



COVERSHEET

Minister	Hon Stuart Nash	Portfolio	Small Business
Title of Cabinet paper	Business Payment Practices Bill: Approval for Introduction	Date to be published	2 December 2022

List of documents that have been proactively released

Date	Title	Author
October 2022	Business Payment Practices Bill: Approval for Introduction	Office of the Minister for Small Business
20 October 2022	Cabinet Minute LEG-22-MIN-0164	Cabinet Office

Information redacted

NO

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Office of the Minister for Small Business

Cabinet Legislation Committee

Business Payment Practices Bill: Approval for Introduction

Proposal

- 1 I propose that the Business Payment Practices Bill (the Bill) be approved for introduction to the House.

Issue identification

- 2 Feedback from small businesses indicates that they can be harmed by late payments and lengthy payment terms, and this may have wider implications for economic efficiency. In some cases, small businesses are unable to enforce their payment terms because of limited resources, the difficulties of the civil debt enforcement process, and due to fear of retaliation from larger businesses.
- 3 Both lengthy payment terms and late payment may be the detrimental result of bargaining power imbalances and information asymmetries between firms. These problems are difficult to deal with effectively through our available regulatory and non-regulatory tools.
- 4 Legislation is required to:
 - 4.1 establish a regime with legislative backing that requires large entities to publicly disclose their payment practice information, to give businesses access to better information to inform their decision making when engaging in business-to-business trade, and encourage larger businesses to mitigate reputational risk by improving their payment practices; and
 - 4.2 provide the economy-wide payment practice information needed to better target future interventions if required.

Policy

- 5 The Bill gives effect to a 20 December 2021 Cabinet decision to establish a Business Payment Practices (BPP) disclosure regime [CAB-21-MIN-0546 refers]. The primary purpose of the BPP disclosure regime is to bring transparency to business-to-business payment practices across the economy.
- 6 The Bill will require large entities (as defined by the Financial Reporting Act 2013) to publicly report every six months on their payment times and practices. This information will be published on the reporting entity's website and will also be held on an easily accessible public register managed by the Ministry of Business, Innovation and Employment (MBIE).

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- 7 The Bill also incorporates the decisions made by Cabinet on 8 August 2022 on the design decisions [CAB-22-MIN-0300.01 refers]:
- 7.1 changing the threshold for reporting entities to be included in the BPP disclosure regime;
 - 7.2 allowing the sharing of commercial information for compliance and enforcement purposes between Inland Revenue (IR) and the Ministry for Business Innovation and Employment (MBIE); and
 - 7.3 removing the requirement for businesses to report on receipt of payment.
- 8 Cabinet authorised me to make any necessary policy decisions that may arise in drafting consistent with the policy intentions agreed by Cabinet and to make minor or technical changes [CAB-21-MIN-0546 refers]. On 8 August 2022, Cabinet noted decisions I had made since July 2022. Since then, I have made further decisions. A summary of these decisions is attached as Appendix One.
- 9 In addition, I seek Cabinet’s agreement to the addition of a criminal offence, covering knowingly obstructing or hindering the registrar from monitoring and investigating compliance with the BPP regime’s requirements, with a maximum fine for each act or omission of no more than \$50,000 in the case of an individual and \$500,000 for a body corporate. The quantum of the proposed penalty for this offence is consistent with Cabinet’s previous decision on the maximum fines for criminal offences [CAB-21-MIN-0546 refers]. This is in line with the guidance from the Ministry of Justice’s Offense and Penalty Vetting team.

Impact analysis

- 10 A regulatory impact assessment was prepared in accordance with the necessary requirements, and was submitted at the time that Cabinet approval of the policy relating to the bill was sought [CAB-21-MIN-0546 refers].
- 11 MBIE’s Regulatory Impact Analysis Review Panel reviewed the Regulatory Impact Statement prepared by MBIE. The Panel considered that the information and analysis summarised in the Regulatory Impact Statement met the Quality Assurance criteria.

Compliance

- 12 The Bill complies with each of the following:
- 12.1 the principles of the Treaty of Waitangi. Māori engaged in smaller businesses, and their communities, may benefit from interventions that seek to improve payment times and practices, as prompt payment provides more certainty for businesses and frees up working capital to invest in more productive activities. There is work underway to ensure implementation of the BPP regime is designed in partnership with Māori to ensure Māori businesses are aware of the regime and can easily access the disclosed information;
 - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

IN CONFIDENCE

IN CONFIDENCE

- 12.3 the disclosure statement requirements (this has been attached to this paper);
- 12.4 the Privacy Impact Assessment was prepared to ensure these principles and guidelines will be adhered to;
- 12.5 the relevant international standards and obligations; and
- 12.6 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee. Officials met with the Legislation Design and Advisory Committee on 16 September 2021 to discuss the proposals in the Bill.

Consultation

- 13 Inland Revenue, the Commerce Commission, the Treasury, the Parliamentary Counsel Office, the Office of the Privacy Commissioner and the Ministry of Justice have been consulted. Department of Prime Minister and Cabinet have been informed.
- 14 In July and August 2022, MBIE consulted with the Chartered Accountants Australia New Zealand (CAANZ), Business New Zealand (BNZ) and Taituarā (Local Government Professionals Aotearoa) on the current proposals, especially on the regulations relating to payment times information that reporting entities will disclose.
- 15 The New Zealand Institute of Chartered Accountants, MYOB, Foodstuffs, Xero, Dalton, NZ Post, BusinessNZ, Mainfreight, BDO New Zealand Ltd, New Zealand Credit and Finance Institute Inc, and Livestock Improvement Corporation were consulted during July and August 2021. These consultations shaped the development of proposals considered and agreed to by Cabinet on 20 December 2021 [CAB-21-MIN-0546 refers].
- 16 In parallel with this Bill, officials have also developed a public discussion document seeking feedback on the regulations which would give effect to this Bill. I am seeking Cabinet's agreement to release this public discussion document for consultation in a separate paper I am taking to the Cabinet Economic Development Committee (DEV).

Binding on the Crown

- 17 The Bill would be binding on the Crown [CAB-21-MIN-0546 refers].

Associated regulations

- 18 The Bill enables the Governor-General, to make regulations by Order in Council. Regulations are required for the following components of the Bill:
 - 18.1 specifying the details of what information must be disclosed by reporting entities;
 - 18.2 prescribing the form of infringement notices, and reminder notices;
 - 18.3 prescribing the quantum of infringement fees, which must not exceed \$3,000; and

IN CONFIDENCE

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18.4 prescribing maximum fines able to be imposed by a court for infringement offences, which must not exceed \$9,000.

Other instruments

19 The Bill empowers the making of notices, which will be used for any information or decisions which may need to be regularly made or updated. The Minister may exempt a class of reporting entities from all or any of its obligations under the Bill, if several conditions are met, and the registrar is able to set disclosure periods and deadlines for a reporting entity or to a class of reporting entities, via notice.

Amendment to the Tax Administration Act 1994

20 On 8 August, I received Cabinet agreement to allow the sharing of commercial information for compliance and enforcement purposes between Inland Revenue (IR) and MBIE. This sharing would support the compliance activities of the BPP regime.

21 The purpose of the information sharing is to support the Registrar to monitor compliance with the BPP regime. The BPP Registrar would use the information provided by IR to identify entities that are likely to be subject to the BPP regime, compare those entities against those that have reported, then, if necessary, follow up individually with non-compliant entities. The information IR shares with the Registrar would not be published.

22 The revenue information disclosed to the BPP Registrar would be limited to information that identifies entities who are very likely to meet or exceed the BPP application threshold as assessed through actual, or proxy revenue measures. This information could include, for example, an entity name, GST/IRD number, or New Zealand Business Number (NZBN). The information provided by IR would help the BPP Registrar identify most of the entities subject to the regime.

23 MBIE and IR officials have discussed the best way of progressing this information sharing arrangement. They have recommended that amending Schedule 7 of the Tax Administration Act 1994 would be the most direct and timely way to achieve this. Such an amendment will ensure that the statutory requirements for keeping sensitive revenue information confidential do not prevent IR from disclosing specified sensitive revenue information to MBIE under specified circumstances.

24 Officials are working through the parameters of information to shared and will also liaise with the Office of the Privacy Commissioner to ensure any privacy issued are mitigated.

25 Following an amendment to the Tax Administration Act 1994, MBIE and IR officials will prepare a Memorandum of Understanding setting out how the information sharing will be operationalised, including the detail of information to be shared within the legislative authority and how agencies should manage sensitive information.

The addition of a criminal offence for obstructing registrar powers

26 I seek Cabinet's agreement to the addition of a criminal offence, covering knowingly obstructing or hindering the registrar from monitoring and investigating compliance with the BPP regime's requirements, with a maximum fine for each act or omission of

I N C O N F I D E N C E

IN CONFIDENCE

no more than \$50,000 in the case of an individual and \$500,000 for a body corporate. This type of offense is consistent with similar legislation for business registers.

27 I propose setting the quantum of the penalty at this level for the following reasons:

27.1 the penalty is consistent with Cabinet’s previous decision on the maximum fines for criminal offences [CAB-21-MIN-0546 refers];

27.2 I consider the offence to be similar in severity as the offence of providing false or misleading information, given the significant frustration of the regime that the offending would cover (false or misleading disclosures also have a maximum fine of \$50,000 in the case of an individual and \$500,000 for a body corporate);

27.3 the proposed penalties are proportionate, given the regime will apply to New Zealand’s largest businesses, and the directors and senior officers of these businesses; and

27.4 I consider this level of penalty to be a sufficient deterrent against these businesses or individuals absorbing these penalties as part of the ‘cost of doing business’.

28 The offense and quantum of the penalty are in line with the guidance from the Ministry of Justice’s Offense and Penalty Vetting team.

Commencement of legislation

29 The Bill will come into force the day after the date of Royal assent. To enable effective implementation of the regime, key powers (for example, regulation and notice-making powers, establishing the register, appointing the registrar etc) may be exercised pre-commencement if “necessary or desirable to bring the legislation into operation” (section 43 of the Legislation Act 2019 refers). The regulations may be made and the disclosure periods may be set in advance but will come into force when, or after, the Bill commences.

Parliamentary stages

30 I intend to introduce the Business Payment Practices Bill on 26 October 2022 and depending on the availability of House time, will move first reading on 23 November 2022.

31 I propose the Bill be referred to the Economic Development, Science, and Innovation Select Committee for a period of six months.

32 I intend to seek Cabinet agreement to publicly consult on the associated regulations at the same time as Select Committee consultation on the Bill, to allow submitters to consider the detail of the reporting requirements at the same time as the legislative framework in the Bill. This timing would also enable the regulations to be made as soon as possible following enactment, giving reporting entities adequate time to prepare to comply.

33 I propose the Bill should be passed no later than August 2023.

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Proactive Release

- 34 I propose to proactively release this Cabinet paper, associated minutes, and key advice papers, with appropriate redactions, within 30 business days once announcements have been made, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Small Business recommends that the Committee:

- 1 **note** that the Business Payment Practices Bill holds a category 4 priority on the 2022 Legislation Programme (to be referred to Select Committee in 2022);
- 2 **note** that the Bill aims to bring transparency to business-to-business payment practices across the economy;
- 3 **agree** to the addition of a criminal offence, covering knowingly obstructing or hindering the registrar from monitoring and investigating compliance with the BPP regime's requirements;
- 4 **agree** that for the criminal offence, the maximum fine for each act or omission, be no greater than \$50,000 in the case of an individual and \$500,000 for a body corporate;
- 5 **note** the decisions made by the Minister for Small Business since July 2022 (in Appendix One);
- 6 **approve** the Business Payment Practices Bill for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives.

Authorised for lodgement

Hon Stuart Nash
Minister for Small Business

Appendix One: Summary of decisions Minister for Small Business has made under Cabinet delegated authority since July 2022

Policy Issue	Decision made
Contact information publicly available	Contact information of the director approving the disclosure and the individual submitting the disclosure information will not be publicly displayed on the register.
No Crown liability exclusion	There will be no Crown liability exclusion for penalties and offences.
Publishing the details of breaches of the BPP regime	Only civil pecuniary penalties and fines for criminal offences imposed by a Court will be published on the register.
Complaints process	A complaints process is not contained in the draft Bill but the registrar will be expected to set up an informal feedback process.
Receipt of payments by a reporting entity	This provision may be made by Order in Council.
Public interest test	The registrar will be required to consider the public interest before they use their powers or take enforcement action.
Length of time disclosed information must be kept on the register and reporting entities' websites	Disclosure information will need to be disclosed on the BPP register and on reporting entities' websites for at least seven years.
Disclosure on reporting entities websites for reporting entities without a website	Reporting entities without their own website will be able to disclose their information on a website operated on their behalf.
Suppression of private information	The registrar will be enabled to suppress information for privacy or personal safety reasons.
Business payment practices information about entities falling below the reporting threshold	Information about reporting entities and their payment practices during the periods when they were required to make disclosures will remain on the register for seven years, but there will be a note on the register which indicates they will not be required to report.
Infringement and reminder notices	The form of the infringement and reminder notices will be set out in regulations.
False or misleading information	Cabinet had agreed that a criminal offence should apply when a reporting entity knowingly or intentionally files false or misleading information [CAB-21-MIN-0546 refers]. The offence provisions may also apply to a director approving the disclosure.