



## COVERSHEET

<b>Minister</b>	Hon Andrew Bayly	<b>Portfolio</b>	Office of the Minister for Small Business and Manufacturing
<b>Title of Cabinet paper</b>	Repeal of the Business Payment Practices Act 2023	<b>Date to be published</b>	21 February 2024

<b>List of documents that have been proactively released</b>		
<b>Date</b>	<b>Title</b>	<b>Author</b>
February 2024	Repeal of the Business Payment Practices Act 2023	Office of the Minister for Small Business and Manufacturing
14 February 2024	Repeal of the Business Payment Practices Act 2023 ECO-24-MIN-0001 Minute	Cabinet Office

### **Information redacted**

**YES / NO** (please select)

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## IN-CONFIDENCE

Office of the Minister for Small Business and Manufacturing  
Cabinet Economic Policy Committee

### Repeal of the Business Payment Practices Act 2023

#### Proposal

- 1 This paper seeks Cabinet's agreement to repeal the Business Payment Practices Act 2023 (the BPP Act) and its regulations.

#### Relation to government priorities

- 2 The BPP Act will impose significant compliance costs on more than 3,000 New Zealand firms without solving the problem of overly long business payment times. This approach is contrary to our policy agenda, which is to reduce compliance costs and make it easier to do business in New Zealand. Accordingly, I seek Cabinet's agreement to repeal this law. I intend to address issues around business payment times with non-regulatory mechanisms.

#### The Act addresses a real problem, but is not a good solution

- 3 The BPP Act requires large businesses to disclose their payment terms and practices on a public register. It gained royal assent on 26 July 2023 and will come into force on 26 May 2024.
- 4 Changes I put forward in the select committee achieved some improvement to the draft bill, such as increasing the amount entities must spend to be included in the regime to \$10 million, allowing for minor errors, and excluding irrelevant expenditure from the reporting regime. These changes made the scheme more workable, but were not sufficient to make it effective.
- 5 There is a problem with late payments and long payment terms by large market players. This impacts small businesses in particular. The BPP Act aims to enable small businesses to make more informed choices about which customers to engage with. But small businesses are time poor and searching for data about payment times on MBIE's website is unlikely to be a priority for them.
- 6 Nor is it likely to impact their commercial decisions. A recent review of Australia's Payment Times Reporting Scheme, on which the BPP Act is modelled, noted that even if small businesses can interpret the data on the register, they have no ability to pick and choose their large customers based on the data reported.
- 7 Small business owners already have the option of obtaining information on which companies have payments in arrears through a credit agency. For example, Centrix charges \$35 to provide this information. The advantage of using a credit agency is that the information is updated in real-time, whereas the information that would be provided under the BPP Act could be up to six months old.

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- 8 If Cabinet agrees to repeal the BPP Act, I recommend giving businesses certainty now. Many businesses' payment systems do not collect the exact date invoices are received, but this data will be required to be collected by businesses in scope of the BPP Act as it is the starting point for all the calculations. For some firms, the ICT work involved in making their payments systems compliant will be substantial.
- 9 To ensure businesses are not compelled to do this work unnecessarily, I would like for the repeal legislation to be passed through all of its stages under urgency. Failing that, I will seek a truncated select committee period.
- 10 In some cases, businesses have already incurred ICT costs. This is unfortunate but is not a sufficient reason to retain the BPP Act. Enabling the BPP Act to come into force will also impose ongoing costs, as not all data collation can be automated and manual intervention will still be required.

### **I will advance more effective solutions to address the issue of long and late business payment times**

- 11 Long and/or late payments are a big issue for New Zealand's small businesses. When large organisations take a long time to pay their bills, small businesses with limited working capital are the ones who suffer. Sometimes it is because large players unfairly use their market power – and other times it results from smaller businesses not being able to pay quickly because of their own cashflow challenges.
- 12 I intend to return to Cabinet later this year to seek decisions on the following measures, after further work is undertaken on their design:
  - 12.1 **Improve on government departments' ten-day payment target by setting a five working day payment time target for eInvoices.** This will provide a commercial incentive for businesses to use eInvoices. It will also ensure that government-to-business payment times continue to improve. As a first step, MBIE officials will consult with departmental Chief Financial Officers on the implementation phasing and other details.
  - 12.2 **Require Crown entities to be eInvoicing send/receive capable.** Many of our international trading partners have already implemented this. It will drive wider business adoption of eInvoicing, to which there is an estimated \$400 million NZD annual productivity benefit for our economy. eInvoicing, in turn, facilitates faster payment times.
  - 12.3 **Expand the payment targets from core departments to Crown entities.** Currently the 10 day payment time target only applies to government departments. But Crown entities account for a high proportion of the \$51.5 billion the government spends with third party suppliers each year. I will seek the Minister of Finance and Public Services' agreement to start the process of extending the payment time targets to Crown entities by consulting with them in accordance with s107 of the Crown Entities Act 2004.
- 13 In addition to these initiatives I will also:
  - 13.1 **Proactively publish independently verified government payment times.** MBIE collates government departments' payment time information, but does not

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proactively publish it. Doing this will provide a stronger incentive on agencies to meet their payment times targets. I intend that these results are backed up by independent verification. MBIE officials will work with reporting agencies to identify a cost-effective means of doing this.

**13.2 Work with business leaders on an industry-led commitment.** The Australia Business Council's Supplier Payment Code commits signatories to pay small business suppliers within 30 days. I would like to see a similar industry-led approach taken here. This could be part of a broader voluntary commitment of support for small-business friendly practices, such as using eInvoicing where a small business supplier requests this.

**13.3 Raise awareness of existing redress options and work with the Commerce Commission (ComCom) to be more proactive in using them.** The Fair Trading Act 1986 includes a process for the ComCom to enforce and seek penalties against a business's use of unfair contract terms. In 2021 this provision was extended to capture grocery supply contracts up to the value of \$1,000,000. In 2023 it was further extended to capture business-to-business contracts up to the value of \$250,000. As a first step, MBIE will better publicise this process. I also intend to highlight to the ComCom that it should consider ways to ensure that this provision operates as was intended.

### Financial implications

- 14 MBIE is legally required to implement the BPP Act until the repeal takes effect. This means it must have the Business Payments Register up and running by December 2024 at the latest. If Parliament repeals the Act under urgency, however, it should be able to avoid most development costs.
- 15 As already noted, many reporting entities also need to make ICT changes to be ready for the Act coming into force. Repealing it without delay will help minimise the extent of any wasted expenditure.
- 16 There may be financial implications related to some of my other proposals. The implications will be set out in the information I provide Cabinet when seeking its agreement to these proposals.

### Legislative implications

- 17 Legislation will be required to repeal the BPP Act. This will involve repeal of:
  - 17.1 the Business Payment Practices Act 2023
  - 17.2 the Business Payment Practices Act Regulations 2023
- 18 Repealing the BPP Act is not a 100-day commitment but will reduce compliance costs and make it easier to do business in New Zealand. Also, businesses that need to change their payments systems to comply with the BPP Act are facing substantial costs. To minimise these, I suggest that it be a priority.

## Impact Analysis

- 19 The Treasury has confirmed that a Regulatory Impact Statement is not required because the proposal has no or only minor impacts on businesses, individuals or not-for-profit entities.

## Communications

- 20 Entities that must report under the legislation want certainty about the future of the regime. To provide them with transparency and certainty, I will make a public announcement confirming the Government's intention to repeal the BPP Act as soon as Cabinet agrees to the proposal.

## Proactive release

- 21 I intend to proactively release this paper and its associated minute when announcing the Government's intention to repeal the BPP Act.

## Consultation

- 22 MBIE has provided this paper to the Treasury, the Department of Prime Minister and Cabinet, Public Services Commission and Parliamentary Counsel Office. It has also circulated the paper to departmental Chief Financial Officers through the Government Finance Network.

## Recommendations

I recommend that Cabinet Economic Policy Committee:

### *Repeal of the Business Payment Practices Act 2023*

- 1 **Note** that the Government intends to reduce compliance costs and make it easier to do business in New Zealand;
- 2 **Note** that the Business Payment Practices Act 2023 will impose unjustified compliance costs on over 3,000 New Zealand businesses;
- 3 **Agree** to repeal the Business Payment Practices Act 2023 and the Business Payment Practices Regulations 2023;
- 4 **Invite** the Minister of Small Business and Manufacturing to issue drafting instructions to the Parliamentary Counsel Office to give effect to the repeal of the Business Payment Practices Act 2023 and its regulations;
- 5 **Authorise** the Minister of Small Business and Manufacturing to further clarify and develop policy matters relating to the repeal of the Business Payment Practices Act 2023 and its regulations;
- 6 **Note** that businesses need certainty now to avoid needless and expensive ICT changes, so I will seek an expedited parliamentary process;
- 7 **Note** that I will seek a Priority 2 (must be enacted in 2024) place on the 2024 Legislation Programme for this Bill;

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### *Non-regulatory mechanisms to address issues related to long business payment times*

- 8 **Note** that I intend to address issues related to long business payment times through the following measures:
- 8.1 improve on government departments' existing 10 day invoice payment target by setting a faster payment time target for eInvoices;
  - 8.2 work with the Minister of Finance and Minister for Public Services to require Crown entities to be eInvoicing send and receive capable;
  - 8.3 expand the invoice payment target to include Crown entities;
  - 8.4 proactively publish independently verified government payment times;
  - 8.5 work with business leaders on an industry-led commitment on payment times;
  - 8.6 raise awareness of existing redress options and require the Commerce Commission to be more proactive in using them.
- 9 **Note** that in relation to recommendation 8.1 above, I intend to take final proposals to Cabinet in April 2024, following consultation with departmental Chief Financial Officers
- 10 **Note** that recommendations 8.2 and 8.3 above could be implemented via a Government Direction under section 107 of the Crown Entities Act 2004, and that I will seek the agreement of the Minister of Finance and Minister of Public Services to undertake the required consultation;
- 11 **Note** that in relation to recommendations 8.2 and 8.3 above, I intend to take final proposals to Cabinet in mid-2024, following the consultation referred to in recommendation 10 above;
- 12 **Note** that in relation to recommendation 8.4 above, MBIE already collates government departments' payment time information and that proactively publishing these results will provide a stronger incentive on agencies to meet their payment times targets;
- 13 **Agree** that in relation to recommendation 8.4 above, government departments that are subject to the payment times targets be required to proactively publish their payment times on a central website, and that this requirement take effect once a mechanism has been established to ensure the veracity of the published data.

Authorised for lodgement

Hon Andrew Bayly  
Minister for Small Business and Manufacturing