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Dear Sir/Madam

## **Re: Business Payment Practices Regulations**

### **Background**

I am writing to you regarding the Ministry of Business, Innovation & Employment (MBIE) Discussion Document, entitled *Business Payment Practices Regulations* (referred to as 'the Discussion Document').

Given the introduction of the Business Payments Practices Bill in November 2022 that will lead to a new payments practices disclosure regime, the Discussion Document seeks feedback in relation to the new regulations as they are developed over 2023. We know that a number of BusinessNZ's members and related associations will be submitting on the Discussion Document. In addition, we know that a number of our members have already outlined specific process issues for their business to MBIE, as well as taking the opportunity to formally submit on the Discussion Document. Therefore, BusinessNZ would like to provide some overarching thoughts, as well as answer some of the questions raised.

## **SECTION 1: OVERALL COMMENTS & THOUGHTS**

### **Business Payments Practices Bill**

BusinessNZ took the opportunity to submit on the associated Business Payments Practices Bill. In it, we raised a number of issues for the Select Committee to consider. Given the strong relationship between the Bill and the Discussion Document, as well as the fact that the report back from the Select Committee will not take place until after submissions have closed on the Discussion Document, we will take the opportunity to again raise some of these issues.

In relation to the threshold of \$33m revenue to be defined as a large entity, BusinessNZ notes that in Australia this is \$100m. This is a considerable difference with our closest and largest economic neighbour. Therefore, BusinessNZ would welcome lifting the New Zealand \$33m threshold because of the degree of Trans-Tasman business. The sizeable threshold discrepancy between the two countries means that it will likely be the case that a number of Australian companies not reporting under their rules would need to start reporting for their New Zealand operations. For Trans-Tasman reporting entities, this would increase the compliance and regulatory burden, with the risk of some companies misunderstanding these expectations with unintentional omissions.

BusinessNZ also believes that despite best intentions, there will still be a number of entities that may struggle to implement the required disclosures, especially given the relatively low threshold for inclusion compared with Australia. We note the Australian regime had a one-year exception/grace period to ensure they understood the requirements and to collate the required data.

Only once the full regime is known and the Registrar issues a gazette can entities begin to introduce the necessary business changes, which in some cases may require complicated re-engineering of their reporting practices. For this reason, and for the benefit of influencing and improving business payment practices amongst “large” entities, MBIE must carefully consider timeframes around implementation, which we go into greater detail below.

### **Timing of Consultation**

Before discussing particular aspects of the Discussion Document, BusinessNZ congratulates MBIE for providing a sufficient amount of time for submissions to be sent. We note that when the Issues Paper on *Business-to-Business Payment Practices* was released on 26 February 2020 with a subsequent deadline of 14 April for submissions, the extraordinary and unprecedented events that took place in relation to COVID-19 hit the business community extremely hard, with almost all resources reallocated to assist with stopping the spread of the virus. While MBIE decided to amend the deadline for submissions to 1 May, some of our members only discovered

the extension after their submission had been sent in after the deadline anyway, due to resources being so stretched.

Therefore, it is pleasing to see that MBIE have been pragmatic and reasonable with the current consultation period for the Discussion Document, by taking into account Christmas and the holiday period, thus providing a total consultation period of four months. As we will discuss below, ensuring adequate timeframes around consultation and also implementation are critical to ensure a quality regulatory outcome, including compliance costs are minimised as much as possible.

### **Australian System and Review**

Given the close relationship between the Australian and New Zealand markets, any discussion around Business Payment Practices Regulations (BPPR) in New Zealand needs to take into account the relatively recent Australian regime, including its requirements and also the recently announced review by the Australian Government.

Overall, the general view of the business community in Australia has been that their reporting requirements are considered complex. There are approximately 60 fields of information that need to be reported on their official Payment Times Reporting Template. However, in terms of payments measures, the key focus has been the proportion, which is determined by total number and total value, of small business invoices paid by an entity in each of the following periods:

- Within 20 days after the issue day
- 21-30 days after the issue day
- 31-60 days after the issue day
- 61-90 days after the issue day
- More than 120 days after the issue day

This information needs to be reported by total number and total value, of small business invoices in aggregate against each of the day bands stipulated. These proportions are expressed as percentages only. Large businesses and government enterprises must submit payment times reports to the Payment Times Reporting Regulator (the regulator) every six months.

Alongside New Zealand's Government's work towards the introduction of BPPR, we note that on 6 December 2022 the Australian Government announced an independent review of their *Payment Times Reporting Act 2020* and released the terms of reference for the review. A written report is to be provided to their Government by 30 June 2023.

BusinessNZ believes the concurrent Australian review provides an opportunity to examine and learn from what Australia is doing right and wrong. General consensus with those BusinessNZ members that have Australian operations is that there are still a range of niggling issues with the Australian regime. However, understanding the

Australian regime is desirable so as to enable lessons to be learned from that implementation and where feasible, increase efficiency by standardising systems demands and reporting for payment system-providers and entities operating on both sides of Tasman.

However, at the same time we should also tread cautiously when examining their review given the Australian Government are now considering putting in mandatory payment timeframes. This is less than three years since the reporting requirements were enforced. BusinessNZ would certainly not want New Zealand to follow in that same direction, namely the degree of regulatory overreach that the Australian Government are now exhibiting.

Instead, we would expect the Australian review to assist in bringing key issues to light and show how they can be rectified so as to avoid the same mistakes on this side of the Tasman.

***Recommendation: MBIE considers potential changes and improvements in the Australian BPPR regime to improve ours.***

### **Compliance for Large Vs Medium Sized Businesses**

While the Discussion Document states that "*compliance costs to produce the measures below should be modest, and that reports should be able to be automated*", we do not believe this provides an accurate assessment of what those affected will likely experience, particularly over the first 1-2 years. Instead, BusinessNZ expects there to be anywhere between a reasonable to significant amount of compliance costs for many businesses who have to comply during the early days of the BPPR. This will typically involve setting up systems to collate the required data in the form required, as well as to understand the nuances of how the rules apply and any detailed guidance provided.

Delving into this initial compliance period further, in previous submissions on regulatory/compliance matters, BusinessNZ has often highlighted the need to recognise key differences between large and small businesses around their ability to comply with new regulations. However, in this instance, our concern is around the ability of medium-sized businesses to take on this additional compliance burden.

While, on balance, we would expect large-sized businesses to be able to cope better with the introduction of a BPPR, feedback from members suggests that for many medium-sized businesses in particular, there will need to be a lot of manual data manipulation to undertake the calculations required based on the draft regulations. If chosen correctly, we do not believe the required calculations will be insurmountable for medium-sized businesses. However, they will nevertheless take a relatively greater proportion of time and resources compared with large businesses. In turn, this means that timeframes around implementation need to be well thought through, with a view towards more, rather than less, time to prepare.

**Timeline for Future Steps**

Page 9 of the Discussion Document states that *"Once the regulations and notices are finalised, we need to provide enough time and guidance for reporting entities to familiarise themselves with the new reporting obligations and make any necessary adjustments to their reporting systems"*.

In relation to Australia currently going through a review of their own BPPR scheme, Table 1 below outlines MBIE’s indicative timeline for the BPPR process, which includes both the Bill and Discussion Document.

**Table 1: MBIE’s Indicative Timeline for Business Payment Practices Regulations**

<b>Date</b>	<b>Process</b>
28 October 2022	Business Payment Practices Regulations Discussion Document released
8 November 2022	First reading of Bill
Mid-November 2022 – end of April 2023	Select Committee
8 January 2023	Deadline for Select Committee written submissions
26 February 2023	Deadline for regulations submissions
May 2023	Policy decisions to be made on regulations
August 2023	Estimated date of enactment
May 2024	Estimated date the scheme is operational

In our submission on the associated Bill, BusinessNZ pointed out that the report back from the Select Committee will not be until 27 April, yet submissions on the Discussion Document are due 26 February. However, the timeframes above show policy decisions being made on the regulations in May 2023, an estimated date of enactment in August 2023, and an estimated date the scheme is operational in May 2024.

BusinessNZ believes there are three issues with the indicative timeline that MBIE needs to consider. First, we are conscious of the fact that the structure of the Bill may differ from its original draft once the Select Committee has had time to consider submissions and advice from officials. It may be the case that further consultation is required from the private sector following the report back from the Select Committee, given the flow-on effects on options and discussions in the Discussion Document.

Second, general feedback from our membership has indicated that the estimated date the scheme is operational (May 2024) is materially insufficient for those affected to have all their processes and systems in place to comply with the new regulations, no matter what measures are chosen. For many members, the indicative timeframe for finalisation is simply too optimistic and the period for implementation too short. In addition, if it comes to pass that there are further issues that will need to be worked on following the report back by the Select Committee, this would make the indicative timeline even less workable.

Third, while it could be argued that the Australian regime was rolled out in a relatively quick time period, there was essentially no compliance for the first year, with this period required by many entities to get their systems in order to undertake the reporting with sufficient accuracy.

To minimise issues around a potential tight timeframe, BusinessNZ believes two changes need to be made. First, MBIE needs to allocate sufficient time to work through the final version of the Bill that passes into law and the potential flow-on decisions that will need to be made concerning the Discussion Document. If there are significant changes to the Bill that create uncertainty about the regime, increasing the timeframe to ensure effective consultation can take place would be a logical step forward.

Second, members have indicated that the period from all the detail of the regime being known (i.e. regulations made and any relevant supporting guidance issued) to the first reporting period beginning needs to be sufficiently long to be workable. Therefore, we believe a more realistic timeframe around enactment and operational date would see the former in the first quarter of 2024, and the latter in mid-2025. We believe such a timeframe would be significantly more agreeable from the broad business community, and ensure a well-thought-through and considered regulatory process.

***Recommendation: Date of enactment is extended out to the first quarter of 2024, and the operational date is extended out to mid-2025.***

### **Definition of an Invoice**

Common feedback from members believe a definition of an invoice for the purposes of the regime is a crucial element to ensure entities are able to properly comply. In addition, guidance around when an invoice is deemed to be received is also central to the workability of collecting and disclosing information on payment times.

However, a specific definition of "invoice" does not appear to be discussed in the Discussion Document. Looking ahead, we believe careful engagement with the private sector is required on this, including with a range of sectors that will likely have entities that will need to comply.

Last, invoice issue (receipt) day is discussed in annex one of the Discussion Document. Overall, members generally support the Australian approach that is likely to be used in New Zealand (i.e. "Invoice issue (receipt) day" is when an invoice is received by the reporting entity in accordance with the contract's invoicing requirements).

***Recommendation: A clear and concise definition of an invoice is provided, along with guidelines around when an invoice is deemed to have been received.***

## **Future Review**

Last, Section 3 of the associated Regulatory Impact Statement (RIS) for the Discussion Document outlines how the new arrangements will be monitored, evaluated and reviewed.

We note that the RIS states that *"Formal evaluation and review of the regime would be undertaken within three years of commencement. The terms of reference for the review would be informed by the monitoring data and findings"*. BusinessNZ strongly supports a formal review within three years.

While BusinessNZ understands the need to examine the data to help shape the review, we also believe it is important for MBIE to seek early feedback from the business community around how well the regime is fairing from an administrative and compliance perspective. Simply examining the data may not provide the entire story around how successful or otherwise the regime has been for business payment practices, as it may not show certain underlying problems that businesses are facing with requirements.

Therefore, it is pleasing to see that the RIS outlines a process for both formal monitoring and evaluation framework being established. These are two distinct but important areas to consider. From a business compliance perspective, results may show significant progress around achieving intended outcomes, but these may come at a high administrative and compliance cost for the business community as a whole. Therefore, this would raise questions around the net effect of the policy on the New Zealand economy.

Ultimately, BusinessNZ believes existing mechanisms that have recently been introduced (such as e-invoicing), as well as future advancements in digital technology, will continue to drive better payment times and help mitigate any underlying issues that may delay payment. While there may be isolated instances within certain sectors where longer payment periods are required, overall, we would expect to see the business community having increasingly shorter payment periods. Obviously, this will eventually call into question the need for regulations around business payment practices, so a regular review of the regulations is required when at some point the question will be asked whether New Zealand needs the regime at all.

***Recommendation: That any review of the regime seeks the early input and views from the business community to ensure ongoing compliance and administrative costs are understood.***

## SECTION 2: OVERALL COMMENTS & THOUGHTS

### A. Questions relating to disclosure measures

- 1. Do the objectives outlined in the overview section cover off the most important considerations for the set of measures? Are there other important considerations?**
- 2. What information would you most like to see through the measures?**

Page 10 of the Discussion Document states *"the measures are the most important part of the regime"*. BusinessNZ strongly agrees. We also agree with the point made in the Discussion Document that *"they will determine whether businesses can make more informed decisions about who to do business with"*.

However, we also believe that the disclosure measures selected will be where the compliance rubber hits the road for those businesses that have to comply with the new regulations. Therefore, we believe any set of measures need to ensure the right mix of providing sufficient information for small businesses to make an informed business decision, minimise compliance costs, and are both realistic and practical in terms of data provision.

When choosing any set of measures, there will always be a degree of subjectivity to them, including the potential for marginal calls when selecting one measure over another. What BusinessNZ wishes to see are a set of reporting measures that maximise benefits from disclosures while minimising the costs of disclosure. We expect many firms will be impacted by the requirements, so even moderate implementation costs per firm could add up to significant overall costs. For instance, members have stated that they know of individual Australian companies that have each spent well over \$1 million implementing the Australian scheme.

Also, the design of the regime needs to be workable with required measures ideally able to be drawn from accounting and payment systems automatically (i.e. data already collected and entered). This would help avoid costs and inaccuracies associated with having to undertake manual calculations and/or build and maintain new systems.

- 3. How many measures are preferable, and which measures would you prioritise?**

Overall, BusinessNZ has no strong views on the preferable number of measures that should be included. However, the overall feedback from our membership focussed on 'as few as possible', especially since some felt that the number of measures listed in

the Discussion Document was not different enough to provide value or make it worth the extra resources required to report.

As outlined above, the Australian regime has chosen to focus its measures on proportion, which is determined by total number and total value, of small business invoices paid by an entity for periods matching two of the measurement options outlined in New Zealand’s discussion document. While we will go into greater detail regarding the possible measurements below, it is important that we acknowledge Australia’s measures, as well as what works best for the New Zealand setting.

In terms of prioritising measures, the Discussion Document outlines 11 proposed measures, which are listed in table 2 below. After feedback from members, we have organised them into three groups, where:

- Green = further consideration
- Yellow = possible consideration
- Red = should not proceed

**Table 2: Ranking of Proposed Measures**

<i>Proposed Measure</i>	<i>Members</i>	<i>MBIE</i>	<i>Australia</i>
1. Average number of days to pay invoices from suppliers	Green	Green	
2. Percentage of the number of invoices that were paid within the agreed payment period	Yellow	Green	
3. Percentage of invoices paid in full during the reporting period	Red	Green	
4. The percentage of invoices unpaid 61 days or more after receipt of invoice	Red		
5. Average payment time	Red		
6. The proportion of total number of invoices paid within 0-20; 21-30; 31-60; 61-90; 91-120, over 120 days	Green	Green	Green
7. The proportion of total value of invoices paid within 0-20; 21-30; 31-60; 61-90; 91-120, over 120 days	Green	Green	Green
8. Average number of days for receipt of payment	Red		
9. Percentage of invoices received on time	Red		
10. What are your standard payment terms offered to your suppliers in calendar days?	Green		Green
11. What other payment practices does the entity employ?	Green	Green	

Table 2 also includes a column dedicated to the proposed measures that MBIE prefers, as well as what currently exists in Australia that matches with what is being proposed in the Discussion Document.

While we have indicated that 6 of the 11 proposed measures should be considered/possibly considered further, as indicated above, this does not mean we expect all six to be included in the final make-up of the regime. Nor do we expect MBIE to progress the five they have outlined as their preferred measures going forward.

Instead, the total number of measures need to provide the right balance between effective information for the purposes intended and a reasonable compliance burden. Therefore, the general consensus from our members has indicated that the number of measures is kept to a minimum so as to not make the reporting regime onerous for the reporting entities.

***Recommendation: The final number of measures be kept to a minimum so as not to make the reporting regime onerous for the reporting entities.***

***4. For any individual measure in the set of proposed measures:***

- a. Would this information be easy to reproduce or verify?***
- b. What potential unintended consequences (if any) might be caused by this measure?***
- c. Can you see any technical challenges relating to:***
  - i. the accuracy of the measure?***
  - ii. the effort it takes to produce?***
  - iii. the ability to fairly compare the measure between reporting entities?***

***Please identify the measure you refer to, and elaborate if possible. Feel free to offer any advice to improve the measure.***

**Specific views on proposed measures**

After receiving feedback from members, BusinessNZ has the following comments on the 11 options outlined:

**1. Average number of days to pay invoices from suppliers**

As pointed out in the Discussion Document, this represents the simplest and most likely easiest to understand at a glance. Although MBIE have also stated that this measure can be skewed by outliers, which is a point members have also picked up on. Having other measures will likely provide the context required.

Feedback from membership indicates that for some this measure should be able to be calculated without undue complexity. However, members have also pointed out that making the requirement relate to invoices paid during the period rather than “paid invoices due during the reporting period” would be critical to its workability.

Also, this measure does not allow for enterprises to baseline against payment terms. For instance, if a company’s payment terms are the 20th of the month following in the voice, the calculation could be expected to be between 15–45 days. It is then difficult to compare this with companies that pay a weekly invoice.

***Recommendation: This measure be given further consideration.***

## **2. Percentage of the number of invoices that were paid within the agreed payment period**

Although MBIE has also outlined this measure as a preferred way forward, members have differing views on it.

Some believed this measure was workable and provided the best indication of a fair comparison of payment practices. Some also believed it to be the most reasonable measure that is aligned to the purpose of the Bill.

However, others considered information on 'agreed payment periods' for every invoice is not currently consistently collected in payments systems. Therefore, modifying systems to collect and be able to report on this would impose significant costs on many businesses.

Furthermore, some felt that it was a misnomer to apply the concept of 'agreed' payment periods to all invoices. In some cases, these will be clearly 'agreed' but in others an invoice will simply be received with a payment date on it (and in some cases a very short duration). The approach to these can vary widely and for larger entities in particular it would also not be practical to monitor all these individually.

Overall, reporting against this measure would require a high degree of manual calculation due to different dates and approaches used, which for entities that receive thousands of invoices would impose significant costs.

Instead, members pointed out that reporting would be significantly simpler if all metrics proposed referred to invoices paid within the period instead of invoices due during the period. This would also be in alignment with Australian legislation.

***Recommendation: This measure is given possible consideration.***

## **3. Percentage of invoices paid in full during the reporting period**

Unlike MBIE, members had less support for this measure.

Overall, members pointed out that there are reasonable and justifiable business reasons why an invoice would not be paid in full. Therefore, introducing this measure would not provide the full picture of the business realities of the payer and payee. Instead, it could lead to the data being interpreted incorrectly.

In addition, it is typically the case that if an invoice is disputed, the undisputed amount will be paid and the disputed amount will be withheld until the parties have reached

agreement. Therefore, this measure would ignore legitimate reasons under which an entity has made a part-payment only.

Last, this measure would only be relevant if part payments count towards other measures. However, this would seem inconsistent with the intent and purpose of the above.

***Recommendation: This measure does not proceed.***

#### **4. The percentage of invoices unpaid 61 days or more after receipt of invoice**

Both MBIE and members do not support this measure proceeding.

First, the number of days 'after receipt of invoice' may or may not be relevant to the users of this data, depending on the wording of the payment terms in the agreement between the reporting entity and the supplier.

Also, this measure is a clear overlap with measure 6, which is discussed further below. A calculation for invoices not paid 61 days after 'receipt' would be workable and will be effectively required by measure 6, making a standalone metric unnecessary.

In addition to the points raised in measure 3 above concerning legitimate reasons for delay in payment, members thought this measure would just provide another lens on the material necessary for measure 2.

***Recommendation: This measure does not proceed.***

#### **5. Average payment time**

While members generally thought this measure could be useful, many felt it would not be workable and therefore should not proceed.

Some members stated that this measure could not be effectively measured for non-contracted invoice suppliers as there would not be an agreed date to be measured against. Also, as outlined in measure 2 above, due dates are not captured in accounting systems and so new systems would need to be created and/or potentially significant manual analysis would be required.

Furthermore, the due date specified by the supplier, and invoice payment date agreed between the entities, could be inconsistent where the parties have negotiated payment terms. A supplier writing on its invoice 7 days or 14 days does not necessarily mean the company has to accept it, given an invoice is not a legal agreement to those terms. Instead, the individual credit terms are more important.

***Recommendation: This measure does not proceed.***

- 6. The proportion of total number of invoices paid within 0-20; 21-30; 31-60; 61-90; 91-120, over 120 days**
- 7. The proportion of total value of invoices paid within 0-20; 21-30; 31-60; 61-90; 91-120, over 120 days**

Like MBIE, members generally considered measures 6 and 7 to be given further consideration.

The Discussion Document notes that these two measures provide a better-rounded picture of the spread of reporting entities' payment times. Also, measures 6 and 7 complement each other as measure 7 provides information that a simple invoice count could miss.

In addition, since these are two of the key measures required by the Australian regime, there would be fewer issues associated with compliance for those entities that have operations on both sides of the Tasman.

However, members outlined two aspects to consider though. First, although these two measures should be able to be workably implemented, this may still require material effort and investment in systems and data quality for a significant proportion of entities that have to comply. Also, these two calculations have the potential to distort results when looking into the detail of them, and therefore have the potential to be misleading.

***Recommendation: These two measures be given further consideration.***

#### **8. Average number of days for receipt of payment**

Although this measure looks at the other side of the coin regarding invoices the reporting entity itself issues and how long the reporting customers take to pay them, members could not see benefits in being required to also collect and disclose in a certain format the time for receipt of payment as well.

Furthermore, it was felt that different data points and reports would be required to produce this metric (and measure 9 below) compared to the other options, increasing the complexity of the implementation for entities subject to both types of disclosure.

***Recommendation: This measure does not proceed.***

#### **9. Percentage of invoices received on time**

As noted above in relation to measure 8, members did not see value in being required

to undertake this measure, especially with the additional issue of a potentially more complex calculation due to the need to include 'due' dates.

***Recommendation: This measure does not proceed.***

#### **10. What are your standard payment terms offered to your suppliers in calendar days?**

Overall, most members indicated that this measure would provide useful information, and should be generally straightforward for entities to disclose.

However, a few did note that they have significant number of permutations in relation to payment terms, many of which are based on legacy agreements. Disclosing a subset of the standard payment terms as proposed under this measure would give all suppliers an immediate negotiation advantage and not take into account the fact that shorter payment periods can be agreed through negotiation.

***Recommendation: This measure be given further consideration.***

#### **What other payment practices does the entity employ?**

As mentioned in the Discussion Document, measures 10 and 11 are both about asking for an explanation of payment practices and policies, rather than the strictly quantitative aspect of the preceding measurement options.

As we discuss in more in-depth below, we believe it is important to include a measure that is some form of catch-all for additional information small businesses may need to make an informed choice, as well as for those who have to comply with the regime to outline more background information.

However, concerning just measure 11, some members noted that it was not clear from the Discussion Document the sort of disclosure that would be expected here and how consistent reporting that delivers useful information would be achieved. In terms of a more extreme outcome, an overly prescriptive set of tick boxes could be hard for entities to complete if they don't fit well with practice.

If measure 11 was to be progressed, it would need to be as an open field that gives entities the opportunity to populate it as they consider appropriate.

Further considerations associated with measure 11 are discussed below.

***Recommendation: This measure be given further consideration, as long as the expectation is that the measure is an 'open field'.***

## **Other Issues to Consider**

### **Data provision expectations**

In addition to our thoughts on each of the proposed measures, we also believe MBIE need to take into account data provision expectations from those who are required to comply.

Page 9 of the Discussion Document states that *"we will provide guidance on how to calculate measures, how and when to submit information to the Registrar, how and when to apply for an exemption, and how to generally comply with the new obligations"*. Once the measures are officially chosen, at this stage there is a general expectation from the business community that those businesses that are required to comply simply involve supplying the underlying percentages. However, we note this does not seem to be the case with the Australian model.

Members that have subsidiaries in Australia have pointed out that the Australian regime requires businesses to supply a large CSV file filled with data. While this is likely due to there being a checking process around ensuring the data is accurate, there is no early indication within the Discussion Document around what is actually transferred from a business to MBIE. Instead, the Discussion Document gives the impression that only the underlying percentages are provided, which we would expect to be entered into some form of template. If this is not to be the case, MBIE need to provide additional guidance sooner rather than later, given further compliance obligations and potential privacy issues relating to large private sector datasets being handed over to the Government.

***Recommendation: MBIE provides greater clarity around the expected transfer of information from businesses that need to comply with the regime.***

***12. Can you recommend any measures not in the set that would provide useful information? Please explain.***

Annex two of the Discussion Document outlines additional reporting questions used in other reporting regimes, namely Australia and the U.K. While BusinessNZ agrees that most of these would likely provide little additional assistance for small businesses, there are two that we believe MBIE should give more consideration to, namely:

- Do you have a specific payment policy for small business? If so, please describe this; and
- Would you like to provide any additional context to your disclosure?

Feedback from members noted that apart from measure option 11 (*What other payment practices does the entity employ?*), there is no measure that acknowledges or recognises businesses may often have different payment practices for small businesses.

The reason for including one or more questions that relate specifically to small businesses are twofold. First, different practices based on business size or type, will likely throw off the averages they are currently asking for. Second, averages are not wholly reflective of business attitude to payment times. Unless those looking through the reports read associated commentary around this, many may think that the reported average is what would be potentially applicable to their business if they were to become a supplier. However, this simply may not be the case as the reporting framework hides targeted ways in which small businesses are dealt with regarding payment practices. A number of members have mentioned to BusinessNZ that they have preferential payment terms for small business suppliers and are concerned that this feature may be unreflected in the reporting of the overall figures as currently proposed.

One could argue that information in this space could be included if option 11 in the Discussion Document proceeds, which is similar to the option above that asks if a business wishes to provide any additional context to your disclosure. However, a question that specifically mentions small businesses is much more likely to get stronger cut-through to those small businesses assessing the information online, which aligns itself with the objective of *'information disclosed and published is useful to potential users'*.

***Recommendation: The set of measures going forward provides a general question in relation to specific payment policies for small businesses.***

***6. How might we know if the measures chosen are working effectively and useful for users of the regime, and when we should consider changing certain measures?***

As part of any proper policy process, BusinessNZ would expect the likely set of measures that are generally agreed upon through the submission process to then be thoroughly tested via further consultation leading up to them being cemented within the regulations. This could come in two forms, both of which could occur concurrently:

1. All submitters and the key business stakeholders are notified of the likely measures going forward after submissions have been analysed, with the opportunity for follow-up questions and consultation to take place, and

2. A test group of small businesses to discuss the likely measures proceeds to ensure they will generally meet the objective of the regime from a small business perspective.

BusinessNZ believes that if MBIE were to take on board these two processes, it would greatly help in minimising any unforeseen issues further down the policy process. As we have mentioned above, if sufficient time and resources are put into the development of the regulations through undertaking additional processes such as the ones mentioned, a higher quality outcome is more likely. Also, it assists in not having to rely as much on a future review to rectify the regime, which is discussed in more detail below.

***Recommendation: MBIE look to ensure further consultation processes with the private sector after the initial set of measures has been narrowed down.***

### **Future review and technological advancements**

Regarding the question around if/when MBIE should consider changing certain measures, we pointed out in our submission on the Bill that it is not only current timeframes that need to be considered, but also how the new arrangements will be monitored, evaluated and reviewed in the future.

To that end, we note that section 3 of the associated Regulatory Impact Statement (RIS) for the Discussion Document discusses such matters, namely that *"...formal evaluation and review of the regime would be undertaken within three years of commencement. The terms of reference for the review would be informed by the monitoring data and findings."* BusinessNZ strongly supports a formal review, although we would suggest any assessment is undertaken just after three reporting periods before considering changes to the measures. This is because any possible changes in the metrics will likely impose further implementation costs on businesses.

While we understand the need to examine the data to help shape the review, simply doing so may not provide a complete picture of how successful or otherwise the regime has been for business payment practices. This is because it may not show underlying problems that businesses may be facing with requirements, or the fact that there will inevitably be a degree of lumpiness around payment time frames for one sector compared to another. Therefore, we believe it is important for the Government to continuously engage with the business community about how well the regime is working from both an administrative and compliance perspective.

Ultimately, BusinessNZ believes existing mechanisms that have recently been introduced (such as e-invoicing), as well as future advancements in digital technology, will continue to drive better payment times and help mitigate any underlying issues that may delay payment. While there may be isolated instances within certain sectors where longer payment periods are required, overall, we would expect to see the

business community having increasingly shorter payment periods. Obviously, this will eventually call into question the need for regulations around business payment practices, so a regular review of the regulations is required when at some point the question will be asked whether New Zealand needs the regime at all.

Last, we would not want a future review to be used as a stalking horse for significantly more complex and stringent measures, let alone as a tool to build the case for legal maximum term for invoice payments. Any future review should take a pragmatic and considered approach that seeks to examine next best options, and not ones that see significant upheaval to the cost of those that have to comply.

***Recommendation: A formal evaluation and review of the regime is undertaken after three years of commencement, and includes direct feedback from the business community about how well the regime is working from both an administrative and compliance perspective.***

***7. Please share any other thoughts about the proposed set of measures.***

### **Tolerances for error**

Whilst BusinessNZ would expect those entities that are required to comply to endeavour to provide accurate data, small percentages of error are largely unavoidable, especially when large datasets are involved. Members have noted that human error with contract loading (on the reporting entity's side) and invoice submission (on the supplier's side) will significantly vary the results both in the data and perception.

To help alleviate the overall stress many small entities with more limited resources may find themselves experiencing, guidance around an acceptable tolerance would be welcomed.

We would expect most entities that are required to comply to undertake regular – perhaps even monthly - reviewing to ensure data errors are kept at a minimum. Members have indicated that as a possible starting point for further consideration, an error rate of 1% could be introduced, assuming sufficient time for implementation is provided.

***Recommendation: MBIE builds in some form of acceptable tolerance for error.***

### **Fines and gatekeeping**

In addition to the issue around the potential for errors, in our submission on the Bill we noted that if a person knowingly fails to comply with certain requirements or

disclosures information that they know is false or misleading, fines would not exceed \$50,000 for an individual and \$500,000 in any other case.

While we believe that entities need to follow the letter of the law as much as possible, we believed the penalties under the Bill, of \$50,000 for an individual and \$500,000 for an organisation, seemed excessive in comparison to the potential scale of the offense. At a minimum, BusinessNZ recommended these penalties be expressed as “up to \$X” rather than a fixed dollar amount.

As of writing this submission, we have yet to know whether such changes will be made through the Select Committee process. However, it does raise a question about what resources MBIE will be committing to policing activity that may lead to significant monetary penalties? If a penalty of up to \$500,000 is to be handed out for purposely misleading information, what will be the process for investigations and verification that the information provided is indeed intentionally incorrect?

Given this submission discusses the need for greater clarity around what will actually be provided to MBIE, is there an expectation that a “data dump” will give MBIE the information they require to run audits with selected (or all) businesses that have to comply?

***Recommendation: There is greater detail around how the verification process will work.***

### **Regulatory resources**

In relation to the point above regarding compliance and tolerances, we wish to return to the statement on page 9 of the Document that says *“we will provide guidance on how to calculate measures, how and when to submit information to the Registrar, how and when to apply for an exemption, and how to generally comply with the new obligations”*.

In addition to the Australian review and the potential for better alignment with the Australian regime, we note that the Australian Government has a webpage dedicated to providing detailed information for businesses on their regime. These regulatory resources are to assist reporting entities to comply with their obligations and understand how they administer the *Payment Times Reporting Act 2020*.

Their regulatory resources involve both a series of guidance notes that provide detailed guidance and practical examples to assist reporting entities to comply with their obligations and understand how they interpret the law, as well as information sheets that are short guidance documents on a specific process or function.

During the development and selection of measures here in New Zealand, we believe MBIE needs to be cognisant of a few matters that would likely lead to better regulatory outcomes.

First, if the measurements chosen are clear and easy to collate, then that would greatly assist in minimising the amount of regulatory resources required by businesses that are required to comply. While we would expect some guidance to be published to ensure processes and expectations are clear and transparent, the need for less, rather than more guidance tends to suggest a regulatory regime that is fit for purpose from a compliance perspective.

As mentioned above, Australia’s current regime asks 60 different pieces of information. Because of this, the sheer size and detail of the notes perhaps indicates how complicated the Australian regime currently could be for many businesses to understand. Ideally, this is an outcome MBIE should look to avoid.

Second, in relation to our comments above, BusinessNZ is conscious of the fact that while small businesses would not be required to comply with the BPPR, the resources of medium-sized entities will typically not be at the same level of larger businesses. Therefore, guidance material needs to be compiled to ensure the former has sufficient understanding to comply.

Overall, BusinessNZ would strongly encourage MBIE to produce guidance material and information sheets that are easily digestible for all businesses that are required to comply.

***Recommendation: MBIE produce a series of guidance notes and information sheets to ensure all businesses that are required to comply with the BPPR are given sufficient information to comply.***

**B. Questions relating to disclosure periods**

***8. Do the objectives outlined in the overview section cover off the most important considerations for the regime’s reporting periods? If there are other important considerations, please explain.***

Although members felt that the objectives generally covered the most important considerations for the regime’s reporting periods, the efficiency of reporting was an additional consideration that could also be added. For example, while there may be value in aligning timing of this reporting with other reporting in terms of auditing or signoffs etc, the reality is that this would be a new and additional reporting. Therefore, it does not particularly build from any existing statutory reporting.

***9. How do you rank the following in order of priority?  
a. a convenient reporting disclosure period***

***b. the ability to fairly compare the payment practices of different reporting entities***

***c. reasonable access to the Registrar for queries, and other functions.***

***10. Which disclosure period option do you prefer and why?***

Regarding ranking the main benefits in proposing different disclosure regimes by priority, both (a) and (b) were considered by the majority of members to be the most important. However, it is important to note that '*reasonable access to the Registrar for queries and other functions*' will definitely be a priority in the initial period. Many enterprises that are required to comply will need to get clarity early on in areas such as terminology and prescribed formats for reporting.

Overall, there were somewhat differing views from members regarding which specific option for disclosure periods should proceed.

Some felt any of the three options would be workable, while others felt one of the options was clearly more workable than the rest. From BusinessNZ's perspective, we do not believe any of the options are unworkable, but each one does have trade-offs that need to be well thought through and considered. Of the three proposed disclosure periods outlined in the Discussion Document, we would likely consider the option of the Registrar assigning disclosure periods based on industry classification codes as worthy of further consideration. However, if other submitters provide clear and justifiable reasons why the other options or combination thereof would likely provide a better outcome, we would not be against other options proceeding.

In terms of general comments on which option should proceed with, we would like to point out the following:

- Australia's regime is more akin to standard and calendar income tax years, in addition to some variances given when new businesses started operations in the first year the regime was underway. Therefore, we support MBIE's moves towards wanting disclosure period rules that better align with both the users of the data, as well as those who have to provide it.
- From BusinessNZ's perspective, staggering the disclosure periods by say business names is a completely arbitrary process that does little to correctly allocate the needs of individual businesses.
- In regards to the option of each reporting entity disclosing information for the same reporting months, the fact that the disclosure period has the ability to coincide with other reporting requirements common to many or most reporting entities is certainly an advantage for alleviating the compliance load. However, as also mentioned, such a setup could be hampered by seasonal factors at play.

- In regards to the option around disclosure periods based on industry classification codes, the Discussion Document points out two disadvantages with this option, namely it may make it more difficult to compare the payment practices of reporting entities that do not have the same industry classification, plus since reporting entities self-select their industry codes, two reporting entities providing very similar goods and services may opt to be classified in different industries. While we acknowledge the potential disadvantages here, we also believe that this option creates the greatest degree of flexibility for entities to decide their overall reporting disclosure period.
- If the option of disclosure periods based on industry classification codes were to proceed, BusinessNZ would be interested in the process around both the assigned dates by industry, as well as the level of feedback sought from those in the various sectors to ensure the right timeframes are set.
- Some members felt it would be helpful to have the ability to request a change in the allocated reporting period if it conflicts with other business activities such as month or year-end. This would help ensure that compliance is not overly burdensome and that adequate resources can be allocated on the reporting entity's end to dedicate the time and care needed to ensure the reporting is correct.

Overall, no matter what disclosure period process is chosen, there will be no option that provides a full-proof system. Instead, we believe MBIE need to proceed with a disclosure option that typically works best for the majority of those that have to comply.

***11. Does a deadline one month following the reporting period give businesses sufficient time to create and finalise a report? If not, what is a reasonable deadline?***

Overall, members considered one month to be insufficient to create and finalise a report and have it signed off. They noted the equivalent Australian regime gives entities three months after the end of the reporting period to provide the report to the regulator.

Therefore, BusinessNZ recommends a deadline of three months following the reporting period to give sufficient time to reporting entities to prepare for filing accurate and audited metrics. We would also welcome clarification on any retrospective reporting, when this would happen, and give as much advanced warning as possible to prepare to report.

***Recommendation: A deadline of three months following the reporting period to give sufficient time to reporting entities to prepare for filing accurate and audited metrics.***

**12. How might we know if the disclosure periods and deadlines chosen are working effectively, and when we should consider changing reporting entities' disclosure periods?**

Members have pointed out that if option 1 ("each reporting entity discloses information for the same reporting months") was to proceed, then the due date for this be finalised after considering the overlap with other reporting due dates. For example, multiple disclosure requirements pertaining to annual accounts and other statutory filings become due in January and April each year. Therefore, the decisions going forward would be to avoid setting due dates for BPPR reporting during this period in order to give entities sufficient time to report accurately.

**13. Is there another option, not identified, which would provide more useful payment disclosure information? If so, please explain why you think the option would be better.**

While BusinessNZ does not have another option to provide more useful payment disclosure information, we are open to other options if supported by the majority of submitters.

**Other issues to consider**

**Publication of disclosure statements**

We note that clause 13 of the Bill requires an entity to publish payment practices information on its website and keep it on that site for seven years. In our submission on the Bill, feedback from BusinessNZ's membership noted that the requirement for publication of an entity's disclosure statement on its own website and through the BPPR may represent a case of regulatory overreach. While some entities may decide to publish this information on their own website, this should be voluntary, not mandatory.

By making reporting on their own website voluntary, this will help reduce compliance costs (albeit minimally). Also, given Clause 13 requires an entity to keep the information on its site for seven years, the fact that a number of the websites of our larger members are a subdomain of an offshore website means storing this information could create confusion and unnecessary linking.

Furthermore, we also assume that a practical purpose of publishing this information is to assist small businesses in making informed comparisons and decisions about the large business they wish to do business with. Therefore, in almost all instances, the focus should be on the BPPR website so that all relevant and comparable information

is presented to small businesses. Presenting data for only one entity via its own website will not provide the context and comparisons required.

***Recommendation: Publication of an entity's disclosure statement on its own website be made voluntary, not mandatory.***

### **C. Questions relating to exemptions**

***14. Do the objectives outlined in the overview section cover off the most important considerations for the regime's class exemptions? If there are other important considerations, please explain.***

***15. Are there any class entities captured by the proposed BPP Bill (i.e. those with revenues over \$33 million for two consecutive years) who you think should be exempt from the requirement to disclose payment practices?***

***16. If so, why do you think the class of entities should be exempt?***

***17. If the Minister considers a class of entities should be exempt, do you think there should be conditions/safeguards applied to the exemption?***

***18. If so, what types of conditions/safeguards do you think should be considered by the Minister before granting an exemption?***

***19. If a class of entities is exempt, do you think the decision should be regularly reviewed or contain a sunset clause? If a sunset clause is included, the exemption would expire at a certain date and the class of entities covered by the exemption until the expiry date would have to make payment disclosures from that time onwards.***

***20. How might we know if the right exemptions are being made, and when we should consider changing them?***

BusinessNZ does not have specific comments to make regarding each question in relation to the issue of exemption. Instead, we wish to pick up on a few points, including feedback from members.

A number of members recommend inclusion of specific exemptions for certain types of transactions, such as related party transactions that BusinessNZ also mentioned in our submission on the Bill. Given the intent of the law is to understand the supplier payment practices of entities, mandatory reporting should focus on arms-lengths third

party transactions. Therefore, transactions such as inter-company payments and employee payments should be exempt.

Also, members were clear in their view that the regime should only apply to entities (and their subsidiaries) that operate in New Zealand. Again, this was something that BusinessNZ raised in its submission on the Bill, and goes to the heart of ensuring a clear understanding regarding who will or will not have to make disclosures for large entities, including those that have an overseas component to their operations.

Looking more broadly at the issue of exemptions, we note that at the time of writing the Discussion Document, MBIE are unaware of any entity classes. BusinessNZ is equally unaware as the proposed regime means that the set of businesses that would need to comply, would on balance, have usual interactions with other businesses. However, as correctly pointed out in the Document, *"we do not expect to understand all businesses operating environments, and welcome feedback on any situation you think might warrant an exemption"*. Therefore, we would expect MBIE to be open to the notion of potential class exemptions being explained by other submitters and taken into consideration.

Also, MBIE does not currently propose specific exemptions, and that the Bill does not propose any specific criteria for granting exemptions. Whether the outcome of these concerns is better suited to a simpler structure of reporting than a class exemption is something MBIE will need to consider carefully.

In that regard, feedback from members has outlined one additional potential area that may give rise to consideration around some form of exemption. We note that some of our larger members will likely need to submit more than one return due to the structure of their business which involves a number of subsidiaries. Breaking out the data and calculating individual measures for each subsidiary would likely involve a greater level of compliance and resource, which may not be worthwhile if the results show little difference between the various elements of the business. Instead, MBIE may wish to consider the idea of a "group return" to mitigate the need for duplication of information that could simply be provided once.

***Recommendation: (a) inter-company payments, (b) employee payments, and (c) payments made by any entities that do NOT operate in New Zealand, should be exempt.***

***Recommendation: MBIE considers the idea of a group return exemption to minimise the compliance costs associated with single large businesses having to send in multiple returns.***

Last, MBIE's preference is that no sunsets, regular reviews, or annual reporting requirements are included in exemption notices. BusinessNZ agrees. Given the instance of exemptions would most likely be low, the bar for getting them relatively

high, and that other mechanisms such as a broader review of the policy itself (discussed above) would likely be a more cost-effective process for the taxpayer and better suited for consideration.

In addition, we would expect a high degree of certainty for any business or class of entity that receives an exemption that they will not have to consider whether they might have to comply in the near future. If that was to be the case through annual reviews, it would somewhat defeat the purpose of the exemption given the annual compliance cost issues involved.

***Recommendation: Once a class of entities is exempt, no sunsets, regular reviews or annual reporting requirements are included.***

Thank you for the opportunity to comment, and we look forward to further discussions.

Kind regards,

A handwritten signature in black ink, appearing to read 'Kirk Hope', with a stylized flourish at the end.

Kirk Hope  
**Chief Executive**  
BusinessNZ