


# ***CR 2021/10 - Victorian Building Authority (Cladding Safety Victoria) - funding payments made to owners' corporations***

 This cover sheet is provided for information only. It does not form part of *CR 2021/10 - Victorian Building Authority (Cladding Safety Victoria) - funding payments made to owners' corporations*



## Class Ruling

# Victorian Building Authority (Cladding Safety Victoria) – funding payments made to owners’ corporations

### **📌 Relying on this Ruling**

This publication (excluding appendix) is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or pay any penalties or interest in respect of the matters covered by this Ruling.

<b>Table of Contents</b>	<b>Paragraph</b>
What this Ruling is about	1
Who this Ruling applies to	4
When this Ruling applies	5
<b>Ruling</b>	<b>6</b>
<b>Scheme</b>	<b>9</b>
<b>Appendix – Explanation</b>	<b>38</b>

### **What this Ruling is about**

1. This Ruling sets out the goods and services tax (GST) consequences of funding made to an owners’ corporation (OC) by the Victorian Building Authority (VBA) (of which Cladding Safety Victoria (CSV) is a division) on behalf of the Victorian Government for the remedy of external wall cladding on residential buildings (‘the funding’), pursuant to the *A New Tax System (Goods and Services Tax) 1999* (GST Act).
2. Full details of this scheme are set out in paragraphs 9 to 37 of this Ruling.
3. All legislative references in this Ruling are to the GST Act unless otherwise indicated.

### **Who this Ruling applies to**

4. The class of entities to which this scheme applies are OCs established by the *Subdivision Act 1988* (Vic) and the *Owners Corporations Act 2006* (Vic) who enter into a funding agreement in respect of the scheme with the Department of Environment, Land, Water and Planning (DELWP), the VBA, or CSV (as and when CSV becomes established as a separate legal entity) on behalf of the Victorian Government.

### **When this Ruling applies**

5. The Ruling applies from 19 November 2019 to 30 June 2025.

**Ruling**

6. An OC makes a supply of an entry into obligations to undertake cladding rectification works under the funding agreements for which the funding is consideration. Such supply by the OC will be a taxable supply under the scheme on the basis that:

- it is made in the course or furtherance of the enterprise that the OC carries on
- the supply is connected with the indirect tax zone
- the OC is registered or required to be registered for GST, and
- the supply is not otherwise one that should be classified as GST-free or input taxed for GST purposes.

7. OCs that are not already registered will be required to register for GST if the amount of the funding it receives results in the OC meeting the GST registration turnover threshold of \$150,000 for the value of all supplies it makes under the respective current and projected turnover tests.

8. The Commissioner may allow an OC to cancel its GST registration within 12 months of the registration date following the completion of the particular rectification plan if, less than 12 months after being registered, the entity applies for cancellation of the registration in the approved form and the Commissioner is satisfied that the entity is not required to be registered. An OC would need to make an objective assessment of its projected GST turnover and current GST turnover to determine if it is still required to be registered for GST at that point. In considering the entity's application, the Commissioner may have regard to how long the entity has been registered, whether it has previously been registered, and any other relevant matters.

**Scheme**

9. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

10. The Victorian Cladding Taskforce (VCT) was established by the Victorian Government in July 2017 to oversee a comprehensive audit of Victorian buildings to identify instances of inappropriate cladding that pose an unacceptable risk to human life.

11. VCT identified at least two classes of aluminium external wall (façade) cladding, being aluminium composite panel and expanded polystyrene panel with a polyethylene core, which pose a fire risk to people and property if not rectified.

12. A report by the co-chairs of the VCT recommended the development of Rectification Guidelines by the VCT. The Rectification Guidelines are currently awaiting approval by the VBA. The VBA is a Victorian Government regulatory body within the DELWP that regulates Victoria's building and plumbing practitioners.

13. In response to the recommendations of the report, the Victorian Government announced a grant-based funding project (the Project) to assist with the remedy of external wall cladding on Class 2 residential apartment buildings which pose a fire risk to people and property and which do not comply with the proposed rectification standards.

14. To administer and implement the Project, the Victorian Government initially established CSV as a division of the VBA..

15. CSV will manage funding of the Project and provide support and guidance to OCs of buildings with combustible cladding determined to be 'higher risk' where rectification work is required to reduce risks to an acceptable level.

16. OCs under the scheme carry on an enterprise of managing and administering properties.
17. OCs under the scheme are not-for-profit bodies for GST purposes.

### **Legislation**

18. On 1 December 2020, CSV was established as a standalone entity under the *Cladding Safety Victoria Act 2020*. Administration of the Project and funding granted to the OCs is to be at the complete discretion of CSV. The Project does not create an entitlement in any OC or any other third party affected by the issue of hazardous cladding to receive any funding from CSV. In particular, the legislation does not create a right in any OC or third party to receive any of the funds from the Project from CSV.

### **Proposed funding mechanism**

19. The precise mechanism for providing the funding and the terms of the funding agreement are being finalised by the Victorian Government. In broad terms, it is intended that the VBA through CSV (refer to paragraph 20 of this Ruling) will work with the relevant OC for the affected buildings to develop a rectification plan and the OC will engage the necessary building practitioners to execute the plan.

20. Legislation<sup>1</sup> that received Royal Assent on 19 November 2019 permitted the VBA through CSV to act as the authorising body entering into the funding arrangements. Any further references to CSV in this Ruling are therefore to both CSV as a standalone entity, and to the VBA who carried out actions through CSV (for the time period prior to the establishment of CSV as a standalone entity).

21. CSV will provide agreed funding to each affected OC it chooses to enter into a funding agreement with on a reimbursement basis for agreed rectification works, subject to certain milestones or phases of the approved rectification plan. Funding under the scheme is not in the nature of compensation or reimbursement of actual costs incurred by OCs. Rather, the quantum of funding is determined by reference to actual costs incurred by the OCs, and the maximum instalment amount funded pursuant to a funding agreement can be less than actual costs incurred by an OC.

### **Proposed funding arrangements**

22. Each OC will be responsible for the rectification works, which may include the removal and replacement of the cladding, or other 'performance solution' treatments to reduce the risk, such as adding additional external sprinklers and/or partial removal to reduce overall fire risk.

23. The Project funding will be granted to an OC in two stages:

- Funding Agreement 1 to reimburse the approved amount of costs of the affected building's OC to engage relevant building practitioners to review and determine the specific rectification works required in accordance with state regulations and to be compliant with the national construction code to reduce the cladding fire risk present at their building through a submission to the Building Appeals Board (BAB).
- Funding Agreement 2, which involves the following substages

---

<sup>1</sup> *Building Amendment (Cladding Rectification) Act 2019 (Vic)*.

- Substage 1 – to reimburse the approved amount of costs of the affected building’s OC to engage relevant building practitioners to review and determine the specific rectification works required in accordance with state regulations and to be compliant with the national construction code to reduce the cladding fire risk present at their building.
- Substage 2 – to reimburse the approved amount of costs of the specific rectification works required in accordance with state regulations and to be compliant with the national construction code to reduce the cladding fire risk present at their building.

Each of Funding Agreement 1 and Funding Agreement 2 are a Funding Agreement.

24. The rectification works will be undertaken on the property that is the responsibility of the OC, being the external cladding to the qualifying buildings. On this basis, each funding agreement will be entered into between the relevant OC and CSV.

25. Funding Agreement 1 and Substage 1 of Funding Agreement 2 will involve the recipient of the funding (being the relevant building OC) carrying out pre-construction identification works and preliminary design works required to develop the scope of the Rectification Solution for the building (including the engagement of a project manager, consultant, and fire engineer) in accordance with the project plan (Project Plan). Not all affected buildings may require a Funding Agreement 1, as Funding Agreement 1 will only be entered into if a submission to the BAB is required. Where a submission to the BAB is not required, an OC will proceed directly to entering into a Funding Agreement 2.

26. Subject to the CSV approving the OC to proceed to Substage 2, the OC will procure the detailed design of the Rectification Solution for the building and all necessary approvals in accordance with the Project Plan.

27. Per item 8 of the Project Details in Funding Agreement 2, the OCs must meet certain deliverables throughout the funding process, called ‘Project Milestones’.

28. Per clause 4.1 of both Funding Agreements, the funding for the Project will be paid in instalments as set out in these Project Milestones, within 10 business days of the acceptance by CSV of the requisite deliverables set out in the Project Milestones.

29. Each payment under the Funding Agreements is conditional upon certain conditions set out in clause 4.2 of the Funding Agreements, including:

- achievement to CSV’s satisfaction (acting reasonably) of the relevant Project Milestones
- CSV being satisfied that the Project has been conducted in compliance with the Program Guidelines, the Project Execution Plan and the requirements of the Funding Agreement
- provision to CSV of a certificate signed and dated by the recipient and certificate signed and dated by the recipient’s appointed project manager, each verifying that each of the Project Milestones for the relevant Grant instalment have been completed or achieved by that date
- provision to CSV of any supporting documentation and other evidence specified in the Project Milestones for that Grant instalment
- CSV being satisfied that the recipient has entered into any required Consultant Agreement in accordance with clause 6 and that the agreement remains in force and neither the recipient nor the consultant is in material breach of the agreement

- CSV being satisfied that the Grant funds paid to date have been applied towards the Project and in accordance with this Funding Agreement
- CSV being satisfied that the written reports referred to in clause 9 have been provided by the recipient in accordance with this Funding Agreement, and
- where applicable under clause 11, provision to CSV of an interaction reference number and other information relevant to the Local Jobs First Policy issued under the *Local Jobs First Act 2003* (Vic) in accordance with clause 2.1 of Annexure C.

30. Unless otherwise agreed, any unused funding must be returned to CSV per clause 4.3 of the Funding Agreements.

31. Per clause 4.5 of the Funding Agreements, where any amounts are received by or on behalf of the OCs as a result of an insurance claim or litigation proceedings related to the external cladding on its relevant building having combustible cladding (recouped amounts), the OC must reimburse to CSV the recouped amounts, allowing for third-party costs.

32. Per clause 5.1(a) of the Funding Agreements, in consideration of the payment of the Grant, the OCs must:

- conduct the Project with due care and skill, in a professional manner and in compliance with all applicable laws and the Compliance Determination
- comply with all applicable policies in force at the Commencement Date or that come into force during the Grant Period
- assume all responsibility for conducting the Project activities substantially and materially in accordance with the Project Execution Plan, including by ensuring that the establishment and management of the activities detailed in the Project Execution Plan adheres to the timelines specified in the relevant Project Milestone
- ensure that each consultant and each Prospective Builder has the necessary skill, expertise and experience to complete the Project and, where applicable, complies with the terms of its Consultant Agreement in undertaking any activities relating to the Project to the extent required to enable the recipient to comply with its obligations under this Funding Agreement
- ensure that the activities detailed in the Project Execution Plan are at all times professionally managed
- meet any other reasonable requests of CSV in relation to this Funding Agreement, having regard to existing resources and timelines
- assume all financial responsibility and meet all costs and general operating expenses in connection with the Project
- apply the Grant only for the purpose stated in, and in the manner described by, this Funding Agreement, and
- not depart from the Compliance Determination, under otherwise approved by CSV in writing and the BAB, once a Compliance Determination has been made.

33. Per clauses 5.4 and 5.5 of Funding Agreements 1 and 2 respectively, the OCs must, as reasonably required by CSV, participate in meetings, conferences, seminars,

workshops, surveys and interviews, and provide briefing to CSV representatives on project progress and achievement of the project objectives.

34. Clause 6 of the Funding Agreements – *Engagement of Consultants* – sets out specific requirements that must be adhered to by the OCs in respect of engaging consultants to carry out services.

35. Clause 6.2 of the Funding Agreements – *Approval by the Department* – sets out that the OCs must remain fully responsible for the performance of all of its obligations under the Funding Agreement and for all costs incurred with respect to its consultants and is liable for acts and omissions of its consultants as though they were actions of the OCs themselves.

36. Clause 9 of the Funding Agreements – *Written Reports* – sets out that the OCs must provide Progress Reports to the DELWP in accordance with the timeframes set out in the Milestone Schedule. Each Progress Report must provide a record of Grant funds expended for the Project and must include evidence that can be used to independently verify expenditure of the Grant funds, as well as details of:

- performance against the Project Execution Plan, Milestone Schedule and overall Project budget
- a revised outlook for the Project and the budget, and
- a separate accounting record as outlined in clause 10.1 of the Funding Agreements.

37. Under clause 19.1 of the Funding Agreements, if the OCs fail to comply with any of the material obligations in the Funding Agreements, CSV is able to withhold, suspend, cancel or terminate any payment or payments of the Grant, require the OCs to refund such amount of the Grant previously paid (together with interest), and/or immediately terminate the Funding Agreement by giving written notice.

**Appendix – Explanation**

**ⓘ** *This Explanation is provided as information to help you understand how the Commissioner's view has been reached. It does not form part of the binding public ruling.*

<b>Table of Contents</b>	<b>Paragraph</b>
Making a taxable supply	38
Is there a supply?	41
Is there consideration?	49
Requirements to register for goods and services tax	57
When the Commissioner may cancel your goods and services tax registration	68

**Making a taxable supply**

38. If all the elements of section 9-5 are satisfied, an entity will be making a taxable supply.

39. Section 9-5 states:

You make a **taxable supply** if:

- (a) you make the supply for consideration; and
- (b) the supply is made in the course or furtherance of an enterprise that you carry on; and
- (c) the supply is connected with the indirect tax zone; and
- (d) you are registered, or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

40. To satisfy paragraph 9-5(a), there are three questions that are relevant to determining whether there is a supply for consideration:

- Is there a supply?
- Is there consideration?
- Is there sufficient nexus between the supply and the consideration?

**Is there a supply?**

41. The meaning of 'supply' is very broad and is defined in section 9-10 as:

- (1) A **supply** is any form of supply whatsoever.
- (2) Without limiting subsection (1), **supply** includes any of these:
  - (a) a supply of goods;
  - (b) a supply of services;
  - (c) a provision of advice or information;
  - (d) a grant, assignment or surrender of real property;
  - (e) a creation, grant, transfer, assignment or surrender of any right;

- (f) a financial supply;
- (g) an entry into, or release from, an obligation:
  - i) to do anything; or
  - ii) to refrain from an act; or
  - iii) to tolerate an act or situation
- (h) any combination of any 2 or more of the matters referred to in paragraphs (a) to (g).

42. Goods and Services Tax Ruling GSTR 2006/9 *Goods and services tax: supplies* examines the meaning of supply for the purposes of the GST Act. Paragraph 22 of GSTR 2006/9 outlines 10 propositions which the Commissioner considers to be relevant to characterising and analysing supplies.

43. Of relevance to the scheme is Proposition 9 which provides that the 'creation of expectations alone does not establish a supply'. As explained in paragraph 102 of GSTR 2006/9, the Commissioner considered that an agreement that does not bind the parties in some way is not sufficient to establish a supply by one party to the other.

44. In light of this, we consider that by entering into the Funding Agreements, an OC makes a supply to CSV of entering into obligations which is to undertake cladding rectification works and meeting specified criteria in order to qualify for funding.

45. The evidence of the entry into obligations is demonstrated in different clauses in the Funding Agreements. For example:

- Clause 2(a) – the OC must use the funding only for the purpose of carrying out the Rectification Project in accordance with the terms of the Funding Agreement and must not use the Grant for any Ineligible Expenditure.
- Clause 4.1 – Grant payments are only to be paid once CSV has accepted that the requisite deliverables have been met.
- Clause 5.5 – the OC must submit a Project Execution Plan to CSV setting out that delivery methodology for how the OC intends to undertake the Project, and this must contain the information required in the Program Guidelines and must comply with the requirements of the Funding Agreement.
- Clause 19.1 – if the OC does not comply with any of the material obligations, CSV is able to withhold, suspend, cancel or terminate the Grant payments, require the OC to refund such amount of Grant payment previously paid by CSV, and/or immediately terminate the Funding Agreements by giving written notice.

46. It is noted that under the terms of the Funding Agreements, there are particular binding obligations which an OC is required to undertake - for example, cladding rectification works and meeting specified criteria in order to qualify for the Grant payment. This demonstrates that these obligations are prescriptive, clearly identifiable, specific and enforceable in nature. If they are not complied with, CSV has the right to withhold, suspend, cancel or terminate these payments and require an OC to refund these amounts.

47. Further to this, Funding Agreements also contain additional express and enforceable obligations that an OC will have to enter into in order to receive the further funding specifically for the construction phase of the Rectification Project.

48. Therefore, we consider that by entering into the obligations under Funding Agreements, an OC makes a supply.

**Is there consideration?**

49. The term 'consideration' is broadly defined in section 9-15, as follows:

- (1) **Consideration** includes:
  - (a) any payment, or any act or forbearance, in connection with a supply of anything; and
  - (b) any payment, or any act of forbearance, in response to or for the inducement of a supply of anything.

50. As it is considered that an OC makes a supply by entering into the obligations under the Funding Agreements, what then needs to be considered is whether the funding is consideration for the supply made by the OC.

51. Goods and Services Tax Ruling GSTR 2001/6 *Goods and services tax: non-monetary consideration* discusses how to determine whether a payment is consideration and whether there is 'supply for consideration'. GSTR 2001/6 outlines that:

- the test, whether there is a sufficient nexus between the supply and the payment made, is an objective one
- regard needs to be had to the true character of the transaction, and
- an arrangement between parties will be characterised not merely by the description that parties give to the arrangement, but by looking at all the transactions entered into and the circumstances in which the transactions are made.

52. In respect of financial assistance payments, paragraphs 15 and 28 of Goods and Services Tax Ruling GSTR 2012/2 *Goods and services tax: financial assistance payments* states (excluding footnotes):

15. For a financial assistance payment to be consideration for a supply there must be a sufficient nexus between the financial assistance payment made by the payer and a supply made by the payee. A financial assistance payment is consideration for a supply if the payment is 'in connection with', 'in response to' or 'for the inducement of' a supply. The test is an objective one.

28. Where a supply is constituted by the payee entering into an obligation with the payer to do or refrain from doing something and the payment is made to secure that obligation, there is a sufficient nexus between the payment and the obligation. This is because the financial assistance payment is made in connection with, in response to, or for the inducement of the entry into the obligation.

53. To further demonstrate in what circumstances the Commissioner may consider sufficient nexus exists between the financial assistance payment and the entry into obligation, Example 3 of GSTR 2012/2 states:

29. *Snake Glass Jugglers is a commercial dance troupe that develops and presents performance art in South Australia. It enters into an arrangement with Gooseville Arts Foundation, a body that is established for the purpose of fostering the arts. Under that arrangement, in return for a financial assistance payment from the Foundation, the troupe enters into a binding agreement under which it is obligated to expand its activities - by presenting three performances outside South Australia during the following year.*

30. *By entering into this obligation to present three performances outside South Australia, the troupe has made a supply to the Foundation. The payment by the Foundation has been made in connection with, in response to, or for the inducement of this supply. Therefore, there is a sufficient nexus between the entry into the obligation and the financial assistance payment such that the financial assistance payment is consideration for that supply.*

31. *Snake Glass Jugglers is liable for GST on the supply of the entry into the obligation. The Gooseville Arts Foundation is entitled to an input tax credit on their acquisition of the right to require Snake Glass jugglers to present the performances.*

54. Having regard to the circumstances of the scheme and the view expressed by the Commissioner in GSTR 2012/2, we consider there is sufficient nexus between the funding and the OC's supply of an entry into obligations under the terms of the Funding Agreements. The Grant payment is for the OC's entry into these obligations and is further supported by the following clauses in the Funding Agreements:

- Clause 2(a) – the OCs must use the funding only for the purpose of carrying out the Rectification Project in accordance with the terms of the Funding Agreement and must not use the Grant for any Ineligible Expenditure.
- Clause 4.2 – Grant payments are conditional on achievement of the agreed rectification Project Milestones, that the OC has engaged appropriately qualified professionals to complete the Rectification Solution, evidence in the form of written reports are obtained from qualified professionals by the OC outlining the design and progress of the Rectification Solution, and evidence that the Grant payments paid by CSV to the OC have applied towards the Rectification Solution.
- Clause 4.3 – where the Grant payments are not used by the OCs, these amounts are to be refunded to CSV.
- Clause 9.1 – the OCs must also provide Progress Reports and Final Reports to CSV setting out the details of the status and progress of the Rectification Project as well as performance against the Project Execution Plan, Milestone Schedule and overall budget for the Rectification Project.

55. In that regard, funding under the Funding Agreements is conditional on the OC's entry into and performance of the obligations set out in the Funding Agreements. This establishes sufficient nexus between the Grant payment and the OC's supply.

56. We therefore consider that an OC makes a supply of an entry into obligations to undertake cladding rectification works under the Funding Agreements for which the funding is consideration. Such supply by the OC will be a taxable supply under the scheme on the basis that:

- it is made in the course or furtherance of the enterprise that the OC carries on
- the supply is connected with the indirect tax zone
- the OC is registered or required to be registered for GST, and
- the supply is not otherwise one that should be classified as GST-free or input taxed for GST purposes.

### **Requirement to register for goods and services tax**

57. Section 25-1 notes that an entity must apply in the approved form to be registered under the GST Act if it is:

- not registered under the GST Act, and
- required to be registered.

58. The entity must make the application within 21 days after becoming required to be registered.

59. Section 23-5 provides that:

You are **required to be registered** under this Act if:

- (a) you are carrying on an enterprise; and
- (b) your GST turnover meets the registration turnover threshold.

60. You are required to be registered where both these requirements are met.

61. Under the scheme, an OC satisfies the first requirement as OCs under the scheme carry on an enterprise of managing and administering properties. Therefore, it is necessary to consider the second requirement.

62. As OCs are considered to be a not-for-profit body for GST purposes, the registration turnover threshold is \$150,000.

63. Subsection 188-10(1) provides that:

- (1) You have a **GST turnover** that meets a particular turnover threshold if:
  - (a) your current GST turnover is at or above the turnover threshold, and the Commissioner is not satisfied that your projected GST turnover is below the turnover threshold; or
  - (b) your projected GST turnover is at or above the turnover threshold.

64. Subject to some exclusions, an entity's current GST turnover at a time during a particular month is generally the sum of the values of all the supplies that it has made, or are likely to make, during the 12 months ending at the end of that month.

65. Subject to some exclusions, an entity's projected GST turnover at a time during a particular month is generally the sum of the values of all the supplies that it has made, or is likely to make, during that month and the next 11 months.

66. Consequently, an OC will be required to register for GST if the amount of the funding it receives results in the OC meeting the GST registration turnover threshold of \$150,000 for the values of all supplies it makes under the respective current and projected turnover tests.

67. An OC would need to make an objective assessment of its projected GST turnover and current GST turnover to determine if it is required to be registered for GST. If an entity chooses to register, it must generally stay registered for at least 12 months.

### **When the Commissioner may cancel your goods and services tax registration**

68. Section 25-57 states that:

- (1) The Commissioner may cancel your registration if:
  - (a) less than 12 months after being registered, you apply for cancellation of registration in the approved form; and
  - (b) the Commissioner is satisfied that you are not required to be registered.
- (2) In considering your application, the Commissioner may have regard to:
  - (a) how long you have been registered; and
  - (b) whether you have previously been registered; and
  - (c) any other relevant matters.

...

69. Paragraph 16 of Goods and Services Tax Ruling GSTR 2001/7 *Goods and services tax: meaning of GST turnover, including the effect of section 188-25 on projected GST turnover* states:

Whether you have a GST turnover that meets or does not exceed a particular turnover threshold depends on an objective assessment of your projected GST turnover and current GST turnover. An 'objective assessment' is one that a reasonable person could be expected to arrive at having regard to the facts and circumstances which apply to your enterprise at the relevant time. The Commissioner will accept your assessment of these turnovers unless he has reason to believe that your assessment was not reasonable.

70. In determining both current GST turnover and projected GST turnover in sections 188-15 and 188-20 respectively, regard is had to the value of supplies 'you are likely to make'. The GST Act does not define the phrase 'you are likely to make' and therefore the words retain their ordinary meaning in the context of the legislation.

71. In paragraph 23 of GSTR 2001/7, the Commissioner sets out that:

For the purposes of sections 188-15, 188-20 and 188-25, the expressions, 'likely to make', and 'likely to be made', mean that on the balance of probabilities, it can be predicted that the supply is more likely than not to be made.

72. Therefore, with regard to whether the Commissioner will allow an OC to cancel its GST registration within 12 months of the registration date following the completion of the particular rectification plan, the Commissioner may cancel an entity's registration if, less than 12 months after being registered, the

- entity applies for cancellation of registration in the approved form, and
- Commissioner is satisfied that the entity is not required to be registered.

73. An OC would need to make an objective assessment of its projected GST turnover and current GST turnover to determine if it is still required to be registered for GST at that point. In considering the entity's application, the Commissioner may have regard to how long the entity has been registered, whether it has previously been registered, and any other relevant matters.

74. Under the scheme, the following are therefore some possible circumstances and outcomes relating to GST registration after the completion of a particular rectification plan:

- An OC that was registered for GST prior to entering into a cladding rectification program will likely continue to be registered for GST if they continue to meet the GST registration threshold.
- An OC that is registered for GST as a result of entering into Funding Agreements may choose to remain registered for GST after the completion of their rectification plan.
- An OC that had registered for GST as a result of entering into Funding Agreements may cancel its GST registration less than 12 months after being registered where
  - application for cancellation of registration is in the approved form, and
  - the Commissioner is satisfied that the entity is not required to be registered.
  - In considering the entity's application, the Commissioner may have regard to how long the entity has been registered, whether it has previously been registered, and any other relevant matters.

**References***Previous draft:*

Not previously issued as a draft

*Related Rulings/Determinations:*

GSTR 2001/6, GSTR 2001/7, GSTR 2006/9,  
GSTR 2012/2

*Legislative references:*

- ANTS(GST)A 1999 9-5
- ANTS(GST)A 1999 9-5(a)
- ANTS(GST)A 1999 9-10
- ANTS(GST)A 1999 9-15
- ANTS(GST)A 1999 23-5
- ANTS(GST)A 1999 25-1
- ANTS(GST)A 1999 25-57
- ANTS(GST)A 1999 188-10(1)
- ANTS(GST)A 1999 188-15
- ANTS(GST)A 1999 188-20

- ANTS(GST)A 1999 188-20
- ANTS(GST)A 1999 188-25
- Building Amendment (Cladding Rectification) Act 2019 No. 43 of 2019
- Cladding Safety Victoria Act 2020
- Local Jobs First Act 2003 (Vic)
- Owners Corporations Act 2006 (Vic)
- Subdivision Act 1988 (Vic)

*Other references:*

- Draft Funding Agreement 1 – dated 14 November 2019
- Draft Funding Agreement 2 – dated 20 December 2019
- Draft Cladding Rectification Funding Guidelines – submitted to the ATO on 21 January 2020

## ATO references

NO: 1-M8QFY8L

ISSN: 2205-5517

BSL SMB

ATOlaw topic: Goods and services tax ~~ General rules and concepts ~~ Supplies ~~ Taxable supplies

**© AUSTRALIAN TAXATION OFFICE FOR THE COMMONWEALTH OF AUSTRALIA**

You are free to copy, adapt, modify, transmit and distribute this material as you wish (but not in any way that suggests the ATO or the Commonwealth endorses you or any of your services or products).