



## *Express law* fast track information for clients

9 December 2008

### Finance issues new 30 day payment policy

The Department of Finance and Deregulation (Finance) has issued [Finance Circular 2008/10](#) updating its Procurement 30 Day Policy for Small Business. The policy requires *Financial Management and Accountability Act 1997* (FMA Act) agencies to adopt maximum payment terms 'not exceeding 30 days' from the date of receipt of a correctly rendered invoice. The Circular took effect from 1 December 2008, replacing the internet Guidance that had been provided on the policy.

#### *When does the policy apply?*

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The policy applies to procurements from small businesses by FMA Act agencies. A 'small business' is an enterprise that employs less than the full-time equivalent of 20 persons on the day that the written contract under which the payment is to be made is entered into. If the enterprise forms part of a group, the test applies to the group as a whole.

The policy applies to the procurement of goods and services from departmental items (as defined in Estimates Memorandum 2007/29: *Criteria For Determining Departmental And Administered Classifications*) (the Memorandum). It does not apply:

- to procurements of real property, including leases and licences
- to procurements from administered items (as defined in the Memorandum)
- where the nature of the procurement would make it impractical for the policy to apply (e.g. where the terms of the contract are put forward by the contractor rather than the agency), or
- to procurements that pre-date the policy (including where negotiations are already on foot).

#### *What does the policy require?*

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For procurements covered by the policy, the contract must provide that, for payments valued up to and including A\$5 million (GST inclusive), the agency will make payment to the contractor not later than 30 days after the date of receipt by the agency of a correctly rendered invoice. The agency may agree to make payments within a shorter period than 30 days.

For procurements covered by the policy with a value of up to A\$1 million (GST inclusive), the contract must also provide that, if full payment is not made by the agency within 30 days of receipt of a correctly rendered invoice (or the shorter period specified in the contract), the agency must pay simple interest on the unpaid amount. The interest is payable at the general interest charge rate published by the Australian Taxation Office, calculated in respect of each day from the day

after payment was due and including the day payment is made. Interest is not payable unless the amount of interest is more than A\$10.

An agency must ensure that any approach to the market which includes a draft contract indicates that the contract will include clauses to give effect to the policy where the successful tenderer is a small business. Model clauses are provided in the Circular to assist agencies. Agencies must also provide the successful tenderer with an opportunity to identify itself as a small business prior to entering into the contract.

### ***What should agencies do now?***

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For all procurements of goods and services from departmental items, agencies will need to ensure that the procurement documentation and process complies with the policy. Agency template precedent documents may also need to be updated. AGS can assist with specific transactions and precedent documents. Please contact one of our specialists listed below.

### ***Commonwealth Procurement Guidelines***

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Note that new Commonwealth Procurement Guidelines also commenced on 1 December: see AGS *Express Law* No. 83 (15 October 2008).

### ***AGS procurement seminars***

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AGS will be holding Government Law Group seminars on procurement and the Commonwealth Procurement Guidelines in most capital cities in February and March, including seminars in Canberra and Perth on 5 February 2009. For further information about these seminars, including how to reserve a place, please contact [Olive Bassett-Macleod](#) (T 02 6253 7247).

*For further information please contact:*

[Henry Addison](#) T 02 6253 7264 [CANBERRA]

[Tony Beal](#) T 02 6253 7231 [CANBERRA]

[John Berg](#) T 02 9581 7624 [SYDNEY]

[Peter Blennerhassett](#) T 07 3360 5767 [BRISBANE]

[Peter Bowen](#) T 03 6210 2104 [HOBART]

[Lee-Sai Choo](#) T 08 9268 1137 [PERTH]

[Garth Cooke](#) T 03 9242 1494 [MELBOURNE]

[James Docherty](#) T 08 8943 1405 [DARWIN]

[Kenneth Eagle](#) T 03 9242 1290 [MELBOURNE]

[Peter Kidd](#) T 02 6253 7210 [CANBERRA]

[Simon Konecny](#) T 02 9581 7585 [SYDNEY]

[Paul Lang](#) T 03 9242 1322 [MELBOURNE]

[Lynette Lenaz](#) T 03 9242 1358 [MELBOURNE]

[Cathy Reid](#) T 03 9242 1203 [MELBOURNE]

[Linda Richardson](#) T 02 6253 7207 [CANBERRA]

[John Scala](#) T 03 9242 1321 [MELBOURNE]

[Adrian Snooks](#) T 02 6253 7192 [CANBERRA]

[Peter Watson](#) T 08 8205 4287 [ADELAIDE]

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