

# The removal of GST from cemetery trust products and services

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Fees and charges for certain cemetery products and services are now exempt from GST under Division 81 of the *Goods and Services Tax Act 1999*.

The department has been advised that this determination came into effect on 1 January 2009. Consequently, these fees and charges under the *Cemeteries and Crematoria Act 2003* (the Act) have been GST free since 1 January 2009. The fees and charges for the products and services that are now GST free are listed below for your information.

If your trust currently applies GST to the products and services listed below, you will need to amend your fee scale as these products and services are now exempt from GST. Once these fees have been amended the new fee schedule will need to be forwarded to the department for endorsement as per the normal approval process.

The department recommends that this change be implemented at the start of the financial year, from 1 July 2009<sup>1</sup>.

If your trust does not charge GST for the cemetery fees and charges listed below, then you do not need to take any further action.

## Fees exempt from GST

Under the *Goods Services Tax Act 1999 (A New Tax System (Goods and Services Tax) (Exempt Taxes, Fees and Charges) Determination 2009 (No. 1))*, the following fees are exempt from GST.

<b>CEMETERIES AND CREMATORIA</b> <i>Cemeteries and Crematoria Act 2003</i>	
3.1 Right of Interment	Rights to places of interment for graves, cremation memorials and mausolea
3.2 Interment Services	Burial services, lift and reposition and other interment related services
3.3 Memorialisation <sup>2</sup>	Fees relating to memorialisation including memorials and placement
3.4 Permits	Fees relating to memorial permits and other permits
3.5 Cremation	Fees relating to cremation and cremation services
3.6 Exhumation	Fees for exhumations
3.7 Miscellaneous (fees and charges)	Search fee, and other regulatory fees that don't apply to the above categories

<sup>1</sup> Cemetery trusts that are charging GST on their products and services are required to provide a refund on the applicable fees and charges from 1 January 2009.

<sup>2</sup> Fees for memorial products, and permits relating to memorial products, are subject to competitive neutrality principles and the Code of Practice, see further information on the next page for an explanation of the process for these fees.

## Questions and answers on the removal of GST from fees for cemetery trust products and services

### 1. When did these changes take effect?

The determination came into effect on 1 January 2009.

### 2. When do we need to amend our fees to reflect the changes?

Your cemetery trust can begin work on this process now; it is recommended that these changes be implemented on or immediately after the 1 July 2009.

Advice received is that the process should be undertaken in a timely fashion so that the trust is not charging or withholding GST for an extended period after the change has taken effect.

### 3. Can the determination date be moved to 1 July 2009?

**No.**

Once a determination has been made it becomes law.

### 4. Is it practical to revoke the January 2009 exemption date and revise to a future date e.g. July 2009 or January 2010?

See answer to question 3 above.

### 5. Why wait till 1 July 2009 to implement the changes?

The removal of GST from cemetery fees is a complex matter which will take both the department and the trusts time to organise and implement, therefore an implementation date of 1 July 2009 has been proposed by the department.

### 6. Does this change apply to all cemetery fees?

The determination applies to all fees for products and services that fall under the categories listed in the table on page 1. If your trust charges fees for other products and services that do not apply under the categories listed then GST is still applicable to those fees.

### 7. Does the removal of GST from cemetery fees and charges apply to cemetery fees in all States or just Victoria?

This exemption only applies to Public Victorian cemetery fees and charges.

### 8. Are Trusts obliged to provide a refund on the GST component included in the sale price of goods or services sold from 1 January 2009?

**Yes.**

The department recommend that trusts only refund direct customers (NOT funeral directors or stonemasons) the GST component of the fees charged from 1 January 2009 until implementation date.

Trusts that charge GST are obliged to provide a GST refund under the GST legislation.

For administrative simplicity the department recommend that trusts:

- i. Revise their monthly or quarterly BAS to reduce the amount of GST remittable to the ATO.
- ii. Forward a GST refund to all of their direct customers for goods and services purchased from the trust from 1 January 2009 to 30 June 2009.
- iii. Keep a record of the refunds paid to customers.

**9. Are trusts obligated to issue the GST refund to whomever they issued the original tax invoice to?**

**No.** Trusts are only required to refund GST to direct customers. Funeral Directors and stonemasons who have already claimed GST on fees and charges on behalf of customers should not receive GST refund.

It is a possibility that trusts may have to refund GST to funeral directors and stonemasons who are not registered for GST and claimed GST on behalf of their customers.

See answer to question 8 above regarding refunds.

**10. Can customers request interest to be paid on their GST refund?**

**No.**

There is no provision under GST legislation that allows those entitled to a GST refund to claim interest on the GST owing.

**11. Are funeral directors and monumental masons obligated to pass the GST refund to customers?**

The ATO has advised the department that trusts can issue a GST refund to their direct customers only and NOT to funeral directors and stonemason.

As Funeral directors and stonemasons are registered for GST, they already claim back the portion of the GST they pay when they purchase cemetery products and services.

Funeral directors and stonemasons who are not registered for GST can claim GST from trusts and pass it to their customers.

**12. From 1 July 2009 when products and services are GST free can a funeral director:**

- a. on-charge the interment fee to the customer GST free (e.g. \$900) as a 'disbursement' or**
- b. do they need to charge \$990 (e.g. \$900 plus \$90 GST)?**

Cemetery products and services are GST free from 1 January 2009 regardless of who pays for them.

The question on whether GST applies to funeral directors who purchase cemetery products or services on behalf of their customers depends upon the type of transaction that is being undertaken.

The following examples provide two possible scenarios that could occur in relation to provision of funeral director services<sup>3</sup>:

**i. The funeral director acts as an 'agent'<sup>4</sup> to purchase a cemetery product**

The funeral director purchases a product or service from a cemetery trust on the direction of their customer. Under this scenario the funeral director (acting as an agent) is entitled

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<sup>3</sup> Please note there is likely to be a variety of transactions that occur between funeral directors and their clients. It is recommended that funeral directors contact the tax office directly for advice if they are unsure about how to manage GST in relation to any transaction they enter into.

<sup>4</sup> See the GST Legislation section GSTR 2000/37 Agency relationships for a definition of 'agent'.

to charge a fee for the service provided only this fee would attract GST. GST would not apply to the cemetery products and services.

**ii. Funeral director purchases a right of interment (ROI) to be included in a funeral 'package'**

When the funeral director purchases a product or service e.g. right of interment (ROI) to be included in a funeral package that the funeral director then sells to the customer, GST would apply on the total package<sup>5</sup>.

**13. What is the timeframe for trusts to issue a refund to customers?**

Trusts (who have incorrectly charged GST) will have 4 years to issue refunds to customers under section 105-50 of the *Tax Administration Act 1953*.

**14. Can trusts claim a refund on GST already paid on prepaid fees?**

**Yes.**

Refunds, on GST remitted to the tax office after the determination came into effect, can be claimed from the tax office. However, if the trust wishes to seek a refund for GST it needs to be able to demonstrate to the tax office that the GST has been refunded to the customer.

See answer to question 8 above regarding refunds.

**15. How should trusts process the GST associated with pre-paid fees and refunds after 1 July 2009?**

If the trust has already remitted GST to the tax office on a pre-paid fee, the trust must refund the GST component to their customer.

See answer to question 8 above regarding refunds.

**16. Where trusts have sold items subject to external supply, e.g. plaques direct to customers, what are the implications in regards to competitive neutrality policy?**

Trusts are required to refund customers the GST component on plaques purchased directly from the trust.

**17. Do these changes impact suppliers to the cemetery or just cemetery fees?**

These changes only apply to gazetted cemetery fees and charges under the Act, not to third parties.

**18. How does this change affect fees for memorial products and memorial permits that are subject to competitive neutrality and the Code of Practice?**

The code of practice establishes a framework to promote a fair and equitable environment for the sale and supply of memorialisation goods and services by cemetery trusts as public entities, and other alternative suppliers (such as stone masons) in Victorian public cemeteries.

Victoria's Competitive Neutrality Policy applies to the sale and supply of all memorialisation goods and services by cemetery trusts where trusts are in direct competition with alternative suppliers from the private market.

As the removal of GST from cemetery fees for memorial products will result in a reduction of fees for these products and services, and alternative suppliers are not entitled to this same reduction of their fees, cemetery trusts should set their fees for these products and

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<sup>5</sup> It is recommended that funeral directors seek advice from the tax office if they are unsure on how to proceed in relation to this matter.

services at such a level that they are not in a position of advantage over other suppliers that would contravene the principles of competitive neutrality or the objectives of the Code of Practice.

Therefore, the equivalent amount for taxes and charges that apply to external suppliers of memorial products and services should be added in to the cemetery fees and charges for memorial products and services.

**19. Are cemetery trust customers entitled to a GST refund on items which are subject to competitive neutrality requirements?**

**Yes.**

The requirements in relation to competitive neutrality will not limit the trust capacity to provide a refund for those products and services listed on page 1.

See answer to question 16 above.

**20. How will the removal of GST affect fees for a combination of products, i.e. for the cost of a crypt and a plaque which are sold together?**

This change affects each individual fee that falls under the categories listed in the determination, so in this example, the change applies to the plaque fee and the crypt fee individually.

Where the trust charges a single amount, made up of a number of individual fees, the trust is entitled to charge GST on non listed fees and charges.

**21. Can trusts discount their currently gazetted fees by the GST amount (10%) under section 44 of the *Cemeteries & Crematoria Act 2003*?**

**No.**

Section 44 of the *Cemeteries and Crematoria Act 2003* (the Act) was designed to allow trusts to waive or reduce its fees on the grounds of extreme hardship or other special circumstances, not circumvent the approval process required under the Act.

**22. Some gazetted fees include services on which GST has already been paid, i.e. postage. Are we able to claim back the GST that we incur going forward?**

**Yes.**

Trusts will still be able to claim GST as per the usual process. This process exempts trusts from charging GST on their fees for those products and services listed on page 1.

**23. How will this change to GST affect the CPI process for fees?**

The process under the Act that requires fees over \$50 to be increased automatically by CPI will be undertaken separately. The CPI process is currently underway and will be completed in time for trusts to charge CPI adjusted fees from 1 July 2009.

**24. Does the *Cemeteries and Crematoria Act* 'override' the GST Act?**

**No.**

See answer to question 25 below.

**25. Why must the fees and charges for cemetery trust goods and services be gazetted before they can be charged, even though the GST component was removed from those fees and charges from 1 January 2009?**

The *Cemeteries & Crematoria Act 2003* (the Act) does not override the GST Act. However section 40 of the Act states only fees approved by the Secretary can be charged by trusts.

The removal of GST from cemetery fees and charges is a complex matter which will take both the department and the trust time to organise and implement, therefore an implementation date of 1 July 2009 was proposed by the department.

## **26. Are Trust members required to approve increases in fees above CPI?**

**Yes**

The trust will need to approve any proposed fee increases above CPI and sign off the justification as required by the Act and the department.

## **27. Where can I get more information?**

For further information and any queries regarding fees and the process for adjusting cemetery fees and charges please contact;

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