



## 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

<b>List of documents that have been proactively released</b>		
<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
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**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.

Office of the Minister for Small Business  
Chair, Economic Development Cabinet Committee

## **Better Business Payment Practices Disclosure and Publication regime**

### **Proposal**

- 1 I am seeking your agreement to legislation for a disclosure and publication regime to drive better business payment practices. This will take the form of a proposed Better Business Payment Practices Bill.

### **Issue identification**

- 2 Feedback from small businesses indicates they can be harmed by late payments and lengthy payment terms, and this may have wider implications for economic efficiency (for example, a higher cost of capital, or unnecessary insolvencies). Both lengthy payment terms and late payment may be the detrimental result of bargaining power imbalances and information asymmetries between businesses. This paper proposes a solution whereby large entities (with annual taxable supplies over \$24 million) will be required to publicly report every six months on their payment terms and practices. This information will be published on the reporting entity's website and will also be held on an easily accessible register managed by the Ministry of Business, Innovation and Employment (MBIE).

### **Relation to government priorities**

- 3 This proposal is consistent with our 2020 Election manifesto to tackle a number of the challenges identified by the Small Business Council's Small Business Strategy, including the proposition that small businesses are vulnerable to the contracting and payment practices of larger companies and organisations they deal with. Some companies require their suppliers to accept extended payment terms, do not pay on time, and do not send their own invoices promptly. Late payments and extended payment times can have a disastrous impact on a small business's cash flow and viability and are major causes of stress.<sup>1</sup>

### **Executive Summary**

- 4 Small businesses represent more than 97 percent of all businesses in New Zealand. They are an important constituency and the backbone of the economy. Late and overdue payments can often have a detrimental impact on businesses, causing stress and uncertainty. Extended payment terms can also sometimes cause harm, particularly when the supplier has no choice but to accept them on a 'take it or leave it' basis.

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<sup>1</sup> The New Zealand Small Business Strategy (mbie.govt.nz)

- 5 Where there is harm from such practices, it tends to fall disproportionately on small businesses. Small businesses are less resilient to poor payment practices because they are less well-equipped or resourced to weather such practices. Many businesses are also reluctant to push for prompt payment because they fear damaging the relationship.
- 6 This reflects that, in many business-to-business trading relationships, there is a power imbalance between parties. These poor payment practices can have flow-on effects for the wider economy, particularly in times of economic uncertainty.
- 7 There is clear evidence of poor payment practices occurring in our economy, but the evidence doesn't provide a sufficient level of granularity to fully target policy proposals. In assessing the best approach to addressing poor payment practices, I am seeking an intervention that would provide the most benefit for the least cost, and best guard against unintended negative consequences. I consider that a legislated disclosure and publication regime best balances the need for transparency about payment practices.
- 8 The primary objective and purpose of the proposed disclosure regime will be to bring transparency to business payment practices in New Zealand. This will give businesses access to better information to inform their decision making when engaging in business-to-business trade, and larger businesses may seek to mitigate reputational risk by improving their business payment practices.
- 9 The regime will also provide a source of information that contributes to an evidence base on business-to-business payment practices.
- 10 The case for government intervention is strongest where there is a power imbalance, and firm size is our best proxy for where the power resides. To minimise the compliance costs of disclosure, I am proposing a threshold based on the criteria for businesses who must file GST returns monthly. This will mean all businesses with more than \$24 million annual taxable supplies will be required to disclose. The legislation will provide a power to issue class exemptions. This exemption power would be narrowly framed to ensure groups of entities not intended to be captured by the regime can be excluded, consistent with the policy intent of the regime.
- 11 The information required to be disclosed will be based on the broad principle that it be meaningful, timely and easily accessible information that is simple for the disclosing party to provide. Reporting entities will be required to submit a set of data twice yearly that demonstrates their payment practices with regards to late payments, as well as the length of payment terms made and received by that disclosure regime reporting entity. This data will be published on the entity's website and also held on a publicly searchable register.
- 12 I propose that the information be submitted to, and held on, a publicly available and searchable register housed within the Ministry of Business, Innovation and Employment (MBIE). The legislation will provide for the establishment and appointment of a Registrar responsible for maintaining the

register and the associated assurance, compliance and enforcement functions to support the integrity of the register.

- 13 Reporting entities will be required to certify their information disclosures and a range of penalties and remedies are proposed for contraventions of the obligations. This includes providing for inspection powers, consistent with other similar Acts that MBIE administers.
- 14 Given the strong public good elements of this intervention, I propose that the regime is funded by the Crown. Final costs are dependent on the specific details of the legislation and final decisions on the functionality of the register. My intention is to fund the regime within MBIE's baselines at this stage.

## Background

- 15 The Small Business Council (SBC) was formed in 2018 for 12 months to provide advice to the Minister for Small Business and to develop a New Zealand small business strategy. In July 2019 the SBC presented the Government with its 'New Zealand Small Business Strategy: Empowering small businesses to aspire, succeed and thrive'. The Strategy identified business-to-business payment times as an area of focus.
- 16 Following the release of this Strategy, in February 2020, Cabinet agreed to the release the discussion document *Business-to-business payment practices in New Zealand* for public consultation [CAB -20-MIN-0048 refers]. The document specifically sought submissions on proposals to apply a maximum payment time for business-to-business payments, after which interest could be charged by a supplier of goods and services. In total, 31 submissions were received, including from a number of industry groups covering 6,000 industry body members or businesses. This equates to around one percent of all New Zealand's small to medium enterprises (SMEs).
- 17 Officials also investigated approaches in other jurisdictions including the United Kingdom (UK), European Union (EU) and Australia. In both the UK and the EU, there is no evidence of improved business-to-business payment practices as a result of legislation which gives a business the right to charge and collect interest if payment is not made within the mandated payment times. However, the EU did see promising improvements in government-to-business payment times. Survey data<sup>2</sup> reveals that the vast majority of businesses (around 90 percent) will not enforce their rights to charge interest, for fear of negatively impacting the business relationship, and a lack of efficient or cost-effective remedy procedures.
- 18 At the start of this year, Australia commenced the Payment Times Reporting Scheme requiring large businesses to report on their payment terms and practices to small business suppliers. The scheme applies to large businesses with an annual income of over \$100 million.

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<sup>2</sup> For example, <https://op.europa.eu/en/publication-detail/-/publication/400ecc74-9a54-11e5-b3b7-01aa75ed71a1#document-info>

- 19 As New Zealand's own policy development progressed, implementation challenges emerged with some proposals. It became clear there were risks that, without more evidence to better target any intervention, it would potentially be small businesses who would be most negatively impacted by proposals similar to those implemented overseas, and who would likely realise few, if any, benefits.
- 20 In view of these challenges, I directed officials to undertake further consultation with key stakeholders who submitted on the original discussion document. Targeted consultation during July-August 2021 indicated general support for disclosure requirements and publication of payment time information. The majority of stakeholders considered that it would be an important part of any proposal to improve business-to-business payment, a natural starting point, and a logical approach to addressing the behavioural dimension of poor payment practices.
- 21 Further consultation led to a deeper understanding of the potential impacts of regulated maximum payment times (increased administration costs, upgrading of back-office accounting systems and funding of additional working capital) and requirements for a disclosure regime. It also provided information on payment practices more generally, including the use of extended credit terms within certain sectors.
- 22 However, gaps in our collective understanding and knowledge remain. While we know that late payments by debtors can occur, and are problematic in some sectors (for example, supermarkets) we don't know the scale or prevalence of the issue, whether it is systemic, and if it is intentionally exploitative and truly problematic. Late payment practices may be endemic to particular industries or sectors, or confined to a comparatively few participants in each market. This means I am applying caution when selecting the optimal regulatory approach.
- 23 There are a range of regulatory and non-regulatory tools available to drive improvements in payment practices that pose less regulatory risk and burden than mandated payment times. Based on the evidence to date, a disclosure and publication regime of businesses' payment performance will deliver the greatest benefit and uplift in behaviour for the lowest cost.

### **Problem definition**

- 24 I consider there are two types of business payment practices that warrant greater transparency through a disclosure regime – late payments and lengthy payment terms.
- 25 Feedback from small businesses indicates they can be harmed by late payments and lengthy payment terms, and this may have wider implications for economic efficiency (for example, a higher cost of capital, or unnecessary insolvencies). Lengthy payment terms sometimes provide efficient commercial outcomes, but both lengthy payment terms and late payment may be the detrimental result of bargaining power imbalances and information asymmetries between businesses.

- 26 In some cases, small businesses are not in a position to effectively 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. Similarly, small businesses may not always be aware of a larger business's lengthy payment terms during negotiations for supply of goods or services, and may have little bargaining power to alter those terms regardless.
- 27 In other cases small businesses avoid dealing with poor payers. This is not always possible, due to a lack of information about payment practices, limited due diligence resources, and, in some cases, the larger business's market power in the relevant market (for example, a monopsony). Many of these problems are difficult to deal with effectively through our available regulatory and non-regulatory tools.
- 28 In considering the role of government in intervening in relationships between businesses, our primary focus is on practices that have an overall negative effect on New Zealand's economic performance. At an economy-wide level, unfair commercial practices (such as unreasonably long payment times) have the potential to result in lower levels of competition, innovation and productivity across the economy, with corresponding negative impacts for consumers as well as businesses.
- 29 In summary, I consider it is small businesses who are less well-resourced and equipped than larger businesses to manage non-payment, late payment and the imposition of extended payment terms.
- 30 I propose a disclosure regime intended to create a register of business payment practice information that will help reduce the impact of the existing information asymmetries and bargaining power imbalances. Further, it will provide economy-wide information needed to better target future interventions if required.

### **Design of the legislation**

- 31 This disclosure and publication regime will be established through legislation. I propose the legislation set out the:
- 31.1 Purpose of the regime;
- 31.2 Defined criteria as to who will be brought within the regime and be required to disclose, and provision for class exemptions;
- 31.3 Disclosure obligations, including the requirement to publish disclosures on a Better Business Payment Practice (BBPP) register and on the entity's own website;
- 31.4 Information that entities within the regime will be required to disclose and submit;
- 31.5 The commencement of disclosure obligations and the frequency of disclosure;

- 31.6 The responsible agency for hosting and administering the BBPP register;
- 31.7 Monitoring of, and compliance with, the disclosure obligations including the process to submit and certify information, compliance tools, offences and penalties; and
- 31.8 Other mechanisms that might support the objectives of the regime beyond disclosure and publication.

*Purpose*

- 32 The primary purpose of this regime will be to bring transparency to business-to-business payment terms and practices in New Zealand. I expect that this will lead to businesses having better information to inform their decision-making when engaging in trade, and that larger businesses will seek to mitigate reputational risk by improving their business payment practices.
- 33 The regime will also provide a source of information that contributes to an evidence base on business-to-business payment practices, including supporting the government and its agencies in determining if there is a broader problem with extended payment terms, the scope and extent of that problem, and whether further regulatory intervention is warranted. It may also be reviewed by researchers and media which could facilitate greater public scrutiny and influence firm behaviour.
- 34 In addition, there is alignment with the recently passed Fair Trading Amendment Act 2021 (FTAA). That amendment is intended to provide an avenue of recourse against unfair terms in standard form contracts<sup>3</sup>, and against unconscionable conduct. The purposes of this disclosure regime proposed are consistent with the FTAA, and this regime will work alongside the FTAA by bringing greater transparency and visibility to some business practices (i.e. in terms of business-to-business payment terms and practices) that the FTAA is intended to regulate.

*Who will be required to disclose*

- 35 I considered two key questions in determining who should be required to disclose. The first was what *types* of disclosure regime reporting entity, and the second was what *size* of disclosure regime reporting entity. Payment practice behaviour is not determined by the corporate form a disclosure regime reporting entity adopts. While the majority of business entities

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<sup>3</sup> A contract is a 'small trade contract' if:

- each party is engaged in trade
- it is not a consumer contract
- it does not comprise or form part of a trading relationship that exceeds an annual value threshold of \$250,000 (including GST, if applicable) when the trading relationship first arises.

engaging in business-to-business trade are companies, partnerships or sole traders, I consider that a disclosure regime should apply irrespective of the corporate form.

- 36 I propose that a threshold be set by which it is large businesses that are required to disclose under this regime. Large businesses are more likely to hold the balance of power in a trading relationship, and have better access to resources. They are also more likely to have the accounting systems and processes in place to automate reporting, along with dedicated accounting or reporting teams, which is not necessarily the case for small businesses.
- 37 The purpose of any threshold is to provide a line in the sand. Utilising a definition based in the existing Goods and Services Tax Act 1985 (GST Act) would neatly encompass all entities involved in business-to-business trade (with some exceptions, for example, financial services). Any disclosure regime reporting entity or person is required to register for GST where they carry out a taxable activity and exceed the \$60,000 registration threshold, or if they add GST to the price of goods or services they sell. Payment practices are part of these taxable activities.
- 38 In 2019, it was estimated that 3,280 businesses would meet the criteria of \$24 million taxable supplies (including GST) out of an estimated more than 1.4 million entities (including smaller companies, partnerships, trusts, associations and individuals who have to file tax)<sup>4</sup>. This indicates that the 3,280 businesses captures the 'big' entities and that this definition serves as a useful proxy in that regard.
- 39 On the basis of the above analysis the criteria to determine which entities should be required to disclose their business-to-business payment practices information could be defined as:
- 39.1 Entities involved in a taxable activity as defined in section 6 of the GST Act; and
- 39.2 Who are required to file on a one-month frequency due to meeting the income threshold of taxable supplies greater than \$24 million per annum as established under section 15(4) of the GST Act.
- 40 Such a definition applies irrespective of corporate form, should be easily understood by businesses (they are already so defined by the GST legislation) and reduces the likely impost imposed by the disclosure legislation as entities already have the capabilities required to file GST returns on a regular frequency and the underpinning data is the same.
- 41 There will likely be, at times, good reasons for some types of entities to be exempt from the requirements. To allow for flexibility and to future proof the regime, I propose the legislation provides for the ability to issue class

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<sup>4</sup> Stats NZ, *Business Demography Statistics*, 2020. <https://www.stats.govt.nz/information-releases/new-zealand-business-demography-statistics-at-february-2020>.



exemptions. This exemption power would be narrowly framed to ensure groups of entities not intended to be captured by the regime can be excluded.

*Information to be disclosed*

- 42 The purpose of the regime is to bring transparency to how businesses pay their trade creditors both in terms of late or overdue payments, and length of payment times. There can be legitimate reasons for extended payment terms in some sectors of the economy where the nature of the business warrants it. Consequently, it is important to ensure that any disclosure requirements are set in a way that there is sufficient context provided with the information.
- 43 At the same time, there is a need to balance providing context with ease of use, along with balancing the timeliness of disclosure information with the burden on reporting entities. Meaningful, timely and easily accessible information that is simple for the disclosing party to provide is the optimum mix.
- 44 Given this complexity, final decisions as to the exact data to be provided by reporting entities should be made after further engagement with business stakeholders. I propose a regulation making power in the legislation to set the reporting requirements based on these broad principles in order to demonstrate:
- 44.1 the disclosure regime reporting entity's practices in relation to late and overdue payments made;
  - 44.2 the disclosure regime reporting entity's practices in relation to the payment terms it sets;
  - 44.3 the payments terms that the disclosure regime reporting entity receives; and
  - 44.4 the late and overdue payments received by the disclosure regime reporting entity.
- 45 Sensitive financial information will be not necessarily be required for reporting purposes, for example, rather than disclosing the dollar values of invoices paid, reports may instead show the percentage of the total value of payments made in a particular period.
- 46 In addition, I believe there is an opportunity to extract value from the disclosure regime by providing for regulations that set requirements for reporting entities to provide additional information on other relevant metrics, such as NZBN numbers, use of e-Invoicing, or whether they are a signatory to a Code of Conduct, similar to the UK model.<sup>5</sup>

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<sup>5</sup> [Duty to report on payment practices and performance: guidance to reporting on payment practices and performance \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/guidance/duty-to-report-on-payment-practices-and-performance)

*Frequency and commencement*

- 47 I propose that reporting entities be required to disclose twice yearly. Both the Australian Payment Times Reporting Act 2020 and the UK Reporting on Payment Practices and Performance Regulations 2017 require six-monthly reporting. In assessing the appropriate frequency for disclosure, the following principles were applied:
- 47.1 to minimise the impost on reporting entities;
  - 47.2 to ensure accuracy and relevance of disclosed information; and
  - 47.3 to better quality assure and enable administration of the regime.
- 48 On balance, I consider that six-monthly reporting manages compliance costs and provides a sufficient range of data points to demonstrate patterns of payment behaviour without being overly burdensome on reporting entities.
- 49 I propose that all reporting entities must disclose the required information within six months of the regime coming into force.

*The Regulator and establishment of a register*

- 50 The disclosure and publication regime I am seeking Cabinet's agreement to, is predicated on making business payment practices more publicly visible by bringing greater transparency, better accessibility to information and reducing search costs. Therefore, storing the information in a readily accessible location is pivotal to the regime delivering on its intended outcomes.
- 51 I propose the establishment of a Better Business Payment Practices register (BBPP register). The register will serve as a repository where reporting entities' disclosures are submitted and held. This information will be publicly available and searchable.
- 52 In addition, I propose that the legislation also requires entities to publish their disclosures on their own websites in an easily accessible location. This adds another layer of transparency allowing businesses and commentators to access payment practice information directly on reporting entities' websites. It also allows reporting entities to provide a contextual narrative on their websites on what drives their payment practices.
- 53 MBIE currently has responsibility for administering, overseeing and regulating a number of business-related registers. Locating a BBPP register in the same location as other business registries helps support greater efficiency in directing businesses to a single portal for their compliance obligations. I propose that the BBPP register be housed within the registers architecture within MBIE.
- 54 Therefore, MBIE will administer the regime, and the regulator of the regime will be a Registrar responsible for maintaining the register and monitoring compliance and enforcement.

*The regulator's powers, functions and duties*

55 Consistent with the regulation of other registers, the legislation will provide for the establishment and appointment of a Registrar. The Registrar will be responsible for maintaining a publicly available and searchable BBPP register and the associated assurance, compliance and enforcement functions necessary to ensure the integrity of the register. The Registrar will prescribe the specific form of the register and the form in which the information must be provided.

56 Key functions the legislation will provide for are:

56.1 An assurance mechanism;

56.2 Powers to monitor and enforce, including powers of inspection; and

56.3 Offences and penalties.

**Assurance**

57 Requiring assurance from reporting entities provides a supporting mechanism to the compliance and enforcement of the regime. I propose that, in the same way that a person or body corporate must certify other aspects of their respective compliance obligations (for example that their GST returns are correct and true), they will also certify that their information disclosures for this regime are accurate. The relevant responsible corporate officer or other person would then be liable if they are found to be not correct. This has the advantage that it relies on existing and well-understood enforcement mechanisms.

58 However, this can also drive expensive and overly risk-adverse behaviour which may be to the detriment overall. I have considered this and believe, that on balance, the requirement to have senior officers certify the disclosures is consistent with the requirements of their office, and the role they take in the affairs of a disclosure regime reporting entity.

**Compliance and enforcement regime**

59 In order to further support the integrity of the disclosure regime, compliance and enforcement powers are required to enable the regulator to ensure that the following core requirements are met:

59.1 Reporting entities register on the BBPP register,

59.2 Reporting entities submit the required disclosures on the register and the reporting entity's website, and

59.3 Reporting entities submit required disclosures that are complete and accurate and in the form required by the Registrar.

60 The design of the enforcement and compliance regime should have regard to the importance of the BBPP regime in driving fair business-to-business payment practices and improving the ability of smaller businesses to negotiate beneficial payment terms. It should also have regard to the size and means of

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the regulated entities and the primary enforcement objective to encourage compliance and deter breaches of the BBPP requirements. I have also considered regulatory consistency with similar information disclosure regimes.

- 61 I consider that there should be a range of compliance and enforcement tools available to implement and enforce BBPP requirements, from compliance notices to pecuniary penalties and infringement notices for breaches. Consistent with other regimes, I also consider there should be criminal sanctions for fraudulent and materially misleading disclosures.
- 62 I propose the regulator be given the power to issue compliance notices to compel compliance with the BBPP requirements.
- 63 I propose that, where a reporting entity fails to comply with a compliance notice, the reporting entity and its responsible officers (e.g. a director of a company) may be liable for a pecuniary penalty for failure to meet the above core requirements.
- 64 Pecuniary penalties are appropriate where the nature of the offending does not warrant the denunciatory and stigmatising effects of a criminal conviction and a monetary penalty would be sufficient to deter or punish breaches.
- 65 A disclosure regime reporting entity may be liable to pay a pecuniary penalty up to a maximum of \$50,000 for an individual and \$500,000 for a body corporate on application by the Registrar to the High Court. This is consistent with pecuniary penalties for similar compliance failures in the Commerce Act 1986 and the Financial Markets Conduct Act 2013.
- 66 I propose that relatively minor breaches of the BBPP requirements can, at the discretion of the regulatory agency, be treated as infringement offences. Any 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.
- 67 I propose that a criminal offence should apply where an entity knowingly or intentionally files materially false or misleading information, either through provision of false information or omission of material information. This is consistent with the approach taken in the legislation governing the companies register, financial service providers register, insolvency practitioners register, and the New Zealand Business Number register, which is a voluntary scheme.
- 68 I propose that for criminal offences, the BBPP Bill provide maximum fines of no greater than \$50,000 in the case of an individual and \$500,000 for a body corporate. The penalty for a criminal offence in the BBPP Bill will not include terms of imprisonment.
- 69 In line with the overarching purpose of bringing greater transparency to business-to-business payment practices, I propose that the regulator be required to publish notices of any contravention alongside the reporting

entities name and the fee, fine or penalty imposed (along with any past disclosures) on the BBPP register.

- 70 To support the Registrar in their enforcement functions I propose appropriate inspection and investigative powers be provided to enable the regulator to monitor compliance with and investigate suspected breaches of the BBPP requirements. These powers would be similar to those provided to the Registrar under the Companies Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and others. This will ensure a common enforcement approach by the regulator across each of its registers.

### Financial Implications

- 71 Constitutional conventions 
- 72 Officials have considered whether the Office of the Registrar could be funded by way of a levy or fee. This is also something that could be considered in the future.
- 73 Some government agencies may meet the reporting entity threshold and be subject to the regime's disclosure and publication obligations. Those government agencies will be engaged in taxable activities of greater than \$24 million per annum and will be filing monthly GST returns. In order to meet their GST filing obligations these agencies already have advanced financial management information systems and are therefore well placed to extract the payment practices information with limited additional effort. Accordingly, any cost to government agencies from being included in the regime is expected to be negligible.

### Legislative Implications

- 74 The proposals in this paper will be given effect through the Better Business Payment Practices Bill. I intend to seek a category 4 priority for the Better Business Payment Practice Bill on the 2022 Legislation programme (to be referred to a select committee in 2022).

### Impact Analysis

#### Regulatory Impact Statement

- 75 The regulatory impact analysis requirements apply to the proposals in this paper. A regulatory impact statement has been prepared and is attached.
- 76 MBIE's Regulatory Impact Assessment Review Panel has reviewed the Regulatory Impact Statement prepared by MBIE. The Panel considers that the information and analysis summarised in the Regulatory Impact Statement **meets** the Quality Assurance criteria. In making this assessment, the Panel

noted there has not been wide consultation on the preferred option but considered this is mitigated by the broader consultation that has occurred and the intention to consult on an exposure draft of the proposed legislation in due course.

### Population Implications

- 77 The proposals in this paper will not disproportionately impact distinct population groups (such as Maori, children, seniors, disabled people, women, people who are gender diverse, Pacific peoples, veterans, rural communities, and ethnic communities).

### Human Rights

- 78 There are no human rights implications arising from the proposals in this paper. Consistency with the *New Zealand Bill of Rights Act 1990* and the *Human Rights Act 1993* will be discussed with the Ministry of Justice during the drafting process.

### Consultation

- 79 Inland Revenue, the Commerce Commission, the Treasury, the Parliamentary Counsel Office, and the Ministry of Justice have been consulted.

### Communications

- 80 I intend to make announcements in due course.

### Proactive Release

- 81 This paper will be published on MBIE's web site 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 Cabinet Economic Development Committee:

#### *Background*

1. **note** that 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' and that the Strategy identified business-to-business payment times as an area of focus;
2. **note** that in February 2020 Cabinet agreed to release for public consultation the discussion document *Business-to-business payment practices in New Zealand* and invited the Minister to report back to the Cabinet Economic Development Committee with the outcomes of consultation and any proposed policy changes [CAB-20-MIN-0048 refers];

3. **note** that further targeted consultation 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. **note** that businesses, particularly small businesses, can be harmed by late payments and lengthy payment terms;
5. **note** 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. **note** 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. **agree** to establish a Better Business Payment Practices disclosure regime;
8. **agree** that the primary purpose of the proposed disclosure regime is to bring transparency to business-to-business payment practices across the economy;
9. **note** that the disclosure regime will provide businesses with better information to inform their decision-making when engaging in trade and it is expected that businesses will seek to manage reputational risk by improving their business payment practices;

*Application*

10. **agree** that the disclosure regime reporting entities are those entities who are involved in a taxable activity as defined by the Good 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. **agree** 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. **agree** that disclosure regime reporting entities will be required to:
  - 12.1 register on the BBPP register,
  - 12.2 submit the required disclosures on the register and the reporting entity's website, and
  - 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. **agree** 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. **agree** 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. **agree** to the establishment a Better Business Payment Practices register to be administered by the Ministry of Business, Innovation and Employment (MBIE);
16. **agree** 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. **note** that the Registrar will determine the specific form of the register;
18. **agree** that the Bill will empower the Registrar to prescribe the form in which the information must be provided;

*Commencement and frequency of disclosure*

19. **agree** 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. **agree** 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. **agree** that reporting entities must certify their information disclosures;
22. **agree** that reporting entities must submit their disclosure information at six-monthly intervals;



*Registrar compliance and enforcement tools*

23. **agree** that the Registrar be provided with the necessary powers to ensure compliance with the requirements in recommendation 12;
24. **agree** that the Registrar may issue compliance notices to compel compliance with the BBPP requirements;
25. **agree** 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 BBPP requirements;



26. **agree** 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. **agree** that reporting entities that fail to meet the BBPP requirements will be subject to infringement offences;
28. **note** that certain breaches of the BBPP requirements can, at the discretion of the regulatory agency, be treated as infringement offences;
29. **agree** 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. **agree** that a criminal offence should apply where an entity knowingly or intentionally files materially false or misleading information, either through provision of false information or omission of material information;
31. **agree** 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. **agree** that the penalty for a criminal offence in the BBPP Bill will not include terms of imprisonment;
33. **note** that the proposed offences and penalties regime in this paper is consistent with similar legislation;
34. **agree** that the Registrar must publish details of any infringement fees or fines and pecuniary penalties or criminal convictions incurred by a BBPP reporting entity under the BBPP regime on their public record on the BBPP register;
35. **agree** that appropriate inspection and investigative powers be provided to enable the regulator to monitor compliance with and investigate suspected breaches of the BBPP requirements, similar to those provided to the Registrar under the Companies Act 1993, the Financial Service Providers (Registration and Dispute Resolution) Act 2008 and others, to ensure a common enforcement approach by the regulator across each of its registers;

*Financial implications*

36. Constitutional conventions  

37. Constitutional conventions  

38. **note** 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. **note** 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. **invite** the Minister for Small Business to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above policy proposals;
41. **authorise** the Minister for Small Business to make any necessary policy decisions that may arise in drafting, consistent with the policy intentions agreed above;
42. **authorise** the Minister for Small Business to make minor or technical changes to the policy decisions in this paper, consistent with the general policy intent, on issues that arise in drafting or following targeted consultation with stakeholders;
43. **agree** that legislation drafted to give effect to the above policy proposals will bind the Crown.

Authorised for lodgement

Hon Stuart Nash

Minister for Small Business