



COVERSHEET

Minister	Hon Stuart Nash	Portfolio	Small Business
Title of Cabinet paper	Release of Business Payment Practices regulations discussion document	Date to be published	2 December 2022

List of documents that have been proactively released

Date	Title	Author
October 2022	Release of Business Payment Practices regulations discussion document	Office of the Minister for Small Business
19 October 2022	Cabinet Minute DEV-22-MIN-0236	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.

A draft discussion document on the Business Payment Practices Bill's regulations was attached to the Cabinet paper "Release of Business Payment Practices regulations discussion document". This has not been included in this release as a final version of the discussion document has already been published. The published version can be found at:

<https://www.mbie.govt.nz/have-your-say/business-payment-practices-regulations/>

In Confidence

Office of the Minister for Small Business

Chair, Economic Development Cabinet Committee

Release of Business Payment Practices regulations discussion document

Proposal

- 1 This paper seeks your agreement to release a discussion document for public consultation on proposed secondary legislation under the Business Payment Practices Bill (**the Bill**) relating to payment practice disclosure measures, disclosure periods, and class exemptions. The discussion document entitled '*Business Payment Practices Regulations*' (**the discussion document**) is attached as Annex One.

Issue identification

- 2 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 small businesses' cash flow and viability. Therefore, the Better Business Payment Practices Bill will require large entities to publicly report on their payment practices with the aim to bring transparency to business-to-business payment practices across the economy. The Bill's secondary legislation will specify the payment practices information that must be disclosed on a public register so that businesses can make informed decisions about who to do business with.

Relation to government priorities

- 3 Labour's 2020 Election manifesto committed to addressing 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.

Executive Summary

- 4 Cabinet agreed to establish a Better Business Payment Practices (**BPP**) reporting regime on 20 December 2021 [CAB-21-MIN-0546 refers] to bring transparency to business-to-business payment terms and practices in New Zealand. On 20 October, I am seeking Cabinet Legislative Committee (LEG) approval to introduce the Bill.
- 5 The Bill authorises the making of secondary legislation which specifies the information that must be disclosed on a public register by reporting entities (disclosure measures), disclosure periods, and provides for exemptions from the regime.
- 6 I propose that consultation on the discussion document should occur in parallel with consideration of the Bill by the Select Committee. This would provide stakeholders

with more detailed information about how the regime is intended to work in practice and may assist them in developing submissions on the Bill.

- 7 Submissions on the discussion document and targeted engagement with stakeholders will inform subsequent policy advice on the secondary legislation. I intend to seek policy decisions from Cabinet on the secondary legislation after the Select Committee has reported back on the Bill.

Background

- 8 The Small Business Council (SBC) was established 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 problematic business-to-business payment times (late payments and extended payment times) as an area of focus.
- 9 In December 2021, Cabinet agreed to establish a BBP regime, which would require large entities to publicly report on their payment times and practices with the aim of bringing transparency to business-to-business payment practices across the economy [CAB-21-MIN-0546 and CAB-22-MIN-0300.01 refer]. On 20 October 2022, I intend to seek approval from the Cabinet Legislative Committee (LEG) to introduce the Bill to the House.

Cabinet agreed the Bill should provide for secondary legislation

- 10 Cabinet agreed the Bill would provide for secondary legislation. Under the draft Bill, secondary legislation may be used to specify the payment practices information large (reporting) entities must disclose, and the disclosure periods. Secondary legislation can also be used to issue class exemptions, where these would be consistent with the policy intent of the regime [CAB-22-MIN-0546 refers].
- 11 Secondary legislation provides flexibility so that the regime remains relevant and can adapt over time. This is especially important in this context as this regime is entirely new to New Zealand, and similar ones across the world are also relatively new.
- 12 I propose to release the discussion document (Annex One) and am seeking feedback on proposed:
 - 12.1 disclosure measures i.e. what entities will need to disclose;
 - 12.2 disclosure periods; and
 - 12.3 class exemptions process.
- 13 The following objectives were used to develop the document's proposals:
 - 13.1 The information disclosed and published is useful to potential users;
 - 13.2 The cost of reporting is taken into account;
 - 13.3 Reporting should be as simple as possible;

- 13.4 Unintended consequences are minimised; and
- 13.5 Administration of the regime must be effective and responsive to reporters and users.

Disclosure measures

- 14 The Bill requires reporting entities to report on measures relating to their payment practices, in line with the Bill's aim to bring transparency to business-to-business payment practices. As agreed by Cabinet, reporting entities will be required to disclose data that demonstrates their payment practices with regards to late payments as well as the length of their payment terms [CAB-21-MIN-0546 and CAB-22-MIN-0300.01 refer].
- 15 In consultation with industry experts and professional organisations such as the Chartered Accountants Australia New Zealand (CAANZ) and Business New Zealand, my officials assessed potential measures drawn from similar reporting regimes overseas, and common measures for businesses' internal cashflow reporting.
- 16 The measures are the most important part of the regime and will ultimately determine whether the disclosures under the regime will enable businesses to make informed decisions about who to do business with. The discussion document provides a short technical description and rationale for each measure. The number and set of measures may not be as extensive as those identified in the discussion document, dependent on the submissions received.
- 17 The proposed set of measures cover:
 - 17.1 business payment practices and overdue payments;
 - 17.2 payment terms set by reporting entities;
 - 17.3 payment terms required by customers of reporting entities; and
 - 17.4 late and overdue payments received by reporting entities.
- 18 Table 1, provided on the following page, gives a full list of the discussion document's proposed measures.

Disclosure periods

- 19 The BPP Bill will require reporting entities to disclose their payment practices information twice a year. Notices will be used to allocate the disclosure periods.
- 20 The main factors that officials considered in identifying the disclosure period options were:
 - 20.1 comparability between reporting entities (whether seasonal effects may impact on payment practices); and
 - 20.2 alignment with other reporting requirements.

Table 1 – Reporting measures proposed in the Business Payment Practices discussion document

Proposed measure – and brief description	
1	Average number of days to pay invoices from suppliers e.g. “16.02 days” Provides an easily comparable summary measure for payments to suppliers.
2	Percentage of the number of invoices that were paid within the agreed payment period e.g. “93%” Provides an easy comparison of how often a reporting entity pays its invoices on time.
3	Percentage of invoices paid in full during the reporting period e.g. “100%” Gives the proportion of invoices paid in full (including late payments) during the reporting period.
4	Percentage of invoices unpaid 61 days or more after receipt of invoice e.g. “0%” Indicates how many payments are made well beyond the time businesses usually receive payment.
5	Average late payment time e.g. “0.2 days” Indicates how long suppliers wait for payment after the agreed due date for an invoice.
6	The proportion of total number of invoices paid within: 0 – 20 days; 21 – 30 days; 31 – 60 days; 61 – 90 days; 91 – 120 days; over 120 days
7	The proportion of total value of invoices paid within: 0 – 20 days; 21 – 30 days; 31 – 60 days; 61 – 90 days; 91 – 120 days; over 120 days Measures 6 and 7 illustrate the spread of reporting entities’ payment times. Note that separate measures for the number of, and value of, invoices can provide complementary information. For example, a large number of invoices could be paid quickly while only accounting for a small proportion of total expenditure
8	Average number of days for receipt of payment e.g. 10.02 days This relates to the invoices the reporting entity itself issues, and how long the reporting entity’s customers take to pay them.
9	Percentage of invoices received on time e.g. 98% This provides a comparison of how often a reporting entity’s invoices are paid on time by its customers.
10	What are your standard payment terms offered to your suppliers in calendar days? e.g. 15 days, 30 days, and 60 days This informs potential suppliers what payment terms it can expect to be offered from reporting entities.
11	What other payment practices does the entity employ? (pick all that apply) <i>Options include: “Offers eInvoicing to suppliers”; “Offers supply chain finance”; “Offers more favourable terms for small businesses”; “Charges to businesses that remain on the entity’s supplier list”; “Other (please specify)”</i> This measure provides additional qualitative information relating to reporting entities’ payment practices that are not directly related to payment times or late payments.

Class exemptions

- 21 The Bill provides the responsible Minister with the ability to exempt a class of reporting entities from the regime by notice. If an exemption is granted to a class of entities, they will not have to disclose their payment practices.
- 22 The discussion document outlines the exemptions process but does not make any recommendations or suggestions on classes of entities that could be exempted from the regime.

Next steps and timing

- 23 Minor editorial refinements may need to be made to the discussion document prior to its release. I seek Cabinet's agreement for me to approve the final text for release.

Approach to public engagement on the discussion document

- 24 I propose that consultation on the discussion document should occur in parallel with consideration of the Bill by the Select Committee. This would provide stakeholders with more detailed information about how the BPP regime is intended to work in practice and this may assist them in developing submissions on the Bill.
- 25 The discussion document will be published on the Ministry of Business Innovation and Employment's "Have your say" web page.
- 26 The discussion document will be publicised through business.govt.nz, its mailing list, and through partnerships with government agencies and professional groups such as BusinessNZ, Chartered Accountants Australia and New Zealand (CAANZ), and the External Reporting Board. The public will be able to make submissions on the discussion document via the consultation platform, by post, or by email.

Report back following feedback and analysis

- 27 The feedback from public submissions and engagement with targeted groups will be analysed and inform subsequent policy advice. I intend to report back to Cabinet seeking policy decisions on the secondary legislation as soon as possible after the Select Committee reports back on the Bill.
- 28 The secondary legislation needs to be finalised prior to enactment. This is because the Bill is due to commence nine months after Royal assent and Cabinet has agreed that reporting entities will be required to register and disclose the required information on the Business Payment Practices register within six months of the regime coming into force [CAB-21-MIN-0546 refers].

Financial Implications

- 29 The release of the discussion document does not have any financial implications. The Ministry of Business, Innovation and Employment will meet the costs of undertaking consultation from within baselines.

- 30 Any further financial implications caused by final decisions on the Bill's secondary legislation will be outlined in a Regulatory Impact Assessment accompanying the Cabinet Paper seeking policy decisions on the Bill's secondary legislation.

Legislative Implications

- 31 The proposals in this paper have no direct legislative implications.
- 32 Following consultation on the discussion document, I intend to seek Cabinet's approval of the proposed secondary legislation shortly after the Select Committee reports back on the Bill.

Impact Analysis

Regulatory Impact Assessment

- 33 The Regulatory Impact Analysis panel at the Ministry of Business, Innovation and Employment has reviewed the discussion document and confirms that it substitutes as an interim Regulatory Impact Statement. The discussion document is likely to lead to effective consultation and support the delivery of Regulatory Impact Analysis to inform subsequent decisions.

Climate Implications of Policy Assessment

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

Population Implications

- 35 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 communities, and ethnic communities).

Human Rights

- 36 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 were considered by the Ministry of Justice during the Business Payment Practices Bill's drafting process.

Consultation

- 37 The Ministry of Justice, the Office of the Privacy Commissioner, the Treasury, and the Companies Office have been consulted and their feedback has been incorporated into this paper. The Department of the Prime Minister and Cabinet has been informed.

Communications

- 38 The Minister for Small Business will announce the proposal around the time the Business Payment Practices Bill is introduced to Parliament or has its first reading in November 2022.
- 39 A communications/engagement plan is being prepared.

Proactive Release

- 40 This paper will be published on the Ministry of Business, Innovation and Employment's website within 30 business days of the Bill having its First Reading, subject to withholdings as appropriate under the Official Information Act 1982.

Recommendations

The Minister for Small Business recommends that the Committee:

- 1 **note** that in December 2021, Cabinet agreed to establish a Better Business Payment Practices reporting regime to bring transparency to business-to-business payment practices across the economy [CAB-21-MIN-0546 refers]
- 2 **note** that on 20 October 2022, the Cabinet Legislation Committee is being asked to approve the introduction of the Business Payment Practices Bill to the House
- 3 **note** that delegated legislation making powers within the Bill provide the flexibility for information disclosure requirements, disclosure periods, and exemptions to the regime, to adapt and improve over time
- 4 **agree** that the Ministry of Business, Innovation and Employment undertakes public consultation on the attached discussion document at the same time as the Select Committee is consulting on the Bill
- 5 **authorise** the Minister for Small Business to make any necessary minor technical amendments to the discussion document before it is released

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

- 6 **invite** the Minister for Small Business to seek Cabinet approval of the proposed secondary legislation shortly after the Select Committee has reported back on the Bill.

Authorised for lodgement

Hon Stuart Nash

Minister for Small Business

IN CONFIDENCE

Annex One: Business Payment Practices Regulations (the discussion document)

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