MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Business Payment Practices Regulations

Discussion Document

October 2022

New Zealand Government

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Minister's foreword

More than two years after the onset of the COVID-19 pandemic, we find ourselves in a strong position to address the next set of challenges facing our economy. This Government is keen to capitalise on our position through our plan to build a high wage, low emissions economy that provides economic security in good times and bad.

Labour's 2020 Election manifesto committed to addressing challenges identified by the Small Business Council's Small Business Strategy. This Strategy identified late payments as being among a number of challenges facing New Zealand's small and medium-sized enterprises.

According to a survey commissioned by MBIE, around half of business owners say late payments hurt their cash flow and increase their stress levels. Nearly one third say late payments inhibit their business growth. We hear of larger firms exploiting their bargaining power, setting payment terms that advantage themselves at the expense of their smaller suppliers, who don't feel able to ask for more reasonable terms. This is unfair, and it is preventing this significant business segment from realising its full potential contribution to our economy and to our communities.

In November 2022, the Government introduced a Bill to usher in a new payment practices disclosure regime that will bring transparency to large businesses' payment practices. It will require large firms, with an annual turnover of over $33 million, to publicly disclose their payment practices. This will give small businesses access to information that will enable them to determine which of their potential purchasers have payment practices and terms that meet their operational needs. We propose that the information disclosed will be searchable or sortable by specific industries so that small businesses can more easily compare the payment practices of the larger businesses they are likely to engage with.

This document seeks your feedback on some of the detail to be included in the regulations that will give effect to this new disclosure regime—for example, what specific information will be required and what periods will be reported on. These regulations will be developed next year.

I look forward to hearing your thoughts and suggestions on how we can ensure this business payment practices regime is fair, effective, and enforceable. We are keen to hear from you, whether you work in a larger entity or a small one. Your feedback will be vital in ensuring that our new regime is practical and provides genuinely useful payment practices information.

Hon Stuart Nash

Minister for Small Business

Making a written submission

The Ministry of Business, Innovation and Employment (MBIE) opened this consultation on 28 October 2022. It seeks submissions by 26 February 2023. Your submission may respond to any or all the issues we ask about. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to: *bppregulations@mbie.govt.nz*
- mailing your submission to:

  Small Business Policy
  Small Business, Commerce and Consumer Policy
  Ministry of Business, Innovation & Employment
  PO Box 1473
  Wellington 6140

Please direct any questions that you have in relation to the submissions process to *bppregulations@mbie.govt.nz*

What we would like to hear from you

This is not consultation on whether or not to have a new Business Payment Practices regime (a new act and regulations). Cabinet has already made this decision in December 2021, and a Business Payment Practices Bill has now been introduced to Parliament.

We are seeking your views on some of the detail to be included in the regulations (and other secondary legislation) that will give effect to the Business Payment Practices (BPP) Bill's purpose of bringing increased transparency to business-to-business payment practices. In particular we would like to know your views on:

1. What payment practices information would be most useful to businesses when deciding who to do business with, and how we can make it as easy as possible for reporting entities to disclose their payment information.
2. What disclosure periods for reporting entities would make it easier to compare payment practices.
3. Whether any groups of entities should be exempt from the BPP regime.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on regulations for the Business Payment Practices Bill. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission.

Objections to the release of information

If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 2020 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that MBIE may publish.

Background and context

Status quo

Feedback from small businesses indicates that late payments and lengthy payment terms cause harm. Many businesses, often small, cannot effectively collect their debts due to limited resources and difficulties with the civil debt enforcement process. Sometimes these businesses put up with slow payment practices fearing they might damage their reputation with their larger purchasers if they demand better terms. This has been shown to be a challenge even in countries with laws that give businesses the right to apply interest to payments that are not received before a mandated maximum payment time[1].

A 2018 survey commissioned by MBIE[2] showed 87 percent of businesses surveyed have experienced cash flow issues after receiving late payments, or receiving requests for deferred payment. 81 percent have experienced stress as a result of late payments. Other reported negative impacts include limiting business's ability to grow (66 percent) and an increase in administration overheads (51 percent).

Late payments are also very common. 42% of businesses in the same survey stated that, at some stage in the 12 months prior, they had paid at least one invoice late. Not surprisingly, those who received a late payment (or a request for deferred payment) were more likely to pay their suppliers late (53%).

Businesses dealing with late payments also stated they needed to cover their business expenses by making use of personal savings (46%) and/or by organising overdrafts or personal loans with their bank (30%).

Fortunately, payment times in New Zealand have recently been improving. Data published by the cloud accounting firm Xero[3] shows slow but constant improvement since they started monitoring the time it takes their client's to be paid after issuing an invoice. The 2017 average payment time was around 27.1 days, while for the twelve months until June 2022 the average payment time was 23.8 days.

Crucially, long payment terms and late payments can stem from businesses taking advantage of their bargaining power. When this happens, it will often have negative effects on these businesses' suppliers. The effects of slow and late payment can be felt throughout supply chains, and more broadly through the economy. Payment problems like these are difficult to deal with effectively through the regulatory and non-regulatory tools available.

Establishing the Business Payment Practices Bill

On 26 October 2022, the Government introduced the Business Payment Practices Bill to Parliament. The purpose of the Bill is to bring transparency to business-to-business payment practices.

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[1] For example, see https://op.europa.eu/en/publication-detail/-/publication/400ecc74-9a54-11e5-b3b7-01aa75ed71a1#document-info

[2] In 2018 MBIE commissioned Research New Zealand to undertake survey on invoicing and payment behaviour and practices for a representative group of 1,254 businesses

[3] Taken from a sample of Xero's clients weighted to approximate New Zealand's general business demographics. More information about Xero's methodology is available on xsbi-methodology-doc.pdf (xero.com)

The Bill is intended to address issues relating to late payments and long payment times. It requires large entities[4] to report six-monthly on their payment practices on a public register administered by MBIE, and on their own website. This will give businesses information about payment practices to consider when engaging large purchasers. The new regime may also incentivise larger businesses, conscious of their reputation, to improve their payment practices where this is warranted.

The Business Payment Practices Bill is currently being considered by the Economic Development, Science, and Innovation Select Committee. The Regulatory Impact Statement (RIS) gives a more detailed analysis of the problems arising from late and extended payments and is available here https://www.mbie.govt.nz/assets/regulatory-impact-statement-better-business-to-business-payment-practices.pdf.

We previously consulted on a proposal to introduce legislation that defined specific requirements for maximum payment periods, after which suppliers could enforce a right to charge interest or a penalty fee. This previous consultation document can be found here: https://www.mbie.govt.nz/have-your-say/improving-payment-practices/.

The proposed Business Payment Practices Bill and the proposed regulations in this paper differ from the earlier proposal. The current Bill does not make a judgement on payment practices, nor will it regulate maximum payment times.

Reporting entities with lengthy or late payment practices will not be charged interest or penalised in other ways in the proposed Bill or regulations. However, the Bill does propose penalties for incorrect or misleading information about payment practices.

[4] Large entities are defined as entities with an annual revenue in excess of $33 million for the prior two consecutive accounting periods

Overview

The problem

There is evidence that average business-to-business payment times have improved over the last five years, and initiatives such as market led technology solutions and government payment performance improvements appear to be supporting this trend. However, small businesses tell us that late payments and lengthy payment terms persist in the economy and can cause considerable harm. This may impact on the efficient functioning of the economy, for example, by potentially causing a higher cost of capital, or unnecessary insolvencies.

The impacts of late and lengthy payments include: time and resource spent on debt collection; disruption to hiring and capital investment due to uncertain cashflow; a need to source additional financing; and an increased risk of insolvency in the case of already capital constrained firms.

Where there is harm from late and long payments, it tends to fall disproportionately on small businesses. Small businesses are generally less well-equipped to weather such practices[5]. Many small businesses are also reluctant to push for faster payments because they fear damaging their relationships with their suppliers.

There are a variety of payment terms[6] employed in the economy and sometimes lengthy payment[7] terms result from a fair agreement by both a supplier and purchaser. However, both lengthy and late payments may be the result of one business having more bargaining power than the other.

This document outlines proposals for regulations and notices to be included in the Business Payment Practices Bill (the BPP Bill). They propose the reporting measures and other administrative settings (exemptions, and timing of reporting) to give effect to the Bill.

The purpose of the Bill

In response to the problem outlined above, the BPP Bill will establish a new disclosure regime requiring large entities[8] to report their payment practices on a public register administered by MBIE, and on their own websites.

The Bill's purpose is to:

- provide transparency to business-to-business payment practices across the economy; and
- give businesses access to better information to inform their decision making.

We anticipate that the new regime will incentivise larger businesses, conscious of their reputation, to improve their payment practices. Ultimately, we expect that this Bill will have an impact on how business is conducted, and create a fairer business environment that is more conducive to healthy competition.

How "regulations" relate to the BPP Bill

Acts are high level and principled in nature. To make sure they are implemented effectively, Acts often include provisions which delegate detailed requirements to another person or body. Legislation

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[5] MBIE Better for Business' Business Health research in late 2020 showed that a fifth of businesses had no cash or financial reserves, and a further 29 percent only had sufficient reserves to allow them to continue operating for a matter of weeks

[6] That is, the time period that suppliers and purchasers agree for payment

[7] A payment term much longer than industry or economy wide norms

[8] Large entities are defined as groups of companies, and/or individual entities (including parent companies and subsidiaries within groups) with more than $33 million revenue in their two most recent accounting periods

that is delegated like this is referred to as secondary legislation and includes regulations, notices or rules.

Although the title of this document refers to “regulations”, the proposals in this document are technically broader than this. If implemented, the Bill’s reporting measures would come into force via “regulations”, and “notices”. The proposed disclosure periods, reporting deadlines and class exemptions would be determined via a notice. The regulations will be made via an Order in Council, while the notices relating to the disclosure periods and deadlines will be issued by the Registrar. The Minister for Small Business may issue class exemption notices.

The objectives of proposed regulations

In making proposals in this document, we considered each of the following principles:

The information disclosed and published is useful to potential users. A successful regime will see businesses making well informed decisions. To achieve this, disclosed information must be relevant, full, accurate, recent, and simple to use and understand. This has implications not only for the reporting measures, but also for the setting of reporting periods so that fair “apples to apples” comparisons can be made between the payment practices of different businesses.

The cost of reporting is taken into account. We don’t want to impose unnecessary costs, which is why we want to consider how reporting might be able to be coordinated and streamlined with other reporting obligations, and whether exemptions to the regime should be considered i.e. where certain types of entities provide reports that contain little information that is beneficial to users.

Reporting should be as simple as possible. Introducing unfamiliar measures and concepts not only increases the cost to reporting entities (e.g., in terms of data collection and training), but also increases the risk of confusion and inconsistent and/or inaccurate disclosures. We want to keep things simple.

Unintended consequences are minimised. While the regime itself does not make a judgement on payment practices, reporting entities will have a good understanding about what suppliers consider to be “good” payment practices. Because of this, reporting entities might feel tempted to take advantage of technicalities to look ‘good’ on paper, while their actual practice does not reflect their on-paper performance.

For example, if the definition for payment times included any partial payment of an invoice, a reporting entity could, at low cost, simply pay one cent of each invoice immediately after they’re received. This could easily be misleading – the report would look good on paper, but the entity would not need to make any effort to pay their suppliers in full. Partly because of this, most of the reporting measures we propose only consider invoices that have been paid in full.

Unintended consequences are usually unpredictable. This means we must keep an eye out for them in all aspects of the regime, by monitoring administrative data and economy-wide payment trends, along with periodic evaluations and reviews.

Administration of the regime must be effective and responsive to reporters and users. Government must run this programme in a cost effective way and maintain the high level of quality that businesses have come to expect from government business registry services. To achieve this objective, we need to ensure the BPP Registrar can quickly and easily address reporting entity and user questions. We also want to ensure that compliance with the regime is easily monitored e.g., reporting measures can easily be reproduced from raw data.

How the regulations and notices will be implemented

The BPP Bill requires a register to be established. The register will store and publish reporting entities’ payment information. The Companies Office, which will likely administer most of the register’s functions, has a strong track record of operating registers with very similar functions. The technical aspects of implementation (publishing and storing information; making exemptions; and determining reporting periods) are well understood by the Companies Office, and are already business-as-usual in other government run business registries.

Once the regulations and notices are finalised, we need to provide enough time and guidance for reporting entities to familiarise themselves with the new reporting obligations and make any necessary adjustments to their reporting systems.

MBIE will use a number of channels to communicate the regime's final measures, exemptions, and reporting periods to reporting entities. We will provide guidance on how to calculate measures, how and when to submit information to the Registrar, how and when to apply for an exemption, and how to generally comply with the new obligations.

MBIE will also communicate details of the new disclosure regime to interested parties, such as smaller businesses and suppliers.

We would like to know what you think

We are consulting on three main areas:

1. Regulations relating to key information and measures businesses will have to report on.
2. A Notice (issued by the Registrar) regarding the time period covered by each report, and deadlines for reporting.
3. A Notice (issued by the Minister for Small Business) regarding the process used to exempt classes of businesses from the disclosure requirements regime.

We would like to know if you think the proposals in this document would help ensure that the purpose of the Bill is met; that is, that:

- reporting entities' business-to-business payment practices are transparent, and
- businesses in general would have better information when deciding whether to supply their goods or services to large purchasers.

We have questions throughout the document seeking specific feedback

These questions are collated on pages 22 and 23.

We would appreciate feedback on the questions, however, please feel free to comment on any aspect of the proposals and add any suggestions about technical details.

We provide a number of options to consider, but there are other options we may not have canvassed in this document. Please feel free to suggest other options which you think should be included in the Bill's secondary legislation.

1 Proposed reporting measures

The proposed BBP Bill requires reporting entities to disclose information on measures relating to their payment practices, in line with the Bill's aim to bring transparency to business-to-business payment practices. These measures will be outlined in regulations.

The measures are the most important part of the regime. They will determine whether businesses can make more informed decisions about who to do business with. We anticipate measures will focus on the time it takes reporting entities to pay an invoice after it has been received, and on late payments. A proposed set of measures is outlined in this section.

Information reporting entities would need to disclose

The proposed measures reporting entities would have to disclose are detailed below. We provide a short technical description and a rationale for each measure.

Eleven measures are outlined, but we do not envisage that they will all be part of the final reporting requirements. Rather, we intend to present a broad range of measures and options for your consideration. Some of the proposed measures cover very similar ground, for example measures 2, 4, and 5 all relate to the late payment of invoices. It is unlikely that the final set of measures will need all of these.

We welcome feedback on the number and type of measures that should be disclosed by reporting entities.

We expect that compliance costs to produce the measures below should be modest, and that reports should be able to be automated. However, we are aware of exceptional circumstances. For example, some measures may require certain entities to alter established accounting processes. We would appreciate feedback from potential reporting entities about the effort required to produce the proposed measures.

Technical notes

Unless otherwise specified, the following applies to all proposed measures:

- "Paid invoices" are recorded only once payment has been made in full.
- Invoices included are only those due during the disclosure period.
- Invoices included are received by the reporting entity (not issued by the reporting entity), and exclude invoices from businesses in the same, commonly owned group as the reporting entity.
- Payment times are measured in calendar days, starting from the date of receipt of the invoice until the day the invoice has been paid in full.
- The agreed payment period is usually set out in the contract, but there may be instances where it depends on details in the invoice or other documents.

*Technical notes about the measures adopted from overseas payment practice disclosure regimes are in **Annex One**. Measures that MBIE is not considering for this regime, but have been used in overseas jurisdictions, are outlined in **Annex Two**.*

Proposed measures

Reporting measures covering invoices paid by reporting entities, issued by their suppliers

1. Average number of days to pay invoices from suppliers *e.g. "16.02 days"*

> Proposed calculation method:
>
> a) Add together the payment times for all paid invoices due during the reporting period
>
> b) Divide a) by the total number of fully paid invoices due during the reporting period

This provides an easily comparable summary measure for payments to suppliers. It is easily understood at a glance**.**

This measure can be skewed by outliers, but other measures in the proposed set will complement this measure and provide a more accurate overview of payment practices.

2. Percentage of the number of invoices that were paid within the agreed payment period *e.g. "93%"*

> Proposed calculation method:
>
> a) Add together the number of invoices due during the reporting period that were paid before, or on, the agreed due date
>
> b) Divide a) by the total number of invoices due during the reporting period

This measure gives an easy comparison of how frequently a reporting entity pays its invoices on time, and by inference, how many are late.

3. Percentage of invoices paid in full during the reporting period *e.g. "100%"*

> Proposed calculation method:
>
> a) Add together the number of paid invoices due during the reporting period
>
> b) Divide a) by the total number of invoices due during the reporting period

This covers the proportion of invoices paid in full (including late payments) during the reporting period. The remainder will likely be disputed payments, or payments otherwise not made in full.

This gives important context to the rest of the measures, as many of the measures only count fully paid invoices. For example, an entity that looks to pay very quickly according to measure 1, would look much less attractive if measure 3 shows that only half of all of their invoices are paid in full.

4. The percentage of invoices unpaid 61 days or more after receipt of invoice *e.g. "0%"*

> Proposed calculation method:
>
> a) Add together the number of invoices still owing 61 days or more after initial receipt
>
> b) Divide a) by the total number of invoices due during the reporting period

This gives an indication of the proportion of payments made well beyond the time most businesses usually receive payment. 60 days is a little more than twice the average time we understand it takes businesses to receive payment after issuing an invoice.

5. Average late payment time *e.g. "0.2 days"*

> Proposed calculation method:
>
> a) Add together the difference, in days, between each invoice's due date, and the day on which it was paid
>
> b) Divide a) by the total number of invoices paid during the reporting period

This lets potential suppliers of the reporting entity know how long they should expect to wait for payment after the agreed due date for an invoice. Regular early payments could produce a negative number.

6. The proportion of total number of invoices paid within:

0 and 20 days *e.g. 75%*	**21 and 30 days** *e.g. 15%*	**31 and 60 days** *e.g. 9%*
61 and 90 days *e.g. 1%*	**91 and 120 days** *e.g. 0%*	**Over 120 days** *e.g. 0%*

> Proposed calculation method:
>
> *For each of the time brackets:*
>
> a) Add together the number of invoices paid within that time bracket
>
> b) Divide a) by the total number of invoices paid in the reporting period

This gives a better-rounded picture of the spread of reporting entities' payment times. From this information potential suppliers can form expectations about the upper and lower limits of a reporting entity's payment practices, and how frequently they comply with the terms they offer their suppliers.

To illustrate how to understand this measure, take the example above: 75% of all the invoices are paid within 20 days, 15% of all invoices are paid between 21 and 30 days, 9% between 31 and 60 days, and 1% between 61 and 90 days.

7. The proportion of total value of invoices paid within:

0 and 20 days *e.g.* 60%	**21 and 30 days** *e.g.* 22%	**31 and 60 days** *e.g.* 13%
61 and 90 days *e.g.* **3**%	**91 and 120 days** *e.g.* 2%	**Over 120 days** *e.g.* 0%

> Proposed calculation method:
>
> *For each of the time brackets:*
>
> a) Add together the dollar value of invoices that are paid within that time bracket
>
> b) Divide that sum by the total combined value of all invoices paid in the reporting period

Like the measure above, this also provides a distribution, but is more concerned with relating payment times to expenditure. In other words, this measure indicates how much money is spent on prompt (or slow) payments.

This complements measure number 6 by providing information that a simple invoice count could miss. For example, a large number of invoices could be paid very quickly, while accounting for a small proportion of total expenditure.

Reporting measures covering invoices issued by reporting entities, paid by their purchasers

8. Average number of days for receipt of payment *e.g. 10.02 days*

> Proposed calculation method:
>
> - Add together the sum of payment times for all paid invoices **issued by the reporting entity**
> - Divide a) by the total number invoices issued during the reporting period

Up until this point, all the measures have referred to invoices received by the reporting entity. This measure relates to invoices the reporting entity itself issues and how long the reporting entity's customers take to pay them.

The purpose of this measure is to indicate how easy it may be for a reporting entity to alter their payment practices. Decreasing payment times can come at a significant cost to a reporting entity when it takes them a long time to receive payments.

9. Percentage of invoices received on time *e.g. 98%*

> Proposed calculation method:
>
> - Add together the number of paid invoices issued by the reporting entity, before or on the due date agreed between them and their purchaser.
> - Divide a) by the total number of invoices issued during the reporting period.

As with ***measure 8***, this measure provides context about the reporting entity. In this case the measure relates to invoices issued by the reporting entity and the payments they receive.

We might expect a business who receives many late payments to encounter cashflow issues more frequently and, in turn, finding themselves needing to make late payments more frequently

Questions asking for an explanation about payment practices and policies

As well as the measures identified, reporting entities could be asked to disclose their payment practices and policies. As per the measures above, we would appreciate your feedback on how this information might better inform business decision making, and work towards achieving the regulations' objectives.

10. What are your standard payment terms offered to your suppliers in calendar days?

e.g. 15 days, 30 days, and 60 days

Through this measure, potential suppliers to reporting entities can know what payment terms it can expect to be offered. This information could assist them in negotiations with reporting entities.

This type of qualitative measure with a limited number of options for responses has the potential to provide useful contextual information at a glance for those reading the reports, with a minimum of reporting burden for reporting entities.

11. What other payment practices does the entity employ? (pick all that apply)

Options include: Offers eInvoicing to suppliers; Offers supply chain finance; Offers more favourable terms for small businesses; Charges to businesses that remain on the entity's supplier list; Other (please specify)

This measure provides additional qualitative information relating to reporting entities' payment practices that are not directly related to payment times or late payments.

Analysis

Our preferred set of reporting measures

The final set of reporting measures selected will represent the best balance of good information, reporting costs, and ease of understanding. We suggest that reporting measures 1, 2, 3, 6, 7, and 11 will best achieve this balance. This set is relatively small and gives important information, but can be understood quickly and easily.

The preferred set focusses on payment times and late payments, which we expect will be the measures of most use to suppliers and of most interest to the general public. Public understanding of and interest in the reporting measures will be an important determinant of how the reporting regime impacts on large entities' reputations, and hence their behaviour, especially where suppliers have little choice about who to do business with.[9] [10]

The preferred set also includes a measure (11) that provides suppliers with an option for questioning reporting entities on general payment matters, outside of late payments and payment times.

Simple checks provided by complementary measures are very useful too. In this case, there is value in providing both average payment times and a view of the spread of payment times. For example, an average can hide inconsistent behaviour that is visible through the spread. In addition, providing for both the count and value of invoices through measures 6 and 7 ensures it is visible where large numbers of invoices only account for a small portion of the value of reporting entities' payments.

There are limits to our evaluation of benefits, which will be greatly helped by feedback from you

This is a new regime. The value of any set of measures may be different from business to business. There may be large impacts from differences in the measures' calculation methods for individual businesses. We are keen to hear on the implications of what is proposed at a business level.

Your feedback on the merits and disadvantages of the measures proposed in this document will inform our advice on the final set of measures. We also welcome suggestions for other measures that might give businesses access to better information to inform their decision making, and work towards achieving the objectives outlined in section 1.

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[9] For example, following the publication of information regarding the receipt of the Wage Subsidy (assistance offered by the New Zealand government as wage replacement for inactive firms) during the first two years of the COVID-19 pandemic saw a number of high profile cases of large profitable businesses returning the subsidy to the government. MBIE has also heard from accounting firms that public scrutiny seriously diminished demand for the Wage Subsidy in its second iteration and subsequent iterations.

[10] A good summary of the various ways public information on organisational performance can influence behaviours in the health system (a widely researched phenomenon) can be found here The power, peril and promise of targets | The Spinoff

Questions

We have prepared some questions that relate to the proposed set of measures, and would appreciate feedback on any, or all, of these questions.

1. Do the objectives outlined in the overview section cover off the most important considerations for the set of measures? Are there other important considerations?
2. What information would you most like to see through the measures?
3. How many measures are preferable, and which measures would you prioritise?
4. For any individual measure in the set of proposed measures:
    a. Would this information be easy to reproduce or verify?
    b. What potential unintended consequences (if any) might be caused by this measure?
    c. Can you see any technical challenges relating to:
        i. the accuracy of the measure?
        ii. the effort it takes to produce?
        iii. the ability to fairly compare the measure between reporting entities?

    Please identify the measure you refer to, and elaborate if possible. Feel free to offer any advice to improve the measure.
5. Can you recommend any measures not in the set that would provide useful information? Please explain.
6. How might we know if the measures chosen are working effectively and useful for users of the regime, and when we should consider changing certain measures?
7. Please share any other thoughts about the proposed set of measures.

2 Proposed disclosure periods

Under the BPP Bill each reporting entity must disclose information on their payment practices (using the measures to be disclosed) twice a year, covering a period of six-months. For example, if an entity had to disclose information relating to the six months ending 31 January, it would also have to report on the six months ending 31 July. The 6 month reporting periods will be determined by the Registrar of the BPP register by notice.

Reporting entities will need to make their disclosures by a deadline, also determined by the Registrar, no less than one month after the end of each disclosure period.

Disclosure periods

The disclosure periods outlined in regulations could be the same two fixed periods, six months apart, that apply to all reporting entities, or they could differ for entities of different types.

There are various advantages and disadvantages to choosing different disclosure periods. The main benefits that we have considered in proposing different disclosure periods are described below.

Comparability between reporting entities – Seasonal factors may impact on the payment practices of reporting entities, which would make comparisons more difficult. In some instances, these factors can be addressed through the timing of disclosures. Fortunately, for most businesses, seasonal factors won't greatly affect results (although for some entities this will be much more significant), and seasonal effects can be identified by looking at historical reports.

Alignment with other reporting commitments – where possible, it may be desirable to align disclosure periods with existing reporting periods and deadlines to streamline reporting entities' processes.

Support from the Registrar and their staff – the BPP registrar's staff will need to balance competing priorities (e.g. the administration of other registers) therefore it may help if the registrar has discretion over when people report.

Options and analysis

In this section, we consider three different disclosure period options:

- Each reporting entity discloses information for the same six-month time period
- The Registrar assigns disclosure periods for each reporting entity
- The Registrar assigns disclosure periods based on industry classification codes - the preferred option.

In each option, we propose that a reporting deadline is set one month after the end of each reporting period.

Option one: Each reporting entity discloses information for the same reporting months

Under this option, the disclosure information for reporting entities would cover the same six-monthly disclosure periods.

Advantages of this option

This is a simple option with the same two fixed disclosure periods for all reporting entities. The disclosure period could coincide with other reporting requirements common to many or most reporting entities.

Additionally, each entity's disclosure could be seen and compared against other entities for the same time period.

Disadvantages of this option

Seasonal factors may complicate comparisons between entities who experience fluctuations at different times of the year (e.g. between ski fields and ice cream producers).

Making the disclosure periods (and consequently the disclosure deadlines) at the same time may make it more difficult for the Registrar to respond quickly to troubleshooting requests and other queries if all disclosures are made at the same time.

Option two: The Registrar assigns disclosure periods for each reporting entity

Under this option the Registrar would assign the disclosure periods for each reporting entity.

> **Example:** Entities with business names whose first letter lies between the letters "A" and "I" in the alphabet (inclusive) report for consecutive six-month periods beginning on 1 July; entities with names between "J" and "Q" report for consecutive six-month periods beginning on 1 September; and entities with names between "R" and "Z" report for consecutive six-month periods beginning on 1 November.

Advantages of this option

Staggering the disclosure periods would enable the Registrar to better manage their workflow and interact with reporting entities.

Through this option reporting entities could also indicate a disclosure period preference, which in some cases would enable many reporting entities, although not all of them, to coordinate the disclosure period with existing reporting period commitments.

Disadvantages of this option

The disclosure periods will arbitrarily vary between reporting entities. This means that firms with similar seasonal variations may be reporting over different periods, making it more difficult to compare payment practices information.

While reporting entities might be able to indicate preferred times, for practical reasons, some may not be granted their preference.

Option three: The Registrar assigns disclosure periods based on industry classification codes – preferred option

Under this option**,** disclosure periods would be assigned based on industry classification codes i.e. entities with the same industry classification code[11] would be disclosing their payment practices information for the same six-monthly time periods.

> **Example**: Entities in the accommodation section report for consecutive six-month periods beginning on 1 September; and entities in the furniture manufacturing sector report for consecutive six-month periods beginning on 1 November.

Advantages of this option

Entities with the same industry classification codes are likely to experience similar seasonal business fluctuations. Requiring them to disclose their payment practices for the same six-monthly period would likely result in more easily comparable disclosures. This approach could better reflect information on what normal payment practices in a particular industry are, and what might be slow payment practices.

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[11] See https://www.businessdescription.co.nz/ for an example of industry classification codes

In addition, businesses providing reporting entities with goods or services are more likely to be supplying reporting entities in similar industry groups, which would make the information disclosed more useful.

This option provides comparability between firms operating in similar environments, while also allowing the Registrar to manage their workload over the year, facilitating responsiveness to reporting entities (see option two).

Disadvantages of this option

This option may make it more difficult to compare the payment practices of reporting entities which do not have the same industry classification code because they would be reporting for different times of the year.

A complicating factor of this option is that reporting entities self-select their industry codes. Two reporting entities providing very similar goods and services may opt to be classified in different industries.

Questions

8. Do the objectives outlined in the overview section cover off the most important considerations for the regime's reporting periods? If there are other important considerations, please explain.
9. How do you rank the following in order of priority?
    a. a convenient reporting disclosure period
    b. the ability to fairly compare the payment practices of different reporting entities
    c. reasonable access to the Registrar for queries, and other functions.
10. Which disclosure period option do you prefer and why?
11. Does a deadline one month following the reporting period give businesses sufficient time to create and finalise a report? If not, what is a reasonable deadline?
12. How might we know if the disclosure periods and deadlines chosen are working effectively, and when we should consider changing reporting entities' disclosure periods?
13. Is there another option, not identified, which would provide more useful payment disclosure information? If so, please explain why you think the option would be better.

3 Proposed class exemptions

The BPP Bill requires all entities, or commonly owned groups of entities, carrying out business in New Zealand to disclose payment information if their annual revenue is over $33 million for two consecutive years.

However, the BPP Bill provides the Minister for Small Business the ability to exempt a class of reporting entities from the regime by notice. If an exemption is granted to a class of entities, the proposed BPP legislation will not apply to those entities and they will not have to disclose their payment practices.

Exemptions are provided for in this regime to ensure the system does not place unnecessary costs on reporting entities, where the disclosure has little or no benefit.

Generally, the revenue businesses receive is spent on goods and services. These are provided by businesses who like to be paid on time. Therefore, we expect that there are only a very limited number of situations where an exemption to the BPP regime will be appropriate.

In this section we seek feedback on the process of exempting classes of reporting entity, and whether any particular classes of reporting entity should be exempted.

How an exemption from the BPP regime would work

The Bill proposes that exemptions can be made on the Minister's own motion or following an application made by one or more reporting entities. The Minister may grant an exemption unconditionally or subject to conditions.

Before granting an exemption, and attaching any conditions, the Minister must consider:

- the intent and purpose of the Act[12] and any regulations
- whether it is necessary or desirable for the class of entities to be granted an exemption, and
- the overall impact the exemption would have on the integrity of, and compliance with, the regime.

The Minister must also be satisfied the class of entities covered by an exemption is not broader than is reasonably necessary to address matters resulting in the exemption decision.

When exemptions would be granted

Generally speaking, exemptions should be only granted when there are sound reasons to do so, for example, when compliance with the legislation would be impractical, inefficient, or unduly expensive.

To ensure exemptions are made appropriately, exemption powers in legislation are generally subject to the following safeguards:

- consistency with the purpose of the Act – the exemption must be consistent with the purpose of the Act
- the criteria that should be considered before an exemption is granted should be set out in legislation
- unless the exemptions are minor, the reasons why an exemption is granted should be set out in the legislation granting the exemption (e.g. regulations)

Other safeguards sometimes attached to exemption provisions in legislation include:

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[12] Currently the BPP Bill

- ***sunsets or reviews*** – an exemption may be active over a set period of time or be reviewed after an identified period. Sunset clauses are often used when the exemption is expected to be short term or temporary in nature.

There should be a particular reason when an exemption is reviewed regularly. Sunset or review clauses are unnecessary when exemptions are likely to be relatively long term or permanent in nature.

- ***Annual reporting requirements*** - when this provision is attached to an exemption, the person or body exercising the exemption power may be required to submit a report to Parliament detailing the number of times and circumstances in which an exemption power is exercised.

The BPP Bill provides some of these safeguards. As of the day that the Bill was introduced to parliament, the conditions under which an exemption may be made are as follows:

"(2) The Minister may grant the exemption only if—

(a) they have had regard to—

i. the purpose of this Act and regulations; and

ii. the overall impact that the exemption would have on the effectiveness of, and compliance with, this Act; and

(b) they are satisfied that—

i. there is good reason for granting the exemption that outweighs the interests of the public in having the obligation met; and

ii. the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

(3) The Minister may grant the exemption unconditionally or subject to any conditions that the Minister may prescribe in the notice."

The types of entities which may be exempt

To effectively meet the Bill's purpose, the regime is designed to capture entities with considerable purchasing power, which is why the revenue threshold for the regime is set to capture only New Zealand's largest businesses.

In this document we do not propose specific exemptions, and the Bill does not propose any specific criteria for granting exemptions. Examples of situations where exemptions could be considered include:

- requiring a class of entities to disclose their payment practices is unnecessarily onerous
- entities are required to disclose their payment practices as part of another legislative regime
- entities make limited business-to-business payments (e.g. where most of their revenue is paid out in the form of grants or to employees) and
- entities payment practices are largely prescribed in other legislation resulting in limited discretion for the entities (e.g. contracts that are subject to the Construction Contracts Act 2002).

Analysis

In this document we express no preferred options for class exemptions

At present, we are not aware of any entity classes[13] that obviously should be granted an exemption. However, we do not expect to understand all businesses operating environments, and welcome feedback on any situation you think might warrant an exemption.

Our preference is that no sunsets, regular reviews, or annual reporting requirements are included in exemption notices

An evaluation of any exemptions granted may be appropriate over a longer timeframe, but given the very small number of exemptions expected, we do not consider that an annual report on exemptions will be informative or cost effective.

Sunset clauses might be appropriate where an exemption should be granted to a class of entities for a limited period of time due to a particular set of time-limited circumstances. Since exemptions will apply to classes of entities, we expect where exemptions are made, the reasons for this should be enduring. For this reason, we think sunset clauses generally will not be required. Rather, as businesses' circumstances change, they would move into, or out of, the category of entity that is exempt.

Questions

14. Do the objectives outlined in the overview section cover off the most important considerations for the regime's class exemptions? If there are other important considerations, please explain.
15. Are there any class entities captured by the proposed BPP Bill (ie those with revenues over $33 million for two consecutive years) who you think should be exempt from the requirement to disclose payment practices?
16. If so, why do you think the class of entities should be exempt?
17. If the Minister considers a class of entities should be exempt, do you think there should be conditions/safeguards applied to the exemption?
18. If so, what types of conditions/safeguards do you think should be considered by the Minister before granting an exemption?
19. If a class of entities is exempt, do you think the decision should be regularly reviewed or contain a sunset clause? If a sunset clause is included, the exemption would expire at a certain date and the class of entities covered by the exemption until the expiry date would have to make payment disclosures from that time onwards.
20. How might we know if the right exemptions are being made, and when we should consider changing them?

[13] An "entity class" could be any group of business with a common characteristic, for example, groups of businesses within a common industry, business model, or corporate structure

4 Collated questions

Questions relating to disclosure measures

1. Do the objectives outlined in the overview section cover off the most important considerations for the set of measures? Are there other important considerations?
2. What information would you most like to see through the measures?
3. How many measures are preferable, and which measures would you prioritise?
4. For any individual measure in the set of proposed measures:
    a. Would this information be easy to reproduce or verify?
    b. What potential unintended consequences (if any) might be caused by this measure?
    c. Can you see any technical challenges relating to:
        i. the accuracy of the measure?
        ii. the effort it takes to produce?
        iii. the ability to fairly compare the measure between reporting entities?

    Please identify the measure you refer to, and elaborate if possible. Feel free to offer any advice to improve the measure.
5. Can you recommend any measures not in the set that would provide useful information? Please explain.
6. How might we know if the measures chosen are working effectively and useful for users of the regime, and when we should consider changing certain measures?
7. Please share any other thoughts about the proposed set of measures.

Questions relating to disclosure periods

8. Do the objectives outlined in the overview section cover off the most important considerations for the regime's reporting periods? If there are other important considerations, please explain.
9. How do you rank the following in order of priority?
    a. a convenient reporting disclosure period
    b. the ability to fairly compare the payment practices of different reporting entities
    c. reasonable access to the Registrar for queries, and other functions.
10. Which disclosure period option do you prefer and why?
11. Does a deadline one month following the reporting period give businesses sufficient time to create and finalise a report? If not, what is a reasonable deadline?
12. How might we know if the disclosure periods and deadlines chosen are working effectively, and when we should consider changing reporting entities' disclosure periods?
13. Is there another option, not identified, which would provide more useful payment disclosure information? If so, please explain why you think the option would be better.

Questions relating to exemptions

14. Do the objectives outlined in the overview section cover off the most important considerations for the regime's class exemptions? If there are other imporant considerations, please explain.
15. Are there any class entities captured by the proposed BPP Bill (ie those with revenues over $33 million for two consecutive years) who you think should be exempt from the requirement to disclose payment practices?
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20. How might we know if the right exemptions are being made, and when we should consider changing them?

Annex one - Technical details adopted from Australia and the UK

We propose using methods from the both the Australian Payment Times reporting scheme, and the regime in the United Kingdom to define key terms below. The advantages of this approach are that these definitions build on operational experience in similar regimes, and sharing definitions simplifies matters for businesses reporting in more than one regime.

Settings borrowed from Australian regime

The following is official advice from the Australian regime (see Invoices to report | Payment Times Reporting Scheme):

Invoice issue (receipt) day

The invoice issue day, also called the receipt date, is when an invoice is received by the reporting entity.

An invoice is 'received' and the payment clock starts when it's received by the entity in accordance with the contract's invoicing requirements (either written or oral).

This could include contractual arrangements for payments to be made. For example, having to provide the invoice to a particular email address or requiring the invoice includes a purchase order number and ABN.

The contractual arrangements may also deal with matters such as the treatment of backdated or incorrect invoices.

The date of receipt of an invoice is not:

- when the invoice is entered into the entity's accounting or information systems, or
- when the invoice is authorised.

That is, unless these processes happen on the same day the invoice is received.

If the receipt date is unknown or can't be established (for example, the entity receives paper invoices), then the date of the invoice can be used as the date of receipt.

In accepting an invoice from a small business supplier (as meeting the contractual arrangements), a reporting entity accepts the obligation to pay the supplier the invoiced amount.

Examples

Incorrectly received invoice

An employee of a large business receives an invoice from a small business. The two businesses have a contractual arrangement. The arrangement states invoices will only be accepted if they're submitted to the large business's shared inbox.

Until that invoice is received in the shared inbox, the invoice isn't 'received'. The payment clock for this invoice doesn't start until this happens.

Incorrectly received invoice

A reporting entity receives invoices in various ways, including electronically and by post. Invoices received electronically have information available on when the invoice was received.

Invoices received in the post aren't date stamped. They may be processed into the entity's accounting system a few days after the invoice was received in the mail.

In this case, the entity can use the date marked on the invoice. This is because it's unable to provide the date the invoice was received.

Paid invoice

When calculating payment times for a small business invoice not using supply chain finance arrangements, the invoice is paid as follows:

- **direct debit** – when the amount has been debited from the bank account.
- **credit or procurement card** – when the amount has been debited from the credit or procurement card account.
- **cash transactions** – when the money has been given to the supplier.

If an invoice is paid before it's received, and there's a trade credit arrangement in place, it has a zero-payment time. This is included in a report under the bracket of payments made within calendar 20 days.

Settings borrowed from the UK regime

The following is official guidance from the regime operating in the United Kingdom relating to "agreed payment periods" (see Duty to report on payment practices and performance: guidance to reporting on payment practices and performance (publishing.service.gov.uk)):

The proportion of payments due within the reporting period which were not paid within the agreed payment period

This is the percentage of the payments contractually required to be made within the reporting period, which were not paid within the agreed payment period. As payments may have been made outside the reporting period, this is a separate set of data from that required to calculate the other statistics.

The agreed payment period is the period within which the customer is required to pay the supplier. It is usually set out in the contract, but there may be instances where it depends on details in the invoice or other documents. It may be explicitly negotiated, or may form part of standard contract terms.

This part of the reporting covers every payment due in the reporting period in question which is not paid in the agreed payment period. This includes invoices or payments which are under dispute, if they have not been paid in the agreed payment period.

If an invoice was already overdue at the beginning of the reporting period, it should not be included; this is because it will already have been reported in the previous report (if one was published) and does not need to be reported twice.

The length of the agreed payment periods (e.g. whether this was 10 or 120 days) is not recorded in this part of the reporting. The value of any payments is also not reflected in the calculation.

Example: Company A has a standard contract which requires it to pay suppliers in 60 days. In a particular reporting period there are 15 payments which fall due under qualifying contracts, which were all made on Company A's standard terms (that is, day 60 for each of these payments falls within the reporting period). Company A paid the suppliers on day 65 in 5 cases, and on day 55 in 10 cases. Assuming there were no other payments due to other suppliers in the reporting period, Company A would therefore report that 33% of its invoices were not paid within the agreed payment period.

Annex two – Additional reporting questions used in other reporting regimes

In addition to our proposed set of measures in section 2, similar international regimes included other questions that they require reporting entities to answer for their disclosures. For completeness, below is a list of questions used in other countries:

- What are your shortest and longest standard payment periods?
- What was the maximum contractual payment period agreed over the disclosure period?
- Describe your dispute resolution process
- Describe your standard payment terms (more general question than number 8) above, giving opportunity for written description rather than just number of days)
- Do you have a specific payment policy for small businesses? If so, please describe this
- What are your general invoicing practices and arrangements? / What arrangements do you have regarding accepting invoices, and lodging a tender?
- Would you like to provide any additional context to your disclosure?