

# DRAFT

## Fees for inclusion in Division 81 regulations

<p>Name of fee/charge or generic description. Please also provide details on which agency(s) collect the fee/charge. If specific fee or charge, please provide legislative reference.</p>	<p>Regulation status requested (i.e. exempt from GST OR subject to GST)</p>	<p>Reasons (including policy) for making this fee/charge:  subject to GST OR not subject to GST</p>
<p>Service Rates and Charges for the collection and disposal of refuse.</p> <p>Collected by local government.</p> <p>Statutory rates and charges under sections 162(1)(b) and 221(1)(b) of the Local Government Act 1989.</p>	<p>Exempt from GST</p>	<p>Where levied by a council, these become compulsory fees or charges that ratepayers are obliged to pay.</p>
<p>Special Rates and Charges</p> <p>Collected by local government.</p> <p>Statutory rates and charges under section 163 of the Local Government Act 1989.</p>	<p>Exempt from GST.</p>	<p>Compulsory rates and charges levied on ratepayers as a co-contribution to works or other council activities for which the ratepayer will receive a benefit. However, the benefit received is not a taxable supply for the purposes of the GST legislation nor can the co-contribution be considered as consideration. Accordingly, special rates and charges should be made GST exempt.</p>
<p>Rates and charges on cultural and recreational land.</p> <p>Collected by local government.</p> <p>Statutory rates and charges under section 4 and 5 of the Cultural and Recreation Land Act 1963.</p>	<p>Exempt from GST.</p>	<p>Where levied by a council, these become compulsory rates or charges that ratepayers are obliged to pay.</p>
<p>Rates payable by the electricity industry.</p> <p>Collected by local government.</p> <p>Statutory rates payable under the Electricity Industry Act 2000 as an alternative to rates and charges payable under the Local Government Act 1989.</p>	<p>Exempt from GST.</p>	<p>Under the Electricity Industry Act 2000, the distribution, transmission and generation companies can choose to pay an agreed amount to a council in lieu of paying rates and charges that a council may declared. As these amounts, although generally discounted, are statutory payments similar to the rates and charges levied un the Local Government Act 1989, they should be exempt from GST.</p>

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<p>Fee to request an inquiry into a municipal election.</p> <p>Collected by the Municipal Electoral Tribunal.</p> <p>Statutory charge levied by the Municipal Electoral Tribunal under section 45 of the Local Government Act 1989 and clause 121 of the Local Government (Electoral) Regulations 2005.</p>	<p>Exempt from GST.</p>	<p>This fee is similar to the fees payable to the Magistrates, County and Supreme Courts and the Court of Appeal. The latter fees were made exempt under the Division 81 Determination and it is assumed that the latter fees will be submitted for inclusion in the GST regulations. Accordingly this fee should be made similarly exempt from GST.</p>
<p>Fees payable to the Victorian Electoral Commission for the conduct of representation and subdivision reviews,</p> <p>Collected by the Victorian Electoral Commission.</p> <p>Statutory fees payable under section 219P of the Local Government Act 1989.</p>	<p>Exempt from GST.</p>	<p>The Local Government Act 1989 requires the periodical review of the governance structure of councils. The review of the governance structure includes determining the appropriate number of Councillors and the electoral structure – subdivided municipalities and the number of wards.</p> <p>The Local Government Act 1989 mandates that the Victorian Electoral Commission undertake the reviews.</p> <p>No apparent services or taxable supplies are provided to the councils required to pay the fees and accordingly these fees should be GST exempt.</p>
<p>Surcharge</p> <p>Collected by local government.</p> <p>Statutory payment imposed by the Secretary of the Department administering the Local Government Act 1989 requiring the repayment to a council certain monies under sections 240A and 240B of the Local Government Act 1989.</p>	<p>Exempt from GST.</p>	<p>Section 240B defines the surcharge as a debt to the council. Being a statutory debt and one which is, in spirit, a penalty imposed on the person required to pay the surcharge, it should be exempt from GST.</p>

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<p>Recovery of Costs</p> <p>Collected by local government or another person authorised by a council to do so.</p> <p>Section 225 of the Local Government Act 1989 allows a council (or another person authorised by the council) to recover the costs of carrying out certain works.</p>	<p>Exempt from GST.</p>	<p>GST has already been paid on the works carried out by the council. The recovery of costs is a re-imbusement and GST should not be paid twice for what is ostensibly the same transaction.</p>
<p>Recovery of money owed to a council.</p> <p>Collected by local government.</p> <p>Section 227 of the Local Government Act 1989 allows a council to recover money owed to it by a former owner or occupier from the current owner or occupier.</p>	<p>Exempt from GST.</p>	<p>Recovery of money owed for personal services provided by a council to a previous owner or occupier from a current owner or occupier. As the current owner or occupier had not received the personal services provided by the council, the payment should be GST exempt.</p>
<p>Nomination Fee</p> <p>Collected by local government.</p> <p>Clause 5(1)(d), Schedule 2 – Electoral Matters of the Local Government Act 1989 requires a person to pay a nomination fee when nominating as a candidate at a local government election.</p>	<p>Exempt from GST.</p>	<p>The nomination fee is akin to a security deposit which is returned to the candidate should he/she be elected to office or receives a minimum number of votes. The nomination fee of candidates which achieve neither of the above are forfeited.</p> <p>The nomination fee for Victoria State and Commonwealth elections (and their forfeiture) is listed in the Division 81 Determination. Assuming that the Victoria and the Commonwealth will be including the nomination fee in the proposed GST regulations, the local government nomination fee too should be included in the GST regulation (it has previously been omitted from the Division 81 Determination) on the basis that forfeited nomination fees are GST exempt.</p>

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Payments for Public Open Space.  Collected by local government.  Statutory contribution under section 18(1)(b) of the Subdivision Act 1988.	Exempt from GST.	In-kind contributions are GST exempt under Division 82 Development of Land of the GST legislation whereas the cash equivalent payments are not. Making the cash alternative payments exempt from GST will mean that both will be treated equally.
Development Infrastructure Levy  Collected by local government.  Statutory levy under Part 3B – Development Contributions of the Planning and Environment Act 1987.	Exempt from GST.	In-kind contributions are GST exempt under Division 82 Development of Land of the GST legislation whereas the cash equivalent payments are not. If this levy is considered an industry levy, it will be GST exempt. However if it is not an industry levy, GST will apply unless made exempt. Making the cash alternative payments exempt from GST will mean that both will be treated equally.
Community Infrastructure Levy  Collected by local government.  Statutory levy under Part 3B – Development Contributions of the Planning and Environment Act 1987.	Exempt from GST.	In-kind contributions are GST exempt under Division 82 Development of Land of the GST legislation whereas the cash equivalent payments are not. If this levy is considered an industry levy, it will be GST exempt. However if it is not an industry levy, GST will apply unless made exempt. Making the cash alternative payments exempt from GST will mean that both will be treated equally.
Building Guarantees and Bonds  Collected by local government.  Section 22 of the Building Act 1993 allows councils to place as a condition on any building permit it issues that the builder deposits with the council a bond or a bond and bank guarantee to secure the complete and satisfactory carrying out of the work authorised by the building permit.	Exempt from GST.	Bonds and deposits are GST exempt unless they are forfeited. In the current item, the Bonds are deposits are not forfeited but are used to complete building works as per the building permit. As GST will be payable on these works, making the bond subject to GST would be doubling up.

***HAVE WE MISSED ANYTHING?***