

24 February 2023

Small Business Policy
Small Business, Commerce and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

Email to: bppregulations@mbie.govt.nz

Dear Sir/Madam,

ICNZ SUBMISSION ON PROPOSED REGULATIONS FOR BUSINESS PAYMENT PRACTICES

Thank you for the opportunity to submit on the proposed regulations relating to disclosures on business payment practices (**BPP Regulations**).

Insurance Council of New Zealand/Te Kāhui Inihua o Aotearoa (**ICNZ**) members are general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including over a trillion dollars' worth of Aotearoa New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

For the insurance industry, this consultation comes at a time when our members are working hard to help their customers impacted by the extreme weather events in late January and early February 2023. It also comes on top on a range of other regulatory initiatives that have required or will require extensive system changes and implementation costs¹. Given this context, and the stated intention of Cabinet to reprioritise workstreams, we would recommend that this policy work be deferred or delayed, which would also allow officials to undertake more in-depth research to scope the extent of any problem in the payment practices of large businesses.

Key points raised in this submission are:

- **It is unclear what problem is being addressed by the proposed regulations.**
- **With lack of clarity as to the problem, the costs of implementation may well outweigh any benefit.**
- **It is critical that the definition of a *relevant invoice* is well-crafted, including that an invoice is *received* when it is received by the reporting entity (not when it is generated).**
- **The costs will not be insignificant, with reports from businesses in Australia spending in the region of \$1 million to make necessary system changes and introduce new compliance processes.**
- **Alignment with the Australian regime is desirable, but this should include waiting for the outcome of the review underway over there (a report being due in June 2023).**
- **Australian businesses were given a year's grace to adapt to the obligations; if these proposed regulations progress, we need a sufficient length of time (12-18 months) for implementation.**

¹ For example, solvency standards under IFRS-17, climate-related disclosures, and the conduct of financial institutions (CoFI).

SUBMISSION

Before answering the specific questions posed in the consultation, we have some overarching comments:

- There must be much more clarity from MBIE and Government as to what perceived problem is being addressed by these proposed regulations, and whether this legislation will change practice? For example, we note that many large businesses (ie, those that would be captured by these regulations) operate some version of a purchase order system that will ensure that invoices are paid automatically within agreed payment terms upon receipt.
- Regulations such as these need to be crafted in a way that maximises the benefits from the required disclosures while minimising the costs of disclosure on obligated businesses. Even with the substantial revenue threshold suggested, many firms will be impacted by these requirements. Even moderate implementation costs per firm could add up to significant overall costs to the economy. ICNZ is aware of some Australian companies that spent over \$1 million each implementing the similar Australian disclosure scheme, and that scheme has only a proportion of the potential metrics proposed in this consultation.
- The regulation design needs to be workable with the required information capable of being drawn from accounting and payment systems automatically (i.e., data already collected and entered); this would avoid costs and inaccuracies associated with having to undertake manual calculations and/or build and maintain new systems.
- The requested reporting would be significantly simpler if all metrics proposed referred to invoices **paid** within the period instead of invoices **due** during the period. We note this would align with the approach in the Australian legislation.
- We believe that alignment with the Australian regime is desirable to enable lessons to be learned from implementation there and increase efficiency by standardising systems demands and reporting for payment system-providers and entities that operate on both sides of the Tasman Sea.
- The definition of **relevant “invoice”** is critical; as well, the point at which that 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 identified in the Discussion Document. Careful engagement with businesses is required on this, including with insurers to address any insurance specific issues.
- When engaging with businesses here, we would support MBIE looking at the Australian regime as a starting point in determining what invoices (or transactions) are captured by these regulations. For example:
 - In Australia, their scheme asks if the invoice relates to supply of a good or service from a small business supplier. We understand this to be a key rationale for the proposed scheme here (that is, the impact of bill payments on small providers), but this may be a difficult criterion to match because New Zealand lacks the systems that could easily identify if an entity is a small business.
 - The good or service from the small business supplier was provided to the larger business under a trade credit arrangement. That is, not a cash payment or direct transfer at the point of sale or the time-of-service provision.
 - It is clear that the reporting entity is contractually obliged to pay the invoice.
- The point at which an invoice is considered “received” should be defined as when it is received by the reporting entity. Information about when an invoice was generated is not necessarily collected within accounting and payment systems and invoices can also be backdated, sometimes significantly.
- Claims Settlement vs Bill Payments
 - In the context of general insurance, it is important that the scheme is able to distinguish between payments made to policyholders claiming settlement under an insurance policy, versus the payment of bills for goods and services providers.
 - Insurers will always endeavour to settle claims in the shortest time possible, because the policyholder will have suffered harm or damage and will be relying on the insurance payment to move their life forward. However, the process for receiving, assessing, and validating a claim can be lengthy. Often times there will be discussion between the insurer and the policyholder (and

potentially other interested parties) as to the final assessment of a claim. The time required for these assessments should not be measured against the outcomes in this legislation².

In relation to implementation:

- If the scheme is progressed, it should come into effect only after a suitable period of time following publication of obligations under the scheme (ie regulations and any supporting guidance). Given the work that we expect businesses will need to undertake, the start of the first reporting period needs to be approximately 18 months from the announcement of all scheme details (based on our understanding of the experience in Australia, this period needs to be over 12 months and thus we recommend approximately 18 months).
- Although the Australian regime was rolled out much quicker than suggested above, there was essentially no compliance for the first year and this period was required by many entities to get their systems modified to report with sufficient accuracy.
- We understand MBIE has an indicative timeframe in mind of:
 - May 2023 – Policy decisions to be made on regulations,
 - August 2023 – estimated date of enactment,
 - May 2024 – estimated date the scheme is operational.
 - For the reasons outlined above, we consider this period (approximately nine months) is too short. Implementation work can only be commenced when all the details of the required measures and timing are fully known.

QUESTIONS FROM THE DISCUSSION DOCUMENT

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?

The proposed objectives are appropriate. The focus on the simplicity and costs of reporting is welcomed.

2. What information would you most like to see through the measures?

No comments.

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

- The number of measures should be limited to those that provide the most value and where the benefits of that measure outweigh the costs.
- In assessing the costs and benefits, it is important to consider the specific costs of each measure rather than the number of them. Some measures are likely to be straightforward to report on, and using available data or the same data to generate different measures may be efficient, whereas some individual measures would be very complex and costly to provide.
- Of the proposed measures, we would suggest progressing measures 1, 6, 7 and 10; this would provide useful information while being comparatively straightforward to implement compared with some other measures.
- Of MBIE's indicated preferred measures (1, 2, 3, 6, 7 and 11), for reasons outlined in response to Question 4 below, we have concerns with the practicality of implementing proposed measures 2 and 3 and question the usefulness of proposed measure 11.

² The Financial Markets Authority is responsible for administering the scheme that oversees the conduct of financial institutions, including insurers. The fair outcomes for consumers required by the FMA would encompass swift settlement of claims.

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

We provide feedback on the individual proposed measures in the following table.

Proposals in the MBIE Discussion Paper	Feedback
<p>1. Average number of days to pay invoices from suppliers e.g. "16.02 days"</p> <p><i>Proposed calculation method:</i></p> <p><i>a) Add together the payment times for all paid invoices due during the reporting period</i></p> <p><i>b) Divide a) by the total number of fully paid invoices due during the reporting period</i></p>	<ul style="list-style-type: none"> • This measure should be able to be calculated without undue complexity. • We note this measure is not required by the equivalent Australian regime.
<p>2. Percentage of the number of invoices that were paid within the agreed payment period e.g. "93%"</p> <p><i>Proposed calculation method:</i></p> <p><i>a) Add together the number of invoices due during the reporting period that were paid before, or on, the agreed due date</i></p> <p><i>b) Divide a) by the total number of invoices due during the reporting period</i></p>	<ul style="list-style-type: none"> • This measure would not be workable and should not be implemented. • Information on 'agreed payment periods' is not currently consistently collected in payments systems and modifying systems to collect and be able to report on this would impose significant costs on businesses. • It also 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. • Note that some suppliers can put very short timelines on invoices (e.g. 7 days), which have not necessarily been agreed to. A purchase order (PO) system addresses this. Once the invoice is received, assuming the PO has been approved, then it would be paid based on the terms in the system. Where a PO has not been approved and an invoice is received, that could lead to delays but doesn't necessarily reflect slow process by the payer. • Reporting against this measure would require manual calculation due to different dates and approaches uses, which for entities that receive thousands of invoices would impose significant costs. • Reporting would be significantly simpler if all metrics proposed referred to invoices paid within the period instead of invoices due during the period. This is also in alignment with the Australian legislation. • Where an entity has agreed to pay invoices within a specified timeframe, this agreement is housed within standard or negotiated contract terms. These terms are generally (currently) confidential to the parties. • This measure is not required by the Australian regime.

Proposals in the MBIE Discussion Paper	Feedback
<p>3. Percentage of invoices paid in full during the reporting period e.g. "100%"</p> <p><i>Proposed calculation method:</i></p> <p><i>a) Add together the number of paid invoices due during the reporting period</i></p> <p><i>b) Divide a) by the total number of invoices due during the reporting period</i></p>	<ul style="list-style-type: none"> • This measure would only be relevant if part payments count towards other measures, which would seem inconsistent with the intent and purpose of those. • Large firms do not generally part-pay invoices and so this measure would not show any information of use vis-à-vis other planned metrics. • As noted elsewhere, the 'Proposed calculation method' would not be workable as the 'due date' is not commonly recorded consistently and/or is not agreed in cases with no explicit agreement. • This measure is not required by the Australian regime. • This metric also ignores part-payment due to invoice disputes. Typically, if an invoice is disputed, the undisputed amount will be paid and the disputed amount will be withheld until the parties have reached agreement. On the face of it, this metric ignores legitimate reasons under which an entity has made a part-payment only.
<p>4. The percentage of invoices unpaid 61 days or more after receipt of invoice e.g. "0%"</p> <p><i>Proposed calculation method:</i></p> <p><i>a) Add together the number of invoices still owing 61 days or more after initial receipt</i></p> <p><i>b) Divide a) by the total number of invoices due during the reporting period</i></p>	<ul style="list-style-type: none"> • This measure would provide another lens on the material necessary for measure 2, however, for the same reasons outlined above when invoices are "due" (refer 4(b)) is not a data point that is consistently collected and so complying with this proposed measure would not be workable. A calculation for invoices not paid 61 days after 'receipt' would be workable and will be effectively required by measure 6. • This measure is not required by the Australian regime. • Also as noted above in response to metric 3, there are legitimate reasons for delay and note the fact an invoice has been created doesn't necessarily make it payable (i.e., invoices in dispute).
<p>5. Average late payment time e.g. "0.2 days"</p> <p><i>Proposed calculation method:</i></p> <p><i>a) Add together the difference, in days, between each invoice's due date, and the day on which it was paid</i></p> <p><i>b) Divide a) by the total number of invoices paid during the reporting period</i></p>	<ul style="list-style-type: none"> • While this measure could be useful, it would not be workable and therefore should not be implemented. • This couldn't be effectively measured for non-contracted invoice suppliers as there won't be an agreed date to be measured against. • As with proposed 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. • Note also that 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. • Note that a supplier writing on its invoice 7 days or 14 days doesn't necessary mean the company has to accept it - an invoice is not a legal agreement to

Proposals in the MBIE Discussion Paper	Feedback												
	<p>those terms. The individual credit terms are more important.</p> <ul style="list-style-type: none"> Note this measure is not required by the Australian regime. 												
<p>6. The proportion of total number of invoices paid within: Proposed calculation method: For each of the time brackets:</p> <p>a) Add together the number of invoices paid within that time bracket</p> <p>b) Divide a) by the total number of invoices paid in the reporting period</p> <table border="0" style="width: 100%;"> <tr> <td>0 and 20 days</td> <td>21 and 30 days</td> <td>31 and 60 days</td> </tr> <tr> <td>e.g. 75%</td> <td>e.g. 15%</td> <td>e.g. 9%</td> </tr> <tr> <td>61 and 90 days</td> <td>91 and 120 days</td> <td>Over 120 days</td> </tr> <tr> <td>e.g. 1%</td> <td>e.g. 0%</td> <td>e.g. 0%</td> </tr> </table>	0 and 20 days	21 and 30 days	31 and 60 days	e.g. 75%	e.g. 15%	e.g. 9%	61 and 90 days	91 and 120 days	Over 120 days	e.g. 1%	e.g. 0%	e.g. 0%	<ul style="list-style-type: none"> This measure provides useful data to suppliers and should be able to be workably implemented, though this may still require material effort and investment in systems and data quality. This measure is one of the key measures required by the Australian regime.
0 and 20 days	21 and 30 days	31 and 60 days											
e.g. 75%	e.g. 15%	e.g. 9%											
61 and 90 days	91 and 120 days	Over 120 days											
e.g. 1%	e.g. 0%	e.g. 0%											
<p>7. The proportion of total value of invoices paid within: 0 and 20 days 21 and 30 days 31 and 60 days e.g. 60% e.g. 22% e.g. 13%</p> <p>61 and 90 days 91 and 120 days Over 120 days e.g. 3% e.g. 2% e.g. 0%</p> <p>Proposed calculation method: For each of the time brackets:</p> <p>a) Add together the dollar value of invoices that are paid within that time bracket</p> <p>b) Divide that sum by the total combined value of all invoices paid in the reporting period</p>	<ul style="list-style-type: none"> As with metric 6, this metric provides useful data to suppliers and should be able to be workably implemented, though this may still require material effort and investment in systems and data quality. This measure is one of the key measures required by the Australian regime. 												
<p>8. Average number of days for receipt of payment e.g. 10.02 days Proposed calculation method:</p> <ul style="list-style-type: none"> Add together the sum of payment times for all paid invoices issued by the reporting entity Divide a) by the total number invoices issued during the reporting period 	<ul style="list-style-type: none"> We can't see benefits in being required to also collect and disclose in a certain format - our time for <u>receipt</u> of payment. We also note this would be distorted by Broker Bordeaux (by law up to 50 days after end of relevant month for payment – refer Insurance Intermediaries Act 1994 section 8) and different types of payment terms for our direct insurance customers, and so could look quite different to other sectors due to these unique sectoral features. Different data points and reports would be required to produce this metric (and metric 9) compared to the others, increasing the complexity of the implementation for entities subject to both types of disclosure. This measure is not required by the Australian regime. 												
<p>9. Percentage of invoices received on time e.g. 98% Proposed calculation method:</p> <ul style="list-style-type: none"> Add together the number of paid invoices issued by the reporting entity, before or on the due date agreed between them and their purchaser. Divide a) by the total number of invoices issued during the reporting period. 	<ul style="list-style-type: none"> As noted above in relation to question 8, don't see value in being required to do this and with additional issue of a potentially more complex calculation due to the need to include 'due' dates. This measure is not required by the Australian regime. 												

Proposals in the MBIE Discussion Paper	Feedback
<p>10. <i>What are your standard payment terms offered to your suppliers in calendar days?</i></p> <p><i>e.g. 15 days, 30 days, and 60 days</i></p>	<ul style="list-style-type: none"> • This measure provides useful information and disclosure could have value. It would also be straightforward for entities to disclose. • This measure is required by the Australian regime.
<p>11. <i>What other payment practices does the entity employ? (pick all that apply)</i></p> <p><i>Options include: Offers e-Invoicing to suppliers; Offers supply chain finance; Offers more favourable terms for small businesses; Charges to businesses that remain on the entity's supplier list; Other (please specify)</i></p>	<ul style="list-style-type: none"> • It is not clear from the Discussion Document the sort of disclosure that is expected here and how consistent reporting that delivers useful information would be achieved. • An overly prescriptive set of tick boxes could be hard for entities to complete if they do fit well with practice. • If this 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 or further engagement a list of defined parameters.

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

We have no further suggestions.

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?

- MBIE should monitor the information disclosed and engage with disclosing entities and users of the regime on the benefits and costs of the regime.
- We suggest assessing at least three reporting periods before considering changes to the measures.
- Any proposed changes to measures would need to be carefully considered in terms of their value and complexity/costs of implementation.

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

Reporting companies will endeavour to provide accurate data, but a small margin of error is unavoidable. Guidance as to an acceptable tolerance would be welcomed. There is likely to be manual effort spent every month reviewing data errors. As a possible starting point for further consideration, we suggest an error rate of 1% could be an achievable goal assuming a sufficient time for implementation is provided.

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.

Yes, although efficiency of reporting should also be specifically considered as this may not necessarily from other alignment with other reporting requirements. 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 and so it doesn't 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.*

For an insurer who is predominantly a discloser rather than a user, a convenient and workably reporting disclosure period is the most important aspect.

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

We would support Option 1 (each entity discloses information for the same six-month time period) as it provides the most certainty and cross sector certainty.

We don't support Option 2 (Registrar assigns disclosure periods for each reporting entity) as this would involve additional uncertainty and reduce comparability.

We could be comfortable with Option 3 (Registrar assigns disclosure periods based on industry classification codes) so long as the period chosen for the insurance sector is the sector consensus determined following consultation.

Both Options 2 and 3 could create issues for entities operating across different industry sectors and/or with subsidiaries that do so – and so there would need to be provision for adversely impacted entities to engage the Registrar individually to identify a workable period for that entity.

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?

We consider one month to be insufficient to create and finalise a report and have it signed off etc. The equivalent Australian regime gives entities three months after the end of the reporting period to provide the report to the regulator.

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?

As we note in Question 6, the implementation of the scheme should be reviewed after three (3) reporting rounds. MBIE should engage directly with entities on the practicalities of meeting the deadline.

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.

No comment.

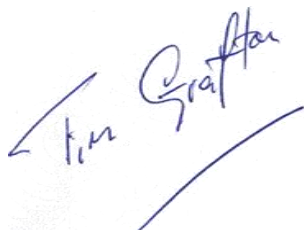
Questions relating to exemptions

We provide no feedback on Questions 14-20 as they do not appear particularly relevant to insurers. We do, however, reiterate our call for more work to be done on the definition of “invoice”, as this is a critical feature of the scheme.

CONCLUSION

Thank you again for the opportunity to submit on the proposed regulations. If you have any questions, please contact our Regulatory Affairs Manager by emailing greig@icnz.org.nz.

Yours sincerely,

A handwritten signature in blue ink that reads "Tim Grafton". The signature is written in a cursive style and is positioned above a horizontal line.

Tim Grafton
Chief Executive

A handwritten signature in blue ink that reads "Greig Epps". The signature is written in a cursive style and is positioned above a horizontal line.

Greig Epps
Regulatory Affairs Manager