



COVERSHEET

Minister	Hon Stuart Nash	Portfolio	Small Business
Title of Cabinet paper	Better Business Payment Practices Bill – Amendments to Policy	Date to be published	8 November 2022

List of documents that have been proactively released

Date	Title	Author
3 August 2022	Better Business Payment Practices Bill – Amendments to Policy	Office of the Minister for Small Business
7 August 2022	Cabinet Minute CAB-22-MIN-0300.01	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 about 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.

In Confidence

Office of the Minister of Small Business

Cabinet Economic Development Committee

Better Business Payment Practices Bill – Amendments to Policy

Proposal

- 1 I seek Cabinet agreement to make three amendments to the Better Business Payment Practices (BBPP) disclosure regime to ensure it is fit-for-purpose. These amendments are:
 - 1.1 change the threshold for reporting entities to be included in the BBPP disclosure regime;
 - 1.2 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
 - 1.3 removing the requirement for businesses to report on receipt of payment.
- 2 I have delegated authority from Cabinet to make decisions relating to the detailed design of the regime [CAB-21-MIN-0546 refers]. There are three significant decisions which I consider require Cabinet's agreement before including these in the Bill.

Issue Identification

- 3 A number of businesses force their suppliers to accept extended payment terms, and often businesses do not pay on time. Late payments and extended payment times can have a disastrous impact on a small businesses' cash flow and viability and are major causes of stress. Therefore the Better Business Payment Practices Bill (the Bill) will require large entities to publicly report on their payment times and practices with the aim to bring transparency to business-to-business payment practices across the economy.

Relation to government priorities

- 4 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. This includes addressing concerns that small businesses are vulnerable to the contracting and payment practices of larger companies and organisations they deal with.

Executive Summary

- 5 The Bill will require large entities to publicly report on their payment times and practices. It will bring transparency to business-to-business payment practices across the economy.

- 6 Firstly, I seek Cabinet's agreement to change the criteria and change the threshold to be included within the scope of the BBPP disclosure regime from \$24 million per annum taxable supplies to \$33 million total revenue per annum.
- 7 Cabinet previously agreed that entities whose taxable supplies (as defined by the Goods and Services Tax Act 1985) are greater than \$24 million and file GST returns on a one-month basis would be included within the scope of the BBPP disclosure regime [CAB-21-MIN-0546 refers]. Officials have advised me that this original definition excludes some entities that ideally would be included in the regime (such as financial services and some commonly owned groups) and the definition does not automatically adjust for inflation over time. Officials estimate approximately the same number of entities will be captured by the regime.
- 8 The proposed change would include entities who meet the definition of 'large' in the Financial Reporting Act (FRA) 2013 by virtue of exceeding the act's revenue threshold. This more appropriately captures all large entities engaged in business-to-business economic activity (irrespective of corporate form), and, conveniently, the FRA threshold is adjusted in accordance with the Consumers Price Index.
- 9 Secondly, I seek Cabinet agreement to allow the sharing of commercial information for compliance and enforcement purposes between IR and MBIE. This sharing would support the compliance activities of the BBPP regime. It would enable the BBPP Registrar to identify entities subject to the regime through the IR reporting system whose total revenue is likely to be over \$33 million per annum and if necessary, follow up individually with non-compliant entities. The information IR shares with the Registrar would be kept secure and not be published. To enable this change, an amendment to Schedule 7, Part C, of the Tax Administration Act 1994 (TAA) would be required. This amendment would provide 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.
- 10 Lastly, I seek Cabinet's agreement to rescind a previous Cabinet decision that would require entities to report on payments received. Cabinet originally agreed to my recommendation that receipt of payments should be included in the BBPP regime to give reporting entities an opportunity to demonstrate the extent to which they could improve their payment practices. However, following stakeholder feedback, I no longer consider this requirement as impactful or necessary in primary legislation.

Background

- 11 The Better Business Payment Practices Bill (the Bill) gives effect to a 20 December 2021 Cabinet decision to establish a Better Business Payment Practices (BBPP) disclosure regime [CAB-21-MIN-0546 refers]. The primary purpose of the BBPP disclosure regime is to bring transparency to business-to-business payment practices across the economy.
- 12 The Bill will require large entities (as defined by the Bill) 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. This will provide businesses access to better information to inform their decision making when

engaging with large businesses in business-to-business trade, and larger businesses may seek to mitigate reputational risk by improving their business payment practices.

- 13 On 20 December 2021, Cabinet authorised me to:
- 13.1 make any necessary policy decisions that may arise in drafting, consistent with the policy intentions agreed by Cabinet.
 - 13.2 make minor or technical changes to the policy decisions agreed by Cabinet, consistent with the general policy intent, on issues that arise in drafting or following targeted consultation with stakeholders [CAB-21-MIN-0546 refers].
- 14 Since receiving this authority, I have made further decisions for officials to incorporate into the detailed design of the Bill and the BBPP disclosure regime. A summary of the detailed decisions I have made are attached in the **Appendix**.

Three outstanding issues

Change in the threshold for inclusion of the BBPP disclosure regime

- 15 In December 2021, Cabinet agreed that entities whose taxable supplies (as defined by the Goods and Services Tax Act 1985) are greater than \$24 million and file GST returns on a one-month basis would be within the scope of the disclosure regime [CAB-21-MIN-0546 refers]. The rationale behind the GST threshold was that it applies across all corporate forms (poor payment practices are not unique to specific corporate forms) and is a good proxy for larger entities that are more likely to hold market power.
- 16 While the \$24 million per annum taxable supplies threshold is pragmatic and will capture most large entities, it presents three key problems:
- 16.1 It excludes some large entities from the financial services and rental accommodation sectors (as much of income is exempt from GST) from being captured within the disclosure regime. This creates an inconsistency as many providers of financial services, such as large banks and insurance companies, and rental accommodation, such as large retirement villages and community housing providers, are likely to have similar purchasing habits to large entities that are covered by the regime.
 - 16.2 GST grouping rules mean that large entities with multiple subsidiaries can file GST returns separately rather than as a group to avoid being captured by the regime. This can be problematic as commonly owned groups of businesses can coordinate their payment practices and policies.
 - 16.3 The GST filing definition of taxable supplies over \$24 million per annum does not automatically adjust for inflation. This means that, over time, the \$24 million per annum threshold might begin to apply to smaller entities not intended to be captured by the BBPP regime.
- 17 In recent months officials identified an alternative application threshold which would deal with these concerns.

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

- 18 I now seek Cabinet's agreement to change the application threshold so that the regime will instead apply to entities defined as 'large' under section 45(1)(b) of the Financial Reporting Act (FRA) 2013. This changes the current reporting threshold from \$24 million per annum taxable supplies to \$33 million total revenue per annum for at least two consecutive accounting periods.
- 19 This application threshold will provide more consistency as it captures all large entities engaged in business-to-business economic activity (irrespective of corporate form), it applies to groups on a consolidated basis, and there is a requirement in the FRA for the threshold to be adjusted in accordance with movements in the Consumers Price Index every seven years or less.
- 20 The higher threshold is closer to the Australian and United Kingdom payment practice reporting thresholds of AUD100 million annual total revenue and GBP36 million annual turnover or GBP18 million balance sheet (or more than 250 employees), respectively.
- 21 The definition of "large" in s45(1)(b) of the Financial Reporting Act 2013 (FRA) will also apply to overseas companies and subsidiaries of overseas companies and will specify when an entity is excluded from the definition of "large" due to a period of inactivity as defined in s45(3) to (5) of the FRA. Only entities carrying on business in New Zealand will be subject to the regime.
- 22 This threshold change would lead to similar actual numbers of entities needing to disclose their payments practices. While the increase in the dollar value of the threshold has increased, it is a broader definition ensuring the BBPP regime covers large entities in the financial services, banking, insurance rental accommodation and retirement village sectors.

Allow the sharing of commercial information for compliance and enforcement purposes between IR and MBIE


- 23 In January 2022, I indicated that I intend to come back to Cabinet for decisions on this matter at the same time as seeking approval to introduce the Bill. I am doing it now instead so all the required decisions can be made at the same time.
- 24 The purpose of the information sharing is to support the Registrar to monitor compliance with the BBPP regime. The BBPP Registrar would use the information provided by IR to identify entities that are likely to be subject to the BBPP 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.
- 25 The revenue information disclosed to the BBPP Registrar would be limited to information that identifies entities who are very likely to meet or exceed the BBPP application threshold as assessed through actual, or proxy revenue measures. This information could include, for example, an entity name, GST/IRD number, or NZBN number. The information provided by IR would help the BBPP Registrar identify most of the entities subject to the regime.

- 26 MBIE and IRD 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 (TAA) 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.
- 27 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.
- 28 Following an amendment to the TAA, 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.

Removing the requirement to report on receipt of payment

- 29 Cabinet also agreed that reporting entities be required to identify when they receive payment. After hearing from stakeholders and considering their feedback, I propose that reporting of payments received should not be a requirement but rather that the Bill provides for the ability to report on payments received to be set in regulations.
- 30 During targeted consultation, officials were advised that business do not usually require any information relating to reporting entities' payment receipt to inform good business decisions. In addition, reporting on payments received may result in unnecessary compliance costs for reporting entities, as this information may not be able to be easily extracted from current accounting systems and processes.
- 31 Most stakeholders were not initially clear on why payment receipts would be covered by the regime. Some stakeholders considered this aspect of reporting to be an unwelcome distraction, while others considered that it would be reasonable as an optional measure. No stakeholders considered this to be an essential element of the regime.
- 32 I originally recommended that receipt of payments be included in the BBPP regime to give reporting entities an opportunity to demonstrate the extent to which they could improve their payment practices. For example, we might not expect a reporting entity to speed up the payments they make, if they are receiving payments at a slow rate. Measures like these still may have some utility, but I recommend that they are not required through primary legislation.
- 33 International trends look to support this proposal. Entities subject to the Australian and UK regimes do not report on payments received.

Financial Implications

- 34 Constitutional conventions
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- 35 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 to ensure funding for the BPP regime is sustainable.
- 36 Some government agencies may meet the reporting entity threshold and be subject to the regime's disclosure and publication obligations. Those government agencies will have revenue of greater than \$33 million per annum. All of these agencies are likely to have advanced financial management information systems and are therefore well placed to extract the required payment practices information at limited additional cost. Many are already doing so through a quarterly government survey of payment times. Accordingly, any cost to government agencies from being included in the regime is expected to be negligible.

Legislative Implications

- 37 The proposals in this paper will be given effect through the Better Business Payment Practices Bill. The Bill currently has a category 4 priority on the 2022 Legislation programme (to be introduced and referred to a select committee in 2022).

Impact Analysis

Regulatory Impact Statement

- 38 The Treasury's Regulatory Impact Analysis team has determined that these proposed amendments to the Better Business Payment Practices Bill are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have been addressed by an existing impact analysis.

Human Rights

- 39 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Climate Implications of Policy Assessment

- 40 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to these proposals, as the threshold for significance is not met.

Population Implications

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

Consultation

- 42 Treasury, Inland Revenue, Commerce Commission, Parliamentary Counsel Office, and Ministry of Justice have been consulted on these proposals and agree with the recommendations. The Department of Prime Minister and Cabinet has been informed.

Communications

- 43 Following Cabinet's agreement, I plan to announce the proposals in their entirety. No communications have been made to date.

Proactive Release

- 44 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** Cabinet previously agreed to establish a Better Business Payment Practices (BBPP) disclosure regime [CAB-21-MIN-0546 refers].
- 2 **Note** that the primary purpose of the disclosure regime is to bring transparency to business-to-business payment practices across the economy.
- 3 **Note** that Cabinet previously authorised the Minister for Small Business to make necessary policy decisions that may arise in drafting, consistent with the policy intentions agreed to in CAB21-MIN-0546, and to make minor or technical changes to the policy decisions.
- 4 **Note** that decisions made by the Minister for Small Business to date (in **Appendix**).
- 5 **Note** that while the Minister for Small Business received delegated authority to make necessary policy decisions that may arise in drafting, I am seeking agreement from Cabinet for three significant decisions.
- 6 **Note** that Cabinet previously agreed that entities 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, would be required to report as part of the disclosure regime.
- 7 **Agree** to recommend that Cabinet **rescind** the decision referred to in recommendation 6 and **instead agree** for the disclosure regime apply to those entities, including overseas entities, that are defined by as 'large' under section s45(1)(b) of the Financial Reporting Act (FRA) 2013.
- 8 **Agree** to an amendment to Schedule 7, part C, of the Tax Administration Act 1994 (TAA) so 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.

- 9 **Agree** to remove the requirement for reporting entities to report on the receipt of payment.

Authorised for lodgement

Hon Stuart Nash

Minister for Small Business

Appendix

Summary of decisions Minister for Small Business made under Cabinet authorisation

Policy Issue	Decision made
Commencement period	The legislation will commence 9 months after enactment. Reporting entities will then have up to 6 months from the commencement date to disclose required information (it is not intended disclosure will occur all on the same day).
Application: Entities required to submit a payment practices report	<p>An entity will be required to submit payment practices reports if:</p> <ul style="list-style-type: none"> • the entity is a parent entity (for example, a holding company with subsidiaries) and the combined revenue of all members of its group exceeds the application threshold; or • the entity is a member of a group (such as a being a subsidiary) and the total revenue for that entity exceeds the application threshold. <p>A reporting entities’ payment practices report must be approved by:</p> <ul style="list-style-type: none"> • a responsible member of the entity (that is, director as defined in the FRA); or • if the entity is a member of a parent entity’s/controlling corporation’s group, a responsible member of the parent entity/controlling corporation. <p>Only entities carrying on business in New Zealand will be subject to the regime.</p>
Information that must be disclosed	<p>Reporting entities must report the following information, which will be publicly available:</p> <ol style="list-style-type: none"> 1. The entity’s legal and trading name. 2. The entity’s registered business address (excluding sole traders). 3. The entity’s NZBN number. 4. The entity’s website. 5. The entity’s industry classification code. 6. The reporting period to which the report relates. 7. Information on payment practices, including: <ol style="list-style-type: none"> i. The average number of days to pay invoices in full during the reporting period. ii. The percentage of invoices due, but not paid in full, by the agreed due date. iii. The proportion, determined by total number and total value, of invoices paid by the entity during the reporting period that were paid in full within specific time periods to be outlined in regulations. 8. If the entity is a member of a group — identify the parent entity.

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	<p>9. The name of the director (as defined in the Financial Reporting Act 2013) who approved the report and the date it was approved.</p> <p>10. The name and contact details of the individual giving the report to the Registrar.</p> <p>11. Any other information specified in regulations made under the Act.</p> <p>Regulations will determine the specific timing of entities' disclosures.</p>
<p>Reporting entities' obligations</p>	<p>A director of an entity as defined in section 5 of the Financial Reporting Act 2013 (or their delegate) must confirm that the information disclosed is full and accurate.</p> <p>This includes companies, partnerships, limited partnerships, charitable entities, bodies corporate or unincorporate, and individuals.</p>
<p>Cessation</p>	<p>Reporting entities must notify the Registrar giving reasons, before their disclosure report due date, that they are no longer a BBPP reporting entity. The Registrar will not be required to approve removal. Reasons for cessation include: no longer meeting the threshold; or no longer trading as a business.</p> <p>A former entity will still be subject to relevant provisions in the Act with respect to the period during which they were a reporting entity. Relevant provisions include:</p> <ul style="list-style-type: none"> • reporting obligations; • Registrar monitoring, inspection, compliance, and enforcement powers; • offences and penalties.
<p>Registrar's powers</p>	<p>(a) The Registrar may delegate their functions, duties, and powers, except the power of delegation.</p> <p>(b) The register may be kept as an electronic register or in any form that the Registrar thinks fit.</p> <p>(c) The Registrar may refuse access to the register or suspend its operation, in whole or in part:</p> <ul style="list-style-type: none"> - if the Registrar considers that it is not practical to provide access to the register; or - for any other reason that is prescribed by regulations made under the Act.
<p>Registrar's inspection and investigation powers</p>	<p><u>Record keeping</u>: Reporting entities must retain, and make available for inspection if required, payment practice records for seven years after the end of the reporting period to which they relate.</p> <p><u>Compliance monitoring</u>: Where the Registrar suspects non-compliance, the Registrar may require a reporting entity, at their expense, to engage an auditor to undertake an audit of the</p>

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	<p>entity's payment practice information and to provide the results of that audit to the Registrar.</p> <p><u>Inspection and investigation powers:</u> Powers consistent with s365 of the Companies Act 1993. The Registrar may:</p> <ul style="list-style-type: none"> • require a reporting entity to confirm its disclosed information is correct, or to correct that information. • require a reporting entity to produce for inspection by the Registrar relevant documents within that entity's possession or control. • inspect and take copies of relevant documents. • take possession of and retain any document for a reasonable period. <p>It will be an offence to fail to comply with inspection requirements or obstruct or hinder the Registrar in carrying out his or her powers of inspection, carrying a fine not exceeding \$10,000.</p>
Complaint process	<p>The Registrar must establish a complaints process whereby anyone may lodge a complaint with the Registrar on payment times information which has been disclosed and publicly available. This would help the Registrar identify non-compliance.</p>
Crown liability	<p>The Crown should not be liable to pay fees, fines, or penalties for offences under the Act.</p>