



## COVERSHEET

<b>Minister</b>	Hon Stuart Nash	<b>Portfolio</b>	Small Business
<b>Title of Cabinet paper</b>	Better Business Payment Practices Disclosure and Publication regime	<b>Date to be published</b>	8 November 2022

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
15 December 2021	Better Business Payment Practices Disclosure and Publication regime	Office of the Minister for Small Business
20 December 2021	Cabinet Minute CAB-21-MIN-0546	Cabinet Office

### Information redacted

YES

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.

Some information has been withheld for the reason of constitutional conventions.

Some of the information contained in these documents relates to decisions made before the Business Payment Practices Bill while being drafted, and some of those decisions were subsequently changed. Final decisions are reflected in the Business Payment Practices Bill introduced to Parliament.



# Cabinet

## Minute of Decision

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### Better Business Payment Practices: Disclosure and Publication Regime

**Portfolio**                      **Small Business**

On 20 December 2021, following reference from the Cabinet Economic Development Committee (DEV), Cabinet:

#### Background

- 1        **noted** that:
  - 1.1      in July 2019, the Small Business Council presented the government with its *New Zealand Small Business Strategy: Empowering Small Businesses to Aspire, Succeed and Thrive* (the Strategy);
  - 1.2      the Strategy identified business-to-business payment times as an area of focus;
- 2        **noted** that in February 2020, DEV agreed to the release of the discussion document *Business-to-Business Payment Practices in New Zealand*, and invited the Minister for Small Business to report back on the outcomes of the consultation and any proposed policy changes [DEV-20-MIN-0013];
- 3        **noted** that further targeted consultation undertaken during July-August 2021 with submitters on the original discussion document indicated general support for a requirement for large businesses to disclose business-to-business payment time information;
- 4        **noted** that businesses, particularly small businesses, can be harmed by late payments and lengthy payment terms;
- 5        **noted** that in some cases, businesses, particularly small businesses, are not in a position to enforce their payment terms due to their limited resources, the difficulties of the civil debt enforcement process, and sometimes the availability of effective retaliation by the larger business;
- 6        **noted** that information asymmetries and bargaining power imbalances are frequent occurrences in many business-to-business relationships;

#### Purpose of the Better Business Payment Practices disclosure regime

- 7        **agreed** to establish a Better Business Payment Practices disclosure regime;
- 8        **agreed** that the primary purpose of the proposed disclosure regime is to bring transparency to business-to-business payment practices across the economy;

- 9 **noted** that the disclosure regime will provide businesses with better information to inform their decision-making when engaging in trade, and that it is expected that businesses will seek to manage reputational risk by improving their business payment practices;

### Application

- 10 **agreed** that the disclosure regime reporting entities are those entities that are involved in a taxable activity as defined by the Goods and Services Tax Act 1985, file GST returns on a one-month basis for GST, and whose taxable supplies are greater than \$24 million per annum;
- 11 **agreed** that the Bill include the ability to make regulations to issue class exemptions to future-proof the legislation and ensure groups of entities not intended to be captured by the regime can be excluded, consistent with the policy intent of the regime;

### Obligations on disclosure regime reporting entities

- 12 **agreed** that disclosure regime reporting entities be required to:
- 12.1 register on the Better Business Payment Practices register;
  - 12.2 submit the required disclosures on the register and the reporting entity's website;
  - 12.3 submit required disclosures on the register and the reporting entity's website that are complete and accurate and in the form required by the Registrar;

### Information to be disclosed

- 13 **agreed** that disclosure regime reporting entities be required to disclose data that demonstrates the payment practices of that disclosure regime reporting entity with regards to late payments, as well as the length of payment terms made and received by that disclosure regime reporting entity;
- 14 **agreed** that the Bill will include the ability to make regulations that specify the details of what information must be disclosed;

### Establishment of a register and the Registrar

- 15 **agreed** to the establishment a Better Business Payment Practices register to be administered by the Ministry of Business, Innovation and Employment (MBIE);
- 16 **agreed** to the establishment and appointment of a Registrar within MBIE who will be responsible for maintaining the register and the associated assurance, compliance and enforcement functions necessary to ensure the integrity of the register;
- 17 **noted** that the Registrar will determine the specific form of the register;
- 18 **agreed** that the Bill will empower the Registrar to prescribe the form in which the information must be provided;

**Commencement and frequency of disclosure**

- 19 **agreed** that reporting entities be required to register and disclose the required information on the Better Business Payment Practices register within six months of the regime coming into force;
- 20 **agreed** that reporting entities be required to disclose the required information on their own websites in an easily accessible location within six months of the regime coming into force;
- 21 **agreed** that reporting entities must certify their information disclosures;
- 22 **agreed** that reporting entities must submit their disclosure information at six-monthly intervals;

**Registrar compliance and enforcement tools**

- 23 **agreed** that the Registrar be provided with the necessary powers to ensure compliance with the requirements outlined in paragraph 12 above;
- 24 **agreed** that the Registrar may issue compliance notices to compel compliance with the Better Business Payment Practices requirements;
- 25 **agreed** that a reporting entity may be liable, where the reporting entity fails to comply with a compliance notice, for a pecuniary penalty for failure to meet the Better Business Payment Practices requirements;
- 26 **agreed** that the maximum pecuniary penalty should, for each act or omission, be no greater than \$50,000 for an individual and \$500,000 for a body corporate;
- 27 **agreed** that reporting entities that fail to meet the Better Business Payment Practices requirements will be subject to infringement offences;
- 28 **noted** that certain breaches of the Better Business Payment Practices requirements can, at the discretion of the regulatory agency, be treated as infringement offences;
- 29 **agreed** that a disclosure regime reporting entity that commits an infringement offence will be subject to an infringement fee not exceeding \$3,000 and an infringement fine not exceeding \$9,000;
- 30 **agreed** that a criminal offence should apply where an entity knowingly or intentionally files materially false or misleading information, either through the provision of false information or the omission of material information;
- 31 **agreed** that for criminal offences, the legislation provide maximum fines, for each act or omission, of no greater than \$50,000 in the case of an individual and \$500,000 for a body corporate;
- 32 **agreed** that the penalty for a criminal offence in the Bill will not include terms of imprisonment;
- 33 **noted** that the proposed offences and penalties regime outlined above is consistent with similar legislation;
- 34 **agreed** that the Registrar must publish details of any infringement fees or fines and pecuniary penalties or criminal convictions incurred by a Better Business Payment Practices reporting entity under the regime on their public record on the register;

35 **agreed** that appropriate inspection and investigative powers be provided to enable the regulator to monitor compliance with and investigate suspected breaches of the Better Business Payment Practices requirements, similar to those provided to the Registrar under the Companies Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and other legislation, to ensure a common enforcement approach by the regulator across each of its registers;

### Financial implications

36 Constitutional conventions

37 Constitutional conventions

38 **noted** that some government agencies are likely to meet the reporting entity criteria and be subject to the disclosure and publication requirements of the regime, and that the compliance cost for government is expected to be negligible;

### Legislative implications

39 **noted** that the Minister for Small Business intends to seek a category 4 priority for the Better Business Payment Practices Bill on 2022 Legislation Programme (to be referred to a select committee in 2022);

40 **invited** the Minister for Small Business to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above policy proposals;

41 **authorised** the Minister for Small Business to make any necessary policy decisions that may arise in drafting, consistent with the policy intentions agreed above;

42 **authorised** the Minister for Small Business to make minor or technical changes to the policy decisions outlined above, consistent with the general policy intent, on issues that arise in drafting or following targeted consultation with stakeholders;

43 **agreed** that legislation drafted to give effect to the above policy proposals will bind the Crown.

Michael Webster  
Secretary of the Cabinet