



AUSTRALIAN CAPITAL TERRITORY

Government Contractual Debts (Interest) Act 1994

No. 107 of 1994

An Act relating to interest accruing on debts arising under certain contracts entered into by the Territory and Territory authorities

[Notified in ACT Gazette S289: 22 December 1994]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Government Contractual Debts (Interest) Act 1994*.

Commencement

2. This Act commences on the day on which it is notified in the *Gazette*.

Interpretation

3. In this Act, unless the contrary intention appears—

“agency” means an administrative unit of the Public Service;

“commercial account” means an account rendered to the Territory or a Territory authority, after the commencement of this Act, that requests payment of moneys in respect of—

(a) the provision of goods or services; or

(b) the execution of works;

under a contract to which this Act applies and includes such an account that requests payment of moneys by way of—

(c) deposit;

(d) part payment;

(e) instalment payment; or

(f) bond or other refundable moneys;

“contract” includes agreement, arrangement or understanding;

“due date”, in relation to a commercial account, means the twenty-fifth day of the month next following the month in which the account is to be taken to be payable in accordance with section 6;

“month” means a month of the year;

“Territory authority” means—

(a) a body, whether incorporated or not, established by or under an Act, other than—

(i) a society registered under the *Co-operative Societies Act 1939*; or

(ii) an incorporated association; or

(b) a company over which the Territory or another Territory authority is in a position to exercise control, other than a company specified in Schedule 1 to the *Territory Owned Corporations Act 1990*.

Exclusion of application of Act

4. (1) This Act applies to a contract entered into by the Territory or a Territory authority, whether before or after the commencement of this Act, other than a specified contract that provides that this Act does not apply to it.

(2) In this section—

“specified contract” means a contract under which the consideration payable by the Territory or a Territory authority equals or exceeds the amount of \$10,000.

Reporting of excluded contracts

5. (1) An administrative head and a Territory authority shall state, in an annual report in respect of a period that ends after the commencement of this Act, the number of contracts to which this Act does not apply by virtue of

section 4 that have been entered into by the agency under the control of the administrative head or the authority, as the case requires.

(2) In this section—

“administrative head” means the Head of Administration or an Associate Head of Administration.

When a commercial account is payable

6. Where a commercial account is payable by the Territory or a Territory authority, for the purpose of the ascertainment of the due date in relation to that account, the account shall be taken to be payable—

- (a) if the contract in pursuance of which the account is rendered includes a provision for determining when the account is payable—on the day ascertained in accordance with that provision; or
- (b) in any other case—on the day on which the account is received by the agency by which it is payable on behalf of the Territory or the Territory authority, as the case requires.

Interest on unpaid accounts

7. (1) Where the Territory or a Territory authority fails to pay a commercial account in full by the due date, it is liable to pay to the creditor a further amount by way of interest ascertained in accordance with this section on so much of the account as remains from time to time unpaid.

(2) Interest payable under this section in respect of a commercial account—

- (a) accrues from the due date; and
- (b) shall be calculated at the rate fixed under the Supreme Court Rules for the purposes of section 70 of the *Supreme Court Act 1933* as if—
 - (i) the unpaid amount of the commercial account were payable under a judgment of the Supreme Court; and
 - (ii) the due date of the account were the date on which the judgment had been given.

(3) Subsection (2) does not operate so as to make the Territory or a Territory authority liable to pay interest on interest.

Exclusion of inconsistent contractual terms

8. A term in a contract to which this Act applies that—

- (a) excludes the application of this Act to the contract; or
- (b) provides for the payment of interest on an unpaid account that has been rendered under the contract;

is void.

Moneys from which interest is payable

9. (1) For the purposes of any Act that—

- (a) enables the issuing out of the Consolidated Revenue Fund of moneys for expenditure under a specified program; or
- (b) specifies the source of moneys that may be expended by a Territory authority generally or in relation to a specified program;

the expenditure of moneys on the payment of an amount payable under section 7 shall be taken to be expenditure under the program that encompasses the relevant commercial account.

(2) Where a commercial account is payable out of moneys standing to the credit of a relevant account, the payment of an amount that, under section 7, is payable in relation to the commercial account shall be deemed, for the purposes of section 83 or subsection 85 (10) of the *Audit Act 1989*, as the case requires, to be made for the purposes of the same relevant account.

(3) In subsection (2)—

“relevant account” means—

- (a) the Trust Fund established by section 82 of the *Audit Act 1989*;
- (b) the Trust Account established by subsection 85 (1) of that Act; or
- (c) a Trust Account established under subsection 85 (2) of that Act.

Payments by mail

10. For the purposes of this Act, where the payment of an amount in respect of which a commercial account has been rendered is remitted by mail, the payment is to be taken to be made when it is posted.

Discounts for prompt payments

11. A contract for the provision of goods or services to, or the execution of works for, the Territory or a Territory authority shall not be entered into unless—

- (a) the person entering into it on behalf of the Territory; or
- (b) the Territory authority;

as the case requires, is satisfied on reasonable grounds that—

- (c) the best discount that can reasonably be obtained for the prompt payment of a commercial account rendered under that contract is available to the Territory or Territory authority; or
- (d) where no such discount is available—that reasonable commercial negotiations would not result in the availability of such a discount.

[Presentation speech made in Assembly on 20 April 1994]

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