



## COVERSHEET

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

### List of documents that have been proactively released

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

### Information redacted

**NO**

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

## **IN-CONFIDENCE**

Office of the Minister for Small Business  
Cabinet Legislation Committee

## **Business Payment Practices Act Regulations**

### **Proposal**

- 1 This paper seeks authorisation for submission to the Executive Council of the *Business Payment Practices Regulations 2023*, referred to in this paper as the Regulations. The Regulations are attached in the Annex.

### **Policy**

- 2 The Regulations give effect to Cabinet policy decisions on the reporting regime under the Business Payment Practices Act 2023 (the Act). The Act is intended to address the lengthy payment terms and late payments that characterise some business-to-business transactions. In particular, small-to-medium sized enterprises can be susceptible to 'take it or leave it' payment terms, and may not have financial reserves on hand to deal with the long wait times for payments that can result.
- 3 The Act requires that reporting entities must publicly disclose certain payment terms and practices on a public register. The Regulations specify the details of these disclosures. On 26 June 2023, Cabinet agreed that Parliamentary Counsel Office (PCO) develop regulations to give effect to the disclosure regime prescribed in the Act [CAB-23-MIN-0258].
- 4 The Regulations prescribe:
  - 4.1 what reporting measures to use (ie the information that must be disclosed by entities);
  - 4.2 what is a permitted departure in respect of errors made in a disclosure;
  - 4.3 the definition of invoice;
  - 4.4 goods, services or types of transaction for which disclosure is not required;
  - 4.5 the amounts of infringement fees and the maximum levels of infringement fines;
  - 4.6 forms for infringement notices and reminder notices.

### **Timing and 28-day rule**

- 5 I recommend the Regulations come into force from 26 May 2024, when the Act's operative provisions come into effect. No waiver of the 28-day rule is sought.

### **Compliance**

- 6 The Regulations comply with each of the following:
  - 6.1 the principles of the Treaty of Waitangi;

## IN CONFIDENCE

- 6.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
  - 6.3 the principles and guidelines set out in the Privacy Act 2020;
  - 6.4 relevant international standards and obligations.
- 7 The Regulations comply with the Legislation Design and Advisory Committee guidelines except to the extent that the maximum infringement fees exceed those referred to in chapter 25 of these guidelines. This is because they apply to New Zealand's largest organisations, and not individuals. The maximum infringement fees contained in the Regulations were decided by Cabinet and reflect what is set out in Section 52 of the Business Payment Practices Act 2023.

### Regulations Review Committee

- 8 There are no anticipated grounds for the Regulations Review Committee to draw the Regulations to the attention of the House under Standing Order 327.

### Certification by Parliamentary Counsel

- 9 The Regulations were certified by the Parliamentary Counsel Office (PCO) as being in order, for submission to Cabinet.

### Impact Analysis

- 10 Cabinet considered a Regulatory Impact Statement (RIS) along with the Cabinet paper seeking policy decisions. MBIE's Regulatory Impact Analysis Review Panel reviewed the RIS, and considered that the information and analysis summarised in the RIS met the criteria necessary for ministers to make informed decisions on the proposals in that paper.

### Publicity

- 11 MBIE will advise stakeholders on its contact list once the regulations are gazetted, and make a fact sheet and Q&A material publicly available. MBIE will provide detailed guidance material for practitioners in due course.

### Proactive release

- 12 I intend to proactively release this paper and its associated minute, with any appropriate redaction where information would have been withheld under the Official Information Act 1982. I will also proactively release the RIS at this time.

### Consultation

- 13 MBIE issued a discussion document on the proposed regulations, and subsequently held in-person discussions with a wide variety of stakeholders. The full record of the feedback received, and entities consulted with, is set out in the RIS.
- 14 Justice's Offence and Penalty vetting team was consulted on the proposed infringement fees and fines.
- 15 MBIE circulated this Cabinet paper and the draft Regulations to the following agencies (through the Government Finance Profession network): ACC, Corrections, Defence, Education, Health, Inland Revenue, Internal Affairs, Justice, Pacific Peoples, Police, Primary Industries, Te Puni Kōkiri, and the Treasury.

## Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that, on 26 June 2023, Cabinet agreed that Parliamentary Counsel Office (PCO) develop regulations to give effect to the disclosure regime prescribed in the Act [CAB-23-MIN-0258];
- 2 note that the *Business Payment Practices Regulations 2023* give effect to Cabinet's policy decisions and prescribe the following:
  - 2.1 what reporting measures to use (ie the information that must be disclosed by entities);
  - 2.2 what is a permitted departure in respect of errors made in a disclosure;
  - 2.3 the definition of invoice;
  - 2.4 goods, services or types of transaction for which disclosure is not required;
  - 2.5 the amounts of infringement fees and the maximum levels of infringement fines;
  - 2.6 forms for infringement notices and reminder notices.
- 3 authorise the submission to the Executive Council of the *Business Payment Practices Regulations 2023*;
- 4 note that the *Business Payment Practices Regulations 2023* come into force on 26 May 2024.

Authorised for lodgement

Hon Ginny Andersen  
Minister for Small Business



# Cabinet Legislation Committee

## Minute of Decision

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

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### Business Payment Practices Act Regulations 2023

**Portfolio**                      **Small Business**

On 24 August 2023, the Cabinet Legislation Committee:

- 1        **noted** that in June 2023, the Cabinet Economic Development Committee (DEV) agreed to develop regulations to give effect to the disclosure regime prescribed in the Business Payment Practices Bill [DEV-23-MIN-0122];
- 2        **noted** that the Business Payment Practices Regulations 2023 give effect to DEV's decisions and prescribe the following:
  - 2.1      what reporting measures to use (i.e. the information that must be disclosed by entities);
  - 2.2      what is a permitted departure in respect of errors made in a disclosure;
  - 2.3      the definition of invoice;
  - 2.4      goods, services or types of transaction for which disclosure is not required;
  - 2.5      the amounts of infringement fees and the maximum levels of infringement fines;
  - 2.6      forms for infringement notices and reminder notices.
- 3        **authorised** the submission to the Executive Council of the Business Payment Practices Regulations 2023 [PCO 25688/10.0];
- 4        **noted** that the Business Payment Practices Regulations 2023 come into force on 26 May 2024.

Rebecca Davies  
Committee Secretary

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**Attendance: (see over)**

**Present:**

Hon Kelvin Davis  
Hon Grant Robertson (Chair)  
Hon Damien O'Connor  
Hon Andrew Little  
Hon David Parker  
Hon Ginny Andersen  
Hon Barbara Edmonds  
Hon Rachel Brooking  
Hon Jo Luxton

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG