

Victorian Government Fair Payment Policy

Contracts for fair payments

All Victorian Government departments and applicable agencies (**Appendix A**) are required to pay invoices with a contract value of less than \$3 million in ten business days and insert fair payments clause into new contracts valued at less than \$3 million.

Departments and applicable agencies are obligated to pay penalty interest on payments that are not made within ten business days, at the initiation of the supplier. **Please note penalty interest only applies to late payments from 1 April 2021.**

Contracts to which the provision applies

Fair payments provisions apply to contracts entered into from 1 January 2021 where the value of the goods or services does not exceed \$3 million.

While it is acknowledged that a \$3 million threshold will capture some contracts involving larger businesses, it is considered as the appropriate minimum requirement to ensure the likely coverage of all contracts involving small and medium businesses.

Ten business day payment terms

The ten business day clock starts ticking from the date of receipt of a correct and complete invoice. The payment terms do not apply to an invoice which is incorrect, incomplete or under dispute. An invoice must also be received by the relevant department or agency (i.e. the address and recipient details must be correct), for the payment terms to apply.

Standard contract clause

Agencies should include an appropriate fair payments clause in these contracts.

Clauses should provide for:

- Payment of debts within ten business days
- Penalty interest for late payments
- Requirement for the supplier to give notice of the late payment in order to receive penalty interest
- Suspension of the ten-business day payment period in the event of a dispute.

Fair payments clause

A standard clause has been drafted, as follows, for use by departments and agencies. Each agency should consult its legal officers to ensure that the clause is appropriately tailored on a case-by-case basis.

1.1 [The Agency] will, on demand by [the Contractor], pay simple interest on a daily basis on any overdue amount, at the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* (Vic).

1.2 For the purposes of clause 1.1, "overdue amount" means an amount (or part thereof) that is not, or is no longer, disputed in accordance with this Agreement:

- (a) that is due and owing under a tax invoice (as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth)) properly rendered by the Contractor in accordance with this Agreement
- (b) which has been outstanding for more than ten business days from the date of receipt of the correctly rendered invoice or the date that the amount ceased to be disputed, as the case may be.

Monitoring, reporting and evaluation

Agencies should ensure that appropriate monitoring and reporting mechanisms are established. This will enable an evaluation of the fair payments provisions to determine their effectiveness in ensuring prompt payment of Victorian Government debt to business.

Specifically, information should be collected on:

- Number of claims for penalty interest
- Value of the invoices involved
- Overall payment terms, i.e. average number of days to pay an invoice, percentage of all payments made within ten business days.

Interest on late payments

The interest payable on late payments will be in accordance with existing Victorian legislation, namely, the *Penalty Interest Rates Act 1983*. Under this legislation, the penalty interest rate which would apply to the late payment of commercial debts by agencies would be the interest rate expressed as a percentage fixed by the Attorney-General from time to time by notice published in the *Government Gazette*. Such penalty interest would accrue ten business days after the debt arises. The current penalty interest rate is available from the Department of Justice and Community Safety website.

Example penalty interest calculation (assuming the following):

- Penalty interest rate is 10 per cent
- Value of the invoice is \$100,000
- Payment occurs 12 days after the conclusion of the 10-business day period
- Interest owing = \$ 100,000 × 10.00 per cent × 12/365 = \$328.77.

Initiation of penalty payments

In respect of the ongoing administration of the commitment, the penalty interest component on late payments will be based on the supplier's initiation, which will minimise tracking of individual payments by departments.

Appendix A: Fair Payments Policy – Departments and applicable agencies

Departments	Applicable Agencies
Department of Education and Training Department of Energy, Environment and Climate Action Department of Families, Fairness and Housing Department of Government Services Department of Health Department of Jobs, Skills, Industry and Regions Department of Justice and Community Safety Department of Premier and Cabinet Department of Transport and Planning Department of Treasury and Finance	Adult Multicultural Education Services Australia Alfred Health Austin Health Australian Centre for the Moving Image Bendigo Kangan Institute Chisholm Institute City West Water Corporation Country Fire Authority Eastern Health Essential Services Commission Goulburn Murray Rural Water Corporation Holmesglen Institute Independent Broad-Based Anti-Corruption Commission Infrastructure Victoria Melbourne Health Melbourne Polytechnic Melbourne Water Metropolitan Fire and Emergency Services Board Monash Health Museums Victoria South East Water State Emergency Services State Revenue Office State Trustees Limited The Council of Trustees of the National Gallery of Victoria Victoria Police Victorian Electoral Commission Victorian Legal Aid Victorian Management Insurance Authority Victorian Ombudsman Victorian Public Sector Commission Visit Victoria Yarra Valley Water Corporation