

# Departmental Disclosure Statement

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Business Payment Practices Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by The Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 October 2022.

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## Part One: General Policy Statement

The purpose of this Bill is to introduce a regime which brings transparency to business-to-business payment terms and practices in New Zealand. That will lead to businesses having better information to inform their decision-making when trading and incentivise larger businesses to mitigate reputational risk by improving their business payment practices.

The regime will contribute to building an evidence base on business-to-business payment practices. That will support the Government to determine if there is a broader problem with extended payment terms, the scope and extent of that problem, and whether further regulatory intervention is warranted.

The Bill addresses feedback from small businesses that late payments and lengthy payment terms harm their business. Late payments lead to cash flow problems, businesses having to borrow funds temporarily, and, at worst, going out of business. That has wider implications for economic efficiency (for example, a higher cost of capital, or unnecessary insolvencies).

Under this regime, entities with more than \$33 million in revenue, including GST, for two or more consecutive accounting periods will be required to disclose their payment practices twice a year. In particular, these entities will need to disclose -

- payment practices in relation to late and overdue payments made; and
- practices in relation to the payment terms they set.

Entities will be required to submit a set of data twice yearly covering invoices received or paid, the time taken to pay invoices, and the proportion of invoices paid in full during the disclosure period, as well as other information relating to payment practices and policies. This data will be published on a publicly searchable register and on the entity's Internet site.

The Bill provides the Minister with the ability, via notice, to issue class exemptions from the payment practices disclosure requirements.

Entities will be required to certify their information disclosures.

The Bill provides for infringements, penalties, and criminal offences for contraventions of the obligations.

Payment practices information will be required to be submitted to, and held on, a publicly available and searchable register housed within the Ministry of Business, Innovation, and Employment. The Bill provides for the appointment of a registrar who will be responsible for the establishment and maintenance of the register and the associated assurance, compliance, and enforcement functions to support the integrity of the register. That includes providing for inspection powers, consistent with other similar Acts.

In order to give effect to the policy intent of transparency for business-to-business payment practices in New Zealand, the Bill will make minor amendments to 2 other Acts. An amendment will be made to the Summary Proceedings Act 1957 in relation to infringement offences and an amendment to provide for information sharing will be made to the Tax Administration Act 1994.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<p>Feedback from small businesses indicates that they can be harmed by late payments and lengthy payment terms, and this may have wider implications for economic efficiency. 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 firms. These problems are difficult to deal with effectively through our available regulatory and non-regulatory tools.</p> <p>Responses from MBIE's 2018 survey of New Zealand businesses<sup>1</sup> offer qualitative evidence of business owners' perceptions of how the settings and practice in this space impact on them and their business operations. Of the businesses surveyed:</p> <ul style="list-style-type: none"><li>• 49 percent said late payments hurt their cash flow,</li><li>• 48 percent said it increased their stress levels, and</li><li>• 30 percent said it impacted their ability to grow.</li></ul> <p>This survey also found that businesses experiencing cash flow problems because of late payments often delay paying their own invoices (25 percent), cover their business expenses by organising overdrafts or personal loans with their bank (31 percent) and/or use personal savings (38 percent)<sup>2</sup>.</p> <p>Research conducted by MYOB as part of its 2021 Business Monitor – a survey of more than 1,000 business owners and decision makers – found:</p> <ul style="list-style-type: none"><li>• In terms of frequency of late payments, 28 percent small and medium-sized enterprises (SMEs) say they 'sometimes' struggle with late payments from customers. One-in-ten SMEs say they 'often' struggle with late payments,</li><li>• One-in-five (20 percent) SMEs say they spend six hours or more invoicing and chasing payments each month, and</li><li>• Almost one-in-five (17 percent) SMEs say worrying about their business finances is affecting their mental wellbeing<sup>3</sup>.</li></ul> <p>More than a quarter (28 percent) of New Zealand's SMEs polled said that late payments from customers would be one of their biggest business pressures over the following 12 months<sup>4</sup>.</p>	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
N/A	

<sup>1</sup> In August and September 2018, MBIE commissioned a survey of 1,254 businesses across New Zealand about their experiences of sending and receiving invoices.

<sup>2</sup> In August and September 2018, MBIE commissioned a survey of 1,254 businesses across New Zealand about their experiences of sending and receiving invoices.

<sup>3</sup> MYOB Insights and Considerations: SME payment times, June 2021.

<sup>4</sup> MYOB Insights and Considerations: SME payment times, June 2021.

<b>2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?</b>	<b>N/A</b>
N/A	

### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>YES</b>
The regulatory impact statement (RIS) was entitled Better Business-to-Business Payment Practices. This was authored by the Small Business Policy team in MBIE and was dated 2 December 2021. An amendment was proposed on 7 July 2022 due to a policy change but Treasury considered that this policy change was not significant enough to require a revision of the RIS.	

<b>2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?</b>	<b>NO</b>
The RIS team at the Treasury did not provide an independent opinion.  MBIE's Regulatory Impact Assessment Review Panel reviewed the Regulatory Impact Statement prepared by MBIE. The Panel considered that the information and analysis summarised in the Regulatory Impact Statement met the Quality Assurance criteria. In making this assessment, the Panel noted there had not been broader consultation on the preferred option but considered this was mitigated by targeted consultation that had occurred and the intention to consult on an exposure draft of the proposed legislation in due course.	

<b>2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?</b>	<b>YES</b>
One significant policy change has been made (the threshold for entities being captured by the framework). MBIE advised Treasury of the change. Treasury advised that the policy change was not substantial enough to impact on the RIS.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
There have been no further reports. However, MBIE officials have liaised with Australian officials on their experience and learnings from their business payment practices legislation (introduced in 2020) and this has informed the work.	

<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>YES</b>
<p>MBIE has assessed the costs of this initiative. These will involve establishing a register and the appointment of a registrar.</p> <p>The benefits are hard to ascertain. Australian officials have reported that the benefits/costs are hard to assess and benefits are likely to be hard to quantify. This policy is being implemented as it is a Government manifesto commitment and the Government wishes to implement an initiative which supports small businesses.</p> <p>This Bill will lead to minor compliance costs to reporting entities, in the form of time and resources dedicated to collating and then disclosing payment practices on a register and their own website.</p> <p>There will no substantial loss of wealth or income to any group of persons from this Bill.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>YES</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>YES</b>
<p>It will be important to have a high level of compliance. In particular, as many reporting entities as possible need to be disclosing their business payment practices for the register to provide comprehensive and meaningful information to the public and businesses about payment practices.</p> <p>To achieve this, MBIE will need to promote and provide education about the register and ensure reporting entities know about their responsibilities and understand how to comply with the regime.</p> <p>MBIE will also promote the benefits of the information on the register, particularly to smaller businesses and encourage them to search the register.</p>	

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

**3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?**

N/A

### Consistency with the government's Treaty of Waitangi obligations

**3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?**

The Bill requires large entities to disclose payment practices, information on a register and internet site, which are freely accessible. Māori businesses will not be penalised by, or disproportionately benefit from, the regime established by this Bill. MBIE advise that this Bill is likely to have no effect on Māori outside of its general effect on small and large businesses, and that it is consistent with the principles of the Treaty of Waitangi.

The Companies Office, who will likely be responsible for implementing the register, has resources to ensure the user experience is appropriate for Māori reporting entities, and general users of the information.

MBIE will ensure that the discussion document on the regime's secondary legislation (detailing exemptions, reporting measures, and reporting periods) makes use of communication channels that ensure that Māori are sufficiently consulted, and have ample opportunity to influence the design of secondary legislation.

### Consistency with the New Zealand Bill of Rights Act 1990

**3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?**

YES

The Bill has been considered by the Bill of Rights Act team. Vetting has confirmed that the Bill does not appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>YES</b>
<p>The Bill contains a range of compliance and enforcement tools available to implement and enforce the business payment practices requirements. These range from compliance notices, and infringement offences to pecuniary penalties and criminal sanctions.</p> <p>A reporting entity that commits an infringement offence may be liable to an infringement fee not exceeding \$3,000 or an infringement fine, imposed by the court, not exceeding \$9,000.</p> <p>The High Court, may on the application of the registrar, order a person to pay a pecuniary penalty for failing to comply with a compliance notice. The amount of any pecuniary penalty must not exceed \$50,000 for an individual for each act or omission, or \$500,000 in any other case.</p> <p>The Bill provides that a criminal offence should apply where a person obstructs or hinders the registrar from monitoring and investigating compliance with the regime's requirements, and where a person knowingly or intentionally files materially false or misleading information, either through provision of false information or omission of material information. For criminal offences, the legislation provides 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.</p> <p>The penalty for a criminal offence in the Bill does not include terms of imprisonment. The proposed offences and penalties in the Bill r are consistent with similar legislation.</p>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>MBIE has consulted with the Ministry of Justice (MoJ). The MoJ has agreed that fees are proportionate and appropriate for the infringements and offences which might be committed against the Bill.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>YES</b>
<p>As with other registers, the Bill will lead to the collection and storage of some personal information. A PIA has been prepared and the Office of the Privacy Commissioner has agreed that the Bill meets privacy requirements.</p>	

<b>3.5.1. Was the Privacy Commissioner consulted about these provisions?</b>	<b>YES</b>
<p>Yes. The Privacy Commissioner has accessed the Privacy Impact Assessment and agrees that the Bill meets privacy requirements.</p>	

## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>In July 2019 the Government-appointed Small Business Council 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.</p> <p>The New Zealand Institute of Chartered Accountants, MYOB, Foodstuffs, Xero, Dalton, NZ Post, Business New Zealand, Mainfreight, BDO New Zealand Ltd, New Zealand Credit and Finance Institute Inc, and Livestock Improvement Corporation were consulted during July and August 2021. Organisations consulted expressed general support for disclosure requirements and publication of payment time information.</p> <p>During 2022, Business New Zealand, Taituarā: Local Government Professionals Aotearoa and the Chartered Accountants of Australia and New Zealand were consulted.</p> <p>In August 2022, MBIE discussed proposals with the Australian Treasury and sought advice on their experience with their own business payment practices regime.</p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
<p>The New Zealand Institute of Chartered Accountants, MYOB, Foodstuffs, Xero, Dalton, NZ Post, Business New Zealand, Mainfreight, BDO New Zealand Ltd, New Zealand Credit and Finance Institute Inc, and Livestock Improvement Corporation were consulted during July and August 2021. Organisations consulted expressed general support for disclosure requirements and publication of payment time information.</p> <p>During 2022, Business New Zealand Taituarā: Local Government Professionals Aotearoa and the Chartered Accountants of Australia and New Zealand were consulted.</p> <p>In August 2022, MBIE discussed proposals with the Australian Treasury and sought advice on their experience with their own business payment practices regime.</p> <p>The Companies Office has also been consulted to ensure that the Bill's provisions are workable and able to be implemented.</p>	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
N/A	

### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
N/A	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
N/A	

### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>NO</b>
The infringement offences in the Bill are strict liability offences.	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
N/A	

### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
N/A	

## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>YES</b>
The Bill gives the Minister the ability to exempt a class of reporting entities from all or any of its obligations, by notice.	

<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
The Bill states that the Governor-General may, by Order in Council, make regulations. The regulation provisions cover the particular payment practice information to be disclosed, the form of infringement notices and reminder notices, set the fees (up to a maximum of \$3,000) and fines (up to a maximum of \$9,000) for each infringement offence and provide for anything incidental to carry out or give full effect to the Bill.  The Bill also states that the registrar may, by notice, specify disclosure periods (the periods for which a reporting entity must make a disclosure) and disclosure deadlines.	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
N/A	