	s 262(3)(a)	s 36	s 3.57	s 333A	<i>Local Government (Accounting) Regulations (NT)</i> , r 28-30
Entrepreneurial powers	s 193	ss 400B-400N (public private partnerships)	ss 39 and 42 (beneficial enterprises)	ss 46-48	s 3.59 (commercial enterprise powers)	s 21	-
Power to borrow	s 144	ss 621-624	<i>Statutory Bodies Financial Arrangements Act 1982 (Qld)</i>	s 134	s 6.20	ss 78-80	s 123
Power to declare special rates	s 163	s 495	ss 92 and 94	s 154	s 6.37	s 100	s 156