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THE HOUSE OF REPRESENTATIVES

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Late Payment of Government Debts (Interest) Bill 2007

No. , 2007

(Mr Emerson)

A Bill for an Act to provide for interest to be levied on the late payment by government of commercial debts arising in relation to contracts with small businesses for the supply of goods and services, and for related purposes

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3 **A Bill for an Act to provide for interest to be levied**
4 **on the late payment by government of commercial**
5 **debts arising in relation to contracts with small**
6 **businesses for the supply of goods and services, and**
7 **for related purposes**

8

9 The Parliament of Australia enacts:

10 ***Part 1—Preliminary***

11 **1 Short title**

12 This Act may be cited as the Late Payment of Government Debts
13 (Interest) Act 2007.

14 **2 Commencement**

15 This Act commences on the day on which it receives the Royal
16 Assent.

17 **3 Objects**

18 The objects of this Act are to:

- 19 (a) improve the payment culture of government by penalising
20 late payments of its commercial debts to small businesses;
21 and
22 (b) compensate small businesses for the impact on their cash
23 flow of receipt of late payment of government debts.

24 **4 Definitions**

25 In this Act, unless the contrary intention appears:

- 1 **Commonwealth agency** has the same meaning as **agency** in the
2 Financial Management and Accountability Act 1997.
- 3 **consumer credit contract** means a contract for the supply of credit
4 where the credit is provided or intended to be provided wholly or
5 predominantly for personal, domestic or household purposes.
- 6 **contract for the supply of goods and services** means:
7 (a) a contract for the sale or transfer of goods; or
8 (b) a contract for the hire of goods; or
9 (c) a contract for the provision of services.
- 10 **excepted contract** means:
11 (a) a contract where the consideration for the sale, transfer, hire or
12 service is not, or does not include, a money consideration; or
13 (b) a consumer credit contract; or
14 (c) a contract intended to operate by way of mortgage, pledge or
15 other security.
- 16 **purchaser**, subject to section 12, means the buyer in a contract of
17 sale of goods or the person who contracts with the supplier in any
18 other contract for the supply of goods or services.
- 19 **qualifying contract** means a contract for the supply of goods and
20 services, where the purchaser is a Commonwealth agency and the
21 supplier is a small business, other than an excepted contract.
- 22 **qualifying debt** means a debt created by virtue of a qualifying
23 contract.
- 24 **rate of statutory interest** means the General Interest Charge Rate
25 provided by section 8AAD of the *Taxation Administration Act*
26 1953.
- 27 **relevant day** means:
28 (a) if the supplier and the purchaser agree a fixed or conditional
29 date for the payment of the debt—that day, unless the debt
30 relates to an obligation to make an advance payment; or
31 (b) if the debt relates to an obligation to make an advance
32 payment—the day on which the debt is treated by section 11 as
33 having been created; or
34 (c) in any other case—the last day of a period of 30 days
35 commencing on:

- 1 (i) the day on which the obligation of the supplier to
2 whom the debt relates is performed; or
3 (ii) the day on which the purchaser has notice of the
4 amount of the debt or, where that amount is not
5 determined, the sum which the supplier claims is the
6 amount of the debt;
7 whichever is the later.

8 *small business* has the same meaning as small business entity in
9 the *Tax Laws Amendment (Small Business) Act 2007*.

10 *statutory interest* means interest carried by virtue of an implied
11 term in a qualifying contract.

12 *substantial remedy* has the meaning given by section 10.

13 *supplier*, subject to section 12, means the seller in a contract of sale
14 of goods or the person agreeing with the purchaser to transfer
15 property in goods or provide a service in any other contract for the
16 supply of goods or services.

17 **5 Act binds the Crown**

- 18 (1) This Act binds the Crown in each of its capacities.
19 (2) However, nothing in this Act makes the Crown liable to be
20 prosecuted for an offence.

21 **Part 2—Statutory interest on qualifying debts**

22 **6 Statutory interest payable for late payment of qualifying debt**

- 23 (1) Statutory interest is payable by the purchaser to the supplier for
24 late payment of qualifying debt in accordance with the terms of
25 this Act.
26 (2) Statutory interest applies only to qualifying debts.

27 **7 Implied term in qualifying contract**

- 28 (1) It is an implied term in a qualifying contract that any qualifying
29 debt created by the contract carries simple interest subject to,
30 and in accordance with, this Part and Part 3 of this Act.

- 1 (2) Interest carried under an implied term is treated in the same
2 way as interest carried under an express term.

3 **8 Period for which statutory interest applies**

- 4 (1) Statutory interest is applied to a qualifying debt for the period
5 specified in this section.
- 6 (2) The application of statutory interest commences on the day
7 after the relevant day for the debt, at the statutory rate of
8 statutory interest.
- 9 (3) The application of statutory interest ceases when the interest
10 would cease to apply if it were carried under an express term in
11 a contract.

12 ***Part 3—Contract terms relating to late payment of***
13 ***qualifying debts***

14 **9 Contractual remedies for late payment of debts**

- 15 (1) Any contract terms are void to the extent that they purport to
16 exclude the right to statutory interest in relation to a debt,
17 unless there is a substantial contractual remedy for late payment
18 of the debt.
- 19 (2) Where the parties agree a contractual remedy for late payment
20 of a debt that is a substantial remedy, statutory interest is not
21 carried by the debt, unless the parties agree otherwise.
- 22 (3) The parties may not agree to vary the right to statutory interest
23 in relation to a debt unless either the right to statutory interest
24 as varied or the overall remedy for late payment of the debt is a
25 substantial remedy.
- 26 (4) Any contract terms are void to the extent that they purport to:
27 (a) confer a contractual right to interest that is not a substantial
28 remedy for late payment of a debt; or
29 (b) vary the right to statutory interest so as to provide for a right
30 to statutory interest that is not a substantial remedy for late
31 payment of a debt, unless the overall remedy for late
32 payment of the debt is a substantial remedy.

- 1 (5) Subject to this section, the parties are free to agree contract
2 terms which deal with the consequences of late payment of a
3 debt.

4 **10 Substantial remedy**

- 5 (1) A remedy for the late payment of a debt shall be regarded as a
6 substantial remedy unless:
- 7 (a) the remedy is insufficient either for the purpose of
8 compensating the supplier for late payment or for deterring late
9 payment; and
- 10 (b) it would not be fair or reasonable to allow the remedy to be
11 relied on to oust or to vary the right to statutory interest that
12 would otherwise apply in relation to the debt.
- 13 (2) In determining whether a remedy is not a substantial remedy,
14 regard must be had to all the relevant circumstances at the time the
15 terms in question are agreed.
- 16 (3) In determining whether paragraph (1)(b) applies, regard must be
17 had to the following matters:
- 18 (a) the benefits of commercial certainty; and
19 (b) the strength of the bargaining positions of the parties relative
20 to each other; and
21 (c) whether the term was imposed by one party to the detriment
22 of the other; and
23 (d) whether the supplier received an inducement to agree to the
24 term.

25 **Part 4—Miscellaneous**

26 **11 Advance payments**

- 27 (1) A qualifying debt created by virtue of an obligation to make an
28 advance payment is treated for the purposes of this Act as if it was
29 created on the day specified in subsection (2), (3) or (4).
- 30 (2) Where the advance payment is the whole contract price, the debt
31 is treated as if it was created on the day on which the supplier's
32 obligation is performed.

- 1 (3) Where the advance payment is part of the contract price, but the
2 sum is not due in respect of any part performance of the
3 supplier's obligation, the debt is treated as if it was created on the
4 day on which the supplier's obligation is performed.
- 5 (4) Where the advance payment is a part of the contract price due in
6 respect of any part performance of the supplier's obligation, but is
7 payable before that part performance is completed, the debt is
8 treated as if it was created on the day on which the relevant part
9 performance is completed.
- 10 (5) For the purposes of this section an obligation to pay the whole
11 outstanding balance of the contract price is to be regarded as an
12 obligation to pay the whole contract price and not as an obligation
13 to pay a part of the contract price.

14 **12 Change in identity of the parties**

- 15 The operation of this Act in relation to qualifying debts is not affected
16 by:
- 17 (a) any change in the identity of the parties to the contract
18 creating the debt; or
- 19 (b) the passing of the right to be paid the debt or the duty to pay it
20 (in whole or in part) to a person other than the person who
21 was the original creditor or the original debtor when the debt
22 was created.

23 **13 Regulations**

- 24 The Governor-General may make regulations prescribing matters:
- 25 (a) required or permitted by this Act to be prescribed; or
- 26 (b) necessary and convenient to be prescribed for carrying out or
27 giving effect to this Act.
- 28 _____
- 29