



## COVERSHEET

<b>Minister</b>	Hon Ginny Anderson	<b>Portfolio</b>	Small Business
<b>Title of Cabinet paper</b>	Business Payment Practices Bill – Proposed Regulations  Business Payment Practices Act Regulations 2023	<b>Date to be published</b>	19 October 2023

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
June 2023	Business Payment Practices Bill – Proposed Regulations	Minister for Small Business
21 June 2023	Business Payment Practices Bill: Proposed Regulations  DEV-23-MIN-0122 Minute	Cabinet Office
August 2023	Business Payment Practices Act Regulations 2023	Minister for Small Business
24 August 2023	Business Payment Practices Act Regulations 2023  LEG-23-MIN-0161 Minute	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

## In Confidence

Office of the Minister for Small Business  
Cabinet Economic Development Committee

# Business Payment Practices Bill Regulations

## Proposal

- 1 This paper seeks Cabinet's agreement to develop regulations under the Business Payment Practices Bill (the Bill). The regulations are necessary to give effect to the disclosure regime prescribed in the Bill.

## Executive Summary

- 2 The Bill is intended to address the lengthy payment terms and late payments that some large trading entities impose on Small to Medium sized Enterprises (SMEs), through 'take it or leave it' payment terms. SMEs have small financial reserves so are often not well-positioned to deal with long wait times for their invoices to be paid.
- 3 The Bill requires that reporting entities must publicly disclose certain payment terms and practices on a public register. It will be administered by a Registrar within the Ministry of Business, Innovation & Employment (MBIE). The detail of what payment practice information must be disclosed on the register is to be set out in regulations.
- 4 The Bill's regulations will also set out:
  - 4.1 the maximum infringement fees and fines that may apply to specified offences;
  - 4.2 acceptable margins of error for numeric reporting;
  - 4.3 and (subject to a Government Supplementary Order Paper):
    - 4.3.1 a definition of 'invoice', which is a key component of the disclosure regime;
    - 4.3.2 several types of transaction that need not be disclosed.

## What reporting measures to use

- 5 'Reporting measures' in this context means the information that must be disclosed and published on the public register. I recommend using largely the same measures that are used in Australia. The proposed measures will provide useful information about reporting entities' payment practices, and trans-Tasman consistency will reduce implementation costs and risks. The measures are:
  - 5.1 the proportion of total number of invoices paid within various time periods;
  - 5.2 the proportion of total value of invoices paid within various time periods;
  - 5.3 qualitative information (standard payment terms and other payment practices)

6 I also propose an additional measure that is not used in Australia:

6.1 average time to pay an invoice.

7 I considered requiring 'lateness' measures (that require reporting entities to set out what proportion of invoices were paid late, and how late), but recommend against this as including them would unduly increase compliance costs and implementation risks.

### **What is a permitted departure in respect of errors made in a disclosure**

8 The Economic Development, Science and Innovation Select Committee (the Select Committee) amended the Bill so that it enables the regulations to define what constitutes a 'substantial departure' in relation to each reporting measure. Errors that fall under this threshold will not need to be notified to the Registrar and corrected.

9 I recommend that the regulations set out an acceptable margin of error (within which an error would not be considered a 'substantial departure') of up to two percent.

### **Definition of 'invoice', and what transactions need not be disclosed**

10 I propose to use an adapted form of the definition of invoice that Australia uses for its Business Payment Times regime. The two regimes have the same intent, and the Australian definition was developed with this in mind.

### **Goods, services or types of transaction for which disclosure is not required**

11 Australia's regime only captures invoices provided by small businesses. New Zealand's regime, in contrast, will capture invoices from all suppliers, whether they are small or not. In order to ensure that the disclosures being made are relevant to the Bill's intent, I propose that the regulations set out several exclusions to the transactions that must be reported on. The proposed exclusions, which would build on exclusions that are already in the Bill, are:

11.1 credit card debts payable to a bank;

11.2 foreign currency transactions;

11.3 some other (more technical) exclusions modelled on those used in Australia.

### **Maximum levels for infringement fees and fines**

12 The regulations will set out the maximum infringement fees and fines that may apply to specified offences. I propose to gradate the penalties according to the degree to which the offence would undermine the integrity of the regime.

## **Background**

13 The Bill is intended to address the lengthy payment terms and late payments that characterise some business-to-business transactions. These issues can impact on SMEs in particular, as SMEs can be particularly susceptible to 'take it or leave it' payment terms, and have fewer financial reserves on hand to deal with the long wait times for payments that can result.

- 14 The Bill was introduced to Parliament on 26 November 2022, and was referred to the Economic Development, Science and Innovation Committee, which reported back on 26 April 2023. The Bill's second reading took place on 1 June 2023.
- 15 The Bill provides that the detail of what payment practice information must be disclosed is set out in regulations. This is to provide flexibility to amend the required reporting measures in light of evaluation, feedback and technology changes.
- 16 In addition to the required reporting measures, the Bill requires that the regulations set out the maximum infringement fees and fines that apply to specified offences. The regulations will also include a definition of 'invoice' (a key term used in the Bill) with associated exclusions, and numeric thresholds for what would constitute a 'substantial departure' (that is, an error that goes beyond being insignificant) in relation to each reporting measure.
- 17 The proposed content of the regulations in respect of each of these matters is set out in this paper.

## **What reporting measures to use**

### **MBIE's consultation on the reporting measures revealed a general preference for trans-Tasman consistency**

- 18 The Ministry of Business, Innovation & Employment (MBIE) issued a discussion document on the regulations in October 2022, and submissions closed in February 2023. It received 27 submissions. MBIE officials subsequently held a series of meetings with submitters, other reporting entities, my Small Business Advisors, payment platform providers (ie ICT companies), sector representatives and consultancies. The purpose of these meetings was for MBIE to test its thinking about which reporting measures would be most useful for end users, and what implementation challenges might arise for reporting entities.
- 19 The written feedback and subsequent in-person sessions were very informative, and have helped shape the proposals in this paper, as well as the attached Regulatory Impact Statement. It constitutes MBIE's complete advice on the reporting measures.
- 20 The main themes arising in stakeholder feedback were:
  - 20.1 there should be as few reporting measures as possible – only those that most directly achieve the regime's aims should be included as a surfeit of reporting measures would increase complexity and reduce understandability;
  - 20.2 the regime's usefulness will depend on the information being reliable (and therefore not too complex to collate and calculate), and easy to interpret;
  - 20.3 the reporting measures should align wherever possible with the Australian regime, as the experience gained there will reduce implementation risks in New Zealand;

20.4 measures that rely on “date invoice provided”, and measures that rely on “date invoice due” will both be problematic to some extent, because some entities do not record one or the other. But overall, measures that rely on “due date” are more problematic, because while invoice receipt dates are largely an objective fact, the correct invoice due date is not always that which is listed on an invoice and verifying this date may require manual intervention.

**I recommend ‘time to pay’ and qualitative reporting measures**

21 MBIE consulted on three types of potential reporting measure. They are described below.

21.1 **Time to pay** measures capture the elapse of time between an invoice arriving and it being paid. These measures require the invoice receipt date to be recorded.

21.2 **Lateness** measures capture instances where an invoice is paid after its due date. They require the invoice due date to be recorded.

21.3 **Qualitative information** describes reporting entities’ standard payment terms and other matters of interest (such as whether they offer eInvoicing and/or superior payment terms for SMEs).

22 Australia uses time to pay and qualitative measures, while the UK uses a lateness measure. All three would be useful, but the implementation risks of introducing all three at once are considerable. On balance, I recommend using **time to pay** measures and **qualitative information**. The full set of reporting measures I propose is listed below.

- A. **Average payment time.** This measure is straightforward to interpret, and likely to be a reasonable basis for comparison in most cases. It can be skewed by outliers, however.
- B. **The proportion of total number of invoices paid within various time periods.** This is a useful complement to an average.
- C. **The proportion of total value of invoices paid within various time periods.** This measure shines a light on the practice of paying small invoices quickly, and large invoices slowly. The Small Business Advisors have informed me that this is a fairly common practice, which is particularly problematic for SMEs given large invoices are most important for cashflow. By itself, this measure wouldn’t be particularly useful for SMEs. But it will help ensure that the information disclosed by reporting entities paints a fair picture of their actual payment practices.
- D. **Qualitative information (standard payment terms and other payment practices).** Qualitative information would provide context for the numeric measures, and could actually be most useful for many SMEs. It is relatively easy to provide. This is the most effective measure in terms of meeting the policy intent, particularly if the information is targeted to small business operators. It would need to be expressed simply. It will also rely on the firm complying with its published payment practices, and therefore needs to be complemented with quantitative performance measures.

- 23 Time to pay measures are the best fit with the Bill's intent, because they capture all payment times, whether an invoice is paid late or not. This contrasts with lateness measures, which only capture invoices paid outside the payment terms. This is less informative overall, because if the payment terms are extended (eg 90 days), it is easier to pay the invoice on time.
- 24 Time to pay measures will pose significant implementation challenges and costs for reporting entities that don't currently capture invoice receipt dates, as they will need to start doing so. This may involve substantial changes to their processes and systems. MBIE doesn't know how many reporting entities are in this situation, but it most likely will be a significant proportion.
- 25 The same situation would arise for other reporting entities if lateness measures were used, however, because they don't record the invoice due date. Furthermore, lateness measures are less straightforward. MBIE heard that some invoices arrive after the due date, while others are provided with a due date that doesn't reflect the terms of the contract. In these cases, ascertaining the correct due date for reporting purposes would require manual intervention, and increase compliance costs.

**These measures are consistent with Australia's (with one addition)**

- 26 All these reporting measures are used in Australia, apart from 'A' (average payment time). This is a useful addition because it poses minimal additional compliance costs, and is a useful headline figure that SMEs will find easy to interpret. It can be subject to skewing, but if so, that would become apparent through the other reporting measures.
- 27 Trans-Tasman consistency, albeit with some modifications to suit the New Zealand context, has several advantages.
  - 27.1 It will help reduce implementation costs and risks, because reporting entities can draw on data collection methodologies and lessons learned from Australia.
  - 27.2 Aligning the basic terms and definitions used in respect of reporting measures will reduce confusion and room for error, especially for firms that operate in both countries.
  - 27.3 It will enable comparisons to be made between reporting entities here and in Australia. For example, if New Zealand reporting entities lag significantly behind Australia's, this might invite further analysis as to what is causing this.
  - 27.4 It will enable lessons learned across the Tasman to be assessed for their applicability to the New Zealand context. Australia is conducting a review of its payment times disclosure regime, and if this suggests useful improvements, New Zealand would be in a position to consider these for our own regime.

### **I do not propose to include a count of invoices in dispute as a standalone measure**

- 28 Invoices can be paid late for many reasons, including because the supplier has overcharged or hasn't delivered their side of the contract. In these cases, the payer may elect to dispute the invoice and not pay the amount owing until the dispute is resolved. The Select Committee wanted to ensure that any measure of late payments didn't include payments that are late because the invoice is in dispute. It therefore inserted clause 10(2) into the Bill. This clause provides that the Minister must be satisfied that the regulations enable separate reporting of measures relating to disputed invoices and late payments.<sup>1</sup>
- 29 A standalone count of invoices in dispute would only need to be made available if a count of late payments is required. As discussed above, however, I do not propose that any lateness measures are included in the regulations. This reporting measure does not need to be included in the regulations, therefore.
- 30 MBIE officials sought stakeholder views on whether they would support optional functionality on the register that would allow reporting entities to report the number of invoices in dispute if they chose to. They were not in favour, because it would:
- 30.1 lead to a damned if you do and damned if you don't situation, in which reporting entities would feel obliged to provide this data because it would look remiss not to;
  - 30.2 need to be recorded manually, thereby increasing compliance costs;
  - 30.3 create definitional issues around what 'in dispute' actually means in particular cases;
  - 30.4 add a further measure to the set, thereby increasing complexity.
- 31 In light of this feedback, I do not propose that the regulations include any measure relating to invoices in dispute. This means that disputed invoices would not be reported on until they are paid. When they are paid, they will be included in the 'time to pay' measures.<sup>2</sup>

### **What is a permitted departure in respect of errors made in a disclosure**

- 32 The Select Committee inserted provisions into the Bill that would allow the regulations to define what constitutes a 'substantial departure' in relation to numeric reporting measures. Errors that fall under these thresholds will not need to be notified to the Registrar, nor corrected on the public register.

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<sup>1</sup> The wording will be clarified by the Government Supplementary Order Paper, but the meaning will be not changed.

<sup>2</sup> Often, when the amount owing is changed following an invoice being disputed, the original invoice is cancelled and a new one issued. This means that the payment needn't show up as taking a long time to pay.

- 33 I consider this issue finely balanced. MBIE's advice was that there should be no acceptable margin of error for numeric reporting, as all the information reporting entities publish on the register should be correct to begin with. They instead suggested that it would be preferable to refer to the concept of 'materiality' in the guidance instead.
- 34 On considering both arguments I have decided to agree with the Select Committee. Providing specific guidance on acceptable error thresholds in the regulations will keep any errors within a small margin, while also ensuring that reporting entities do not need to notify inconsequential errors to the Registrar. This will save them and the Registrar needless work, and ensure that reporting entities take a consistent approach to what errors must be corrected.
- 35 In respect of statistics, five percent is often considered a standard margin of error. But I consider that this would allow for too much variance. Payment times may cluster fairly tightly across reporting entities, so a lower threshold of up to two percent variance in the figure(s) reported is more justifiable. For example, with a two percent error threshold, if the average payment time disclosed is 20 days, an acceptable variance would be up to 0.4 of a day either side. For a distribution, an acceptable variance would be any portion of that distribution changing by up to two percent.

### **Definition of 'invoice'**

- 36 I propose that the regulations define 'invoice' as follows (the wording is based on that used in Australia's payment times transparency regime).

*A reporting entity must report on an invoice payment if all of the following apply:*

- *The invoice relates to supply of a good or service.*
- *The reporting entity procured the good or service from a supplier under a trade credit arrangement.<sup>3</sup>*
- *The reporting entity is contractually obliged to pay the invoice.*

### **Goods, services or types of transaction for which disclosure is not required**

- 37 One important point of difference between the two regimes is that Australia's reporting requirements apply only to invoices received from small businesses. In New Zealand, however, the regime will apply to invoices received from all businesses, regardless of their size. That is because in New Zealand, there is no straightforward way to discern the size of a business providing an invoice.
- 38 The effect of this 'universal' approach to including invoices received, however, is that it pulls invoices and payment types into scope that do not actually relate to the purpose of the legislation (and would not be included in Australia). To rectify this, I propose that the following payment types need not be reported on.

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<sup>3</sup> 'Trade credit arrangement' refers to a situation where goods or services are provided without immediate payment being required.



38.1 Credit card debts (payable to a bank)

A credit card debt is different from an invoice for goods or services as it is owed to a bank, not to the supplier of those goods or services. Given this, and there is a built-in consequence for late payment in the form of interest, including these payments doesn't appear to align with the Bill's intent.

38.2 Foreign currency transactions

There is no benefit to New Zealand SMEs in including these payments. Secondly, these transactions can have long payment terms because the invoice is issued upon sale of the goods but is not paid until the goods arrive. Where shipping is involved, this can take a long time.

39 Other proposed exclusions are modelled on those used in Australia. They are:

39.1 payments to other members of the controlling corporation's group or corporate group (so called "related party transactions");

39.2 payments which don't have trade credit arrangements eg travel expenses (including airfares, hotels, taxi, etc) and hospitality expenses;

39.3 payments related to employees, through payroll or reimbursements;

39.4 any form of royalty payment to the Government;

39.5 invoices that don't require any payment because they're covered by a credit note.

40 The proposed exclusions would operate alongside (and in some cases may overlap with) other exclusions that were inserted into the Bill by the Select Committee. The Bill's existing exclusions include salaries and wages, tax payments, rents and leases, utilities charges, and local body rates and fees.

### **Maximum levels for infringement fees and fines**

41 The regulations must set out the applicable maximum fee and fine for each offence, within a maximum of \$3,000 for infringement fees and (issued by MBIE) and \$9,000 for infringement fines (issued by a Court). My starting point for considering this is to note that all reporting entities must have annual revenue of at least \$33 million. For entities with this much revenue, the applicable fees and fines are materially insignificant, regardless of where exactly they are set.

42 This said, however, infringements are part of a wider compliance process that also includes pecuniary penalties. They represent an intermediate step in the compliance process, and their value is to make reporting entities aware that they need to change their behaviour or more severe consequences will ensue. To this end, gradating the maximum level of fees and fines may help send a signal that some offences are more significant than others. For this reason, rather than setting all fees and fines at the maximum level the Bill allows for, I propose to grade them as set out below.

**Maximum level (\$3,000 fee and \$9,000 fine)**

- cl. 8 (large entities must make disclosures)
- cl. 9B and 9C (contents of disclosure)
- cl. 14 (entities must keep certain records for 7 years)
- cl. 15 (entities must notify Registrar of error or omission)

43 These are core elements of the Bill, and non-compliance with them means that it will fail to operate as intended. In other words, for the Bill to have any useful impact, disclosures must be made, they must contain the required information, they must be accurate (unless they fall within a specified margin of error, as discussed above), and they must be auditable.

44 For comparison, the Financial Markets Conduct Act 2013 has a maximum infringement fee of \$20,000 and the relevant regulations have infringement fees ranging from \$5,000 to \$20,000.

**Mid-range level (\$2,000 fee and \$6,000 fine)**

- cl. 9D(3) and (4) (certain subsidiaries may make disclosures)

45 These are more technical elements of the Bill. Clause 9D allows subsidiaries of larger firms which don't meet the revenue and expenditure thresholds to report anyway. Subclauses 3 and 4 require these 'voluntary disclosures' to be provided on the same timeframe, in the same way, and with the same information as all other disclosures. This is to ensure consistency across all reporting entities, whether they are reporting voluntarily or not.

46 Failure to comply with 9D would make the regime more difficult to operate, but given that the reporting is voluntary, we expect that a fee or fine would only be applicable in cases where a reporting entity refuses to disclose all the required information, or to disclose it on the timeline and in the form required. The existence of such a fee or fine would help remind it that entry into the regime means it is in 'boots and all' and needs to meet the same requirements as all other reporting entities, regardless of the fact that it entered voluntarily.

**Low level (\$1,000 fee and \$2,000 fine)**

- cl. 16 (entities must notify Registrar of changes in identifying information)
- cl. 17 (entities must notify Registrar when Act ceases to apply)

47 These offences would likely be inadvertent, and even if deliberate, would not normally act to undermine the intent of the legislation. Rather, they would most likely be an administrative inconvenience.

48 If a reporting entity changes its identifying information without notifying the Registrar, its entry on the Register will be out of date, and users won't be able to search for that entity using its new identifier. But generally speaking, both new and previous identifying information for large companies can be sourced without significant effort.

- 49 If a reporting entity keeps making disclosures even though the Act no longer applies to it, the Register would be out of date, but from a public good perspective little harm would be caused.

### **The proposed infringement fees fall outside LDAC guidance, but are appropriate in this context**

- 50 The proposed infringement fees and fines for the 'maximum' and 'mid-range' categories of offences exceed the ordinarily recommended maximum amounts that are set out in Legislation Design and Advisory Committee guidelines, and the Ministry of Justice's Policy Framework for New Infringement Schemes.
- 51 That departure relates to the specific context of this Bill – which applies to large businesses and Government departments, not natural persons. The LDAC guidance was premised on the infringement fees it refers to being applied to individuals, not large corporates as is the case here. From a reporting entity's perspective, the difference between a \$1,000 or \$3,000 infringement fee is likely to be immaterial.
- 52 Setting the maximum infringement fee at \$3,000 (as the Bill envisages) enables the fees to be gradated accordingly to the degree to which the infringement undermines the integrity of the regime. That gradation may be relevant in the case that a Court is contemplating a pecuniary penalty.

### **Legislative Implications**

- 53 The proposals in this paper will be implemented through regulations made under the Business Payments Practice Bill (once enacted).

### **Impact Analysis**

- 54 A Regulatory Impact Statement (RIS) is attached to the Cabinet paper. MBIE's Regulatory Impact Analysis Review Panel has reviewed it. The panel considers that the information and analysis summarised in the RIS meets the criteria necessary for ministers to make informed decisions on the proposals in this paper.

### **Climate Implications of Policy Assessment**

- 55 None have been identified.

### **Population Implications**

- 56 None have been identified.

### **Human Rights**

- 57 MBIE considers that the proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Consultation**

- 58 MBIE issued a discussion document, and subsequently MBIE officials held in-person discussions with a wide variety of stakeholders. The full record of the feedback received, and entities consulted with, is set out in the attached Regulatory Impact Statement.

- 59 Justice's Offence and Penalty vetting team was consulted on the proposed infringement fees and fines.
- 60 MBIE circulated this Cabinet paper to the following agencies (through the Government Finance Profession): ACC, Corrections, Defence, Education, Health, Inland Revenue, Internal Affairs, Justice, Pacific Peoples, Police, Primary Industries, Te Puni Kōkiri, Treasury.

## **Communications**

- 61 I will issue a press release outlining the intended approach to the regulations once they are gazetted.

## **Proactive Release**

- 62 I intend to release this paper, with appropriate redactions consistent with the Official Information Act 1982, within 30 business days of the regulations being gazetted.

## **Recommendations**

The Minister of Small Business recommends that the Committee:

- 1 note that subject to a Supplementary Order Paper currently under development, the Business Payment Practices Bill will allow for regulations to be made that prescribe:
  - 1.1 what reporting measures to use (ie the information that must be disclosed by entities)
  - 1.2 what is a permitted departure in respect of errors made in a disclosure
  - 1.3 the definition of invoice
  - 1.4 goods, services or types of transaction for which disclosure is not required
  - 1.5 maximum levels for infringement fees and fines;

### **What reporting measures to use**

- 2 agree that the regulations specify that reporting entities must disclose the following business payments information:
  - 2.1 average time to pay an invoice
  - 2.2 the proportion of total number of invoices paid within various time periods
  - 2.3 the proportion of total value of invoices paid within various time periods
  - 2.4 qualitative information (standard payment terms and other descriptions of a reporting entity's payment practices);

### **What is a permitted departure in respect of errors made in a disclosure**

- 3 agree that the regulations set out that an acceptable margin of error in any numeric disclosure is up to two percent of the figure disclosed, or any part thereof (for a distribution);

### **The definition of 'invoice'**

- 4 agree that the definition of invoice be as follows:

*A reporting entity must report on an invoice payment if all of the following apply:*

- *The invoice relates to supply of a good or service.*
- *The reporting entity procured the good or service from a supplier under a trade credit arrangement.*
- *The reporting entity is contractually obliged to pay the invoice;*

### **Goods, services or types of transaction for which disclosure is not required**

- 5 agree that reporting entities do not need to disclose:

5.1 credit card debts payable to a bank

5.2 foreign currency transactions

5.3 some other (more technical) exclusions modelled on those used in Australia;

### **Maximum levels for infringement fees and fines**

- 6 agree to gradate the infringement fees and fines as follows:

*Maximum (\$3,000 fee and \$9,000 fine)*

- cl. 8 (large entities must make disclosures)
- cl. 9B and 9C (contents of disclosure)
- cl. 14 (entities must keep certain records for 7 years)
- cl. 15 (entities must notify Registrar of error or omission)

*Mid-range (\$2,000 fee and \$6,000 fine)*

- cl. 9D(3) and (4) (certain subsidiaries may make disclosures)

*Low (\$1,000 fee and \$2,000 fine)*

- cl. 16 (entities must notify Registrar of changes in identifying information)
- cl. 17 (entities must notify Registrar when Act ceases to apply);

**Agreement to proceed with drafting regulations**

- 7 agree to implement the above proposals through regulations under Business Payments Bill (once enacted);
- 8 invite the Minister of Small Business to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;
- 9 authorise the Minister of Small Business to make minor or technical changes, consistent with the policy framework in this paper, on any issues that arise during drafting.

Authorised for lodgement  
Hon Ginny Andersen



# Cabinet Economic Development Committee

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### Business Payment Practices Bill: Proposed Regulations

**Portfolio**                      **Small Business**

On 21 June 2023, the Cabinet Economic Development Committee:

#### Background

- 1        **noted** that, subject to a Supplementary Order Paper currently under development, the Business Payment Practices Bill will allow for regulations to be made that prescribe:
  - 1.1      what reporting measures to use (ie the information that must be disclosed by entities);
  - 1.2      what is a permitted departure in respect of errors made in a disclosure;
  - 1.3      the definition of invoice;
  - 1.4      goods, services or types of transaction for which disclosure is not required;
  - 1.5      maximum levels for infringement fees and fines;

#### What reporting measures to use

- 2        **agreed** that the regulations specify that reporting entities must disclose the following business payments information:
  - 2.1      average time to pay an invoice;
  - 2.2      the proportion of total number of invoices paid within various time periods;
  - 2.3      the proportion of total value of invoices paid within various time periods;
  - 2.4      qualitative information (standard payment terms and other descriptions of a reporting entity's payment practices);

#### What is a permitted departure in respect of errors made in a disclosure

- 3        **agreed** that the regulations set out that an acceptable margin of error in any numeric disclosure is up to two percent of the figure disclosed, or any part thereof (for a distribution);

**The definition of 'invoice'**

4 **agreed** that the definition of invoice be as follows:

*A reporting entity must report on an invoice payment if all of the following apply:*

- *the invoice relates to supply of a good or service;*
- *the reporting entity procured the good or service from a supplier under a trade credit arrangement;*
- *the reporting entity is contractually obliged to pay the invoice;*

**Goods, services or types of transaction for which disclosure is not required**

5 **agreed** that reporting entities do not need to disclose:

- 5.1 credit card debts payable to a bank;
- 5.2 foreign currency transactions;
- 5.3 some other (more technical) exclusions modelled on those used in Australia;

**Maximum levels for infringement fees and fines**

6 **agreed** to gradate the infringement fees and fines as follows:

- 6.1 maximum (\$3,000 fee and \$9,000 fine):
  - cl. 8 (large entities must make disclosures);
  - cl. 9B and 9C (contents of disclosure);
  - cl. 14 (entities must keep certain records for 7 years);
  - cl. 15 (entities must notify Registrar of error or omission);
- 6.2 mid-range (\$2,000 fee and \$6,000 fine):
  - cl. 9D(3) and (4) (certain subsidiaries may make disclosures);
- 6.3 low (\$1,000 fee and \$2,000 fine):
  - cl. 16 (entities must notify Registrar of changes in identifying information);
  - cl. 17 (entities must notify Registrar when Act ceases to apply);

**Legislative implications**

7 **agreed** to implement the above proposals through regulations under the Business Payments Bill (once enacted);

8 **invited** the Minister of Small Business to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;



- 9 **authorised** the Minister of Small Business to make minor or technical changes, consistent with the policy framework in the paper under DEV-23-SUB-0122, on any issues that arise during the drafting.

Rebecca Davies  
Committee Secretary

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**Present:**

Hon Grant Robertson (Chair)  
Hon Dr Megan Woods  
Hon Dr Ayesha Verrall  
Hon Damien O'Connor  
Hon David Parker  
Hon Kieran McAnulty  
Hon Ginny Andersen  
Hon Dr Duncan Webb  
Hon Rino Tirikatene  
Hon Rachel Brooking  
Hon Jo Luxton

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV