Legislative Council—No 202
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South Australia

Late Payment of Government Debts (Interest) Bill 2013

A BILL FOR

An Act to provide for interest to be paid on the late payment of debts due to small businesses in connection with contracts for the supply of goods or services to State Government; to make a related amendment to the *Public Finance and Audit Act 1987*; and for other purposes.

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Part 1—Preliminary

1 Amendment provisions

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2 Amendment of section 41—Treasurer's instructions

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Late Payment of Government Debts (Interest) Act 2013*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Preliminary

(1) In this Act, unless the contrary intention appears—

annual turnover means an amount determined after applying the principles published by the Treasurer under subsection (2);

business includes any form of undertaking (including an undertaking not necessarily carried on for profit);

contract for the supply of goods or services means a contract—

(a) for the sale or transfer of goods; or

(b) for the hire of goods; or

(c) for the provision of services;

designated contract means a contract for the supply of goods or services but does not include—

(a) a written contract where the contract—

(i) makes specific provision for payment terms that are greater than 30 days; or

(ii) makes specific provision for the payment of interest if a payment is not made in accordance with the terms of the contract; or

(b) a construction contract under the *Building and Construction Industry Security of Payment Act 2009*; or

(c) a contract where the consideration for the sale, transfer or hire of goods, or the provision of services, is not, or does not include, a monetary consideration; or

(d) a contract of a class excluded from the ambit of this definition by the regulations;

designated payment period means the period of 30 days that applies under section 5(1)(e);

GST means the tax payable under the GST law;

GST law means—

(a) *A New Tax System (Goods and Services Tax) Act 1999* of the Commonwealth; and

(b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods and services;

prescribed interest rate means a rate of interest (expressed as an annual rate) prescribed by the regulations;

public authority means a public authority under the *Public Finance and Audit Act 1987* brought within the ambit of this definition by notice published by the Treasurer in the Gazette;

purchaser means the buyer in a contract for the sale of goods or the person who contracts with the supplier in any other contract for the supply of goods or services (subject to the operation of section 4);

qualifying body means—

(a) a corporation incorporated under the *Corporations Act 2001* of the Commonwealth; or

(b) any other body corporate constituted under the law of the Commonwealth, the State or another State or Territory;

qualifying contract means a designated contract where—

(a) the purchaser is a public authority; and

(b) the supplier is a qualifying person or a qualifying body;

qualifying day means the day immediately following the end of a designated payment period that applies in relation to a particular qualifying contract under section 5;

qualifying debt means a debt created by virtue of a qualifying contract;

qualifying person means a natural person whose principal place of residence is situated in Australia;

small business means a business carried on by a qualifying person or a qualifying body where the annual turnover of the business does not exceed $5 million (or if a greater amount is prescribed—the prescribed amount) in the financial year immediately preceding the financial year in which the relevant qualifying day occurs;

supplier means the seller in a contract for the sale of goods or the person agreeing with the purchaser to transfer property in goods or to provide a service under any other contract for the supply of goods or services (subject to the operation of section 4);

Treasurer's instruction means an instruction issued by the Treasurer under section 41 of the *Public Finance and Audit Act 1987*.

(2) The Treasurer may, by a Treasurer's instruction, publish principles that are to apply for the purposes of determining the annual turnover of a business for the purposes of this Act.

(3) This Act applies in relation to an invoice sent or a claim made to a public authority or other entity on or after the day on which this Act comes into operation (subject to the invoice or claim being rendered in accordance with a relevant Treasurer's instruction).

4—Change in identity of parties

The operation of this Act in relation to a qualifying debt is not affected by—

(a) a change in the identity of a party to the contract creating the debt; or

(b) the passing of the right to be paid the debt or the duty to pay it (in whole or in part) to a person other than a party to the contract creating the debt.

5—Occurrence of default event

(1) For the purposes of this Act, a default event occurs if—

(a) goods or services are provided to a public authority under a qualifying contract; and

(b) an invoice is sent or a claim is made by the supplier under the qualifying contract for the payment of a qualifying debt; and

(c) the invoice or claim is rendered to the public authority, or to another public authority or other entity, in accordance with any relevant Treasurer's instruction; and

(d) the invoice or claim complies with any requirements as to the imposition of GST (as between supplier and purchaser); and

(e) payment by or on behalf of the public authority is made to the supplier but the payment is made more than 30 days after the relevant day; and

(f) the public authority (or another public authority or entity acting on behalf of the public authority) did not dispute a relevant matter within the designated payment period.

(2) A public authority or other entity must, in initiating a dispute under subsection (1)(f), comply with any procedure set out in any relevant Treasurer's instruction.

(3) In this section—

relevant day means the day on which an invoice or claim (being an invoice or claim that complies with any relevant Treasurer's instruction and is in all other respects in the correct form for payment) is received by a public authority, or a public authority or other entity acting on behalf of a public authority, in accordance with any relevant Treasurer's instruction;

relevant matter means—

(a) whether goods or services have been provided in accordance with the terms or provisions of a qualifying contract; or

(b) some other matter relating to the supply of goods or services under a qualifying contract; or

(c) whether an invoice or claim has been properly rendered; or

(d) any other prescribed matter.

6—Interest payable if default event occurs

(1) If—

(a) a default event occurs; and

(b) the qualifying contract in relation to which the default event occurs relates to the supply of goods or services as part of a small business carried on by a supplier on the qualifying day,

the supplier under the qualifying contract is (subject to this section) entitled to interest calculated in accordance with the following formula:

$$I = ND \times \frac{(IA \times PIR)}{365}$$

where

I is the interest payable to the supplier

ND is equal to the number of days that make up the default period

IA is the amount paid by or on behalf of the public authority on account of the invoice or claim that has been rendered by the supplier (exclusive of GST)

PIR is the prescribed interest rate applying on the first day of the month in which the designated payment period ends.

(2) For the purposes of subsection (1), the default period is the period beginning on the day immediately following the end of the designated payment period and ending on the day immediately preceding the day on which payment is made by or on behalf of the public authority.

(3) For the purposes of subsection (2), the day on which a payment is made by or on behalf of a public authority will be taken to be—

(a) the day on which an electronic funds transfer is made to a financial institution for processing in order to make payment to the relevant supplier; or

(b) the day on which payment is made by the use of a payment card or a credit card; or

(c) the day on which a cheque is posted to the relevant supplier.

(4) A supplier is not entitled to interest if the amount of interest calculated under this section is less than $20.

(5) Interest payable under this section will be a liability to be satisfied by the public authority that is in default (and will be payable out of money made available or held for the purposes of the public authority).

(6) The following provisions apply in relation to the payment of interest under this Act:

(a) until the designated date—the supplier entitled to the interest must claim the interest by furnishing an invoice in the prescribed form (accompanied by any prescribed information) to the public authority, or to another public authority or other entity, in accordance with any relevant Treasurer's instruction;

(b) on or after the designated date—the public authority must pay the interest when it makes the payment for the goods or services supplied under the qualifying contract.

(7) To avoid doubt, interest is not payable on any unpaid interest under this section.

(8) This section applies subject to the outcome of any dispute under section 7.

(9) In this section—

designated date means a date designated by the Treasurer by notice published in the Gazette.

7—Disputes

(1) If a dispute arises between a public authority and a supplier about whether—

(a) a supplier is carrying on a small business on a particular qualifying day; or

(b) interest or an amount of interest is payable under this Act on account of any other prescribed matter,

the matter may be referred to the Small Business Commissioner (who is conferred with the function of resolving the dispute).

(2) The Small Business Commissioner may specify procedures and requirements that are to apply in connection with the operation of subsection (1).

(3) The Small Business Commissioner may resolve a dispute in such manner as the Commissioner determines to be appropriate.

(4) The Small Business Commissioner may, in acting under this section, exercise any power of the Commissioner that applies under the *Small Business Commissioner Act 2011* in relation to the performance of the Commissioner's functions under that Act.

(5) If the Small Business Commissioner determines that a public authority should pay interest with respect to a qualifying debt under this Act, the public authority must ensure that the interest, of an amount calculated by the Commissioner, is paid in accordance with any determination of the Commissioner.

8—Reporting

(1) This section applies in relation to a public authority—

(a) that is a government department; or

(b) that is a statutory authority that has a governing body.

(2) If a public authority to which this section applies makes a payment of interest under this Act in any month, the Chief Executive of the public authority must furnish a report with respect to the payment of the interest to—

(a) in the case of a government department—the Minister with responsibility for the department; or

(b) in any other case—the governing body of the public authority.

(3) The report—

(a) must contain any information required under a Treasurer's instruction; and

(b) must be furnished—

(i) in the case of a report under subsection (2)(a)—within 21 days after the end of the month in which the payment is made; or

(ii) in the case of a report under subsection (2)(b)—at the next regular meeting of the governing body of the public authority occurring after the end of the month in which the payment is made.

9—Regulations

The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

10—Review

(1) The Treasurer must cause a report to be prepared about the arrangements that will need to be in place to ensure that the scheme envisaged by section 6(6)(b) will operate in an appropriate and effective manner.

(2) The report must be furnished to the Treasurer within 18 months after the commencement of this Act.

(3) The Treasurer must, within 6 sitting days after receiving the report under subsection (2), cause a copy of the report to be laid before both Houses of Parliament.

Schedule 1—Related amendments

Part 1—Preliminary

1—Amendment provisions

In this Schedule, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Public Finance and Audit Act 1987*

2—Amendment of section 41—Treasurer's instructions

Section 41(1)—after paragraph (d) insert:

(e) setting out the procedures and processes for the rendering of invoices and claims with respect to public authorities, to specify a public authority or other entity to which specified classes of invoices or claims must be rendered or sent, to make provision with respect to the form of any invoice or claim, and to make any other provision with respect to the payment of debts by a public authority (including in connection with a scheme to provide for the payment of interest due to the late payment of specified classes of debts).