Regulatory Impact Statement: Business Payment Practices Bill 2023 Regulations

Purpose of Document	
Decision sought:	Cabinet decisions on the Business Payment Practices Bill 2023 Regulations
Advising agencies:	Ministry of Business, Innovation & Employment
Proposing Ministers:	Minister for Small Business
Date finalised:	25 May 2023

Problem Definition

1. Lengthy payment terms and late payments create difficulties for small businesses. Often, they need to put up with slow payment practices, because requesting better payment terms might jeopardise their commercial relationship with the entity they are supplying. Also, small businesses cannot always effectively collect their debts due to their limited time and resources, and difficulties with the civil debt enforcement process.

2. The Business Payment Practices (BPP) Bill 2023 (the Bill) intends to address these issues by bringing transparency to business-to-business payment practices. It requires large entities to report six-monthly on their payment practices on a public register administered by MBIE. The Register will provide information about reporting entities' payment practices, which other businesses can consider when engaging with them. The additional transparency may also incentivise reporting entities to improve their payment practices, where this is warranted.

3. The Bill requires that the detail of what payment practice information must be disclosed is set out in Regulations. Without these Regulations being made, the Bill will have no effect, as reporting entities won't know what information they need to provide, and MBIE won't know how to design the public register that the information will be published on.

4. The requirement for the "reporting measures" (as we refer to them here) to be set out in Regulations rather than the primary legislation reflects the Government's desire to ensure that they can evolve to meet changing commercial and technological contexts, while ensuring that Parliament retains some oversight over what measures are used.

5. This Regulatory Impact Statement examines options for these reporting measures. It does not attempt to relitigate decisions already made about the need for a transparency regime, who it will apply to, and other matters addressed in the primary legislation.

6. In devising an appropriate set of reporting measures, the key problem to be addressed is how to ensure sufficiently informative information is available to provide an accurate and fulsome picture of reporting entities' payment practices while minimising compliance costs, maximising administrative efficiency, and ensuring the data being reported is readily understandable.

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Executive Summary

7. MBIE issued a discussion document on what reporting measures should be included in the Regulations on 28 October 2022, and submissions closed on 26 February 2023. We received 27 submissions. They suggested that:
   - there should be as few reporting measures as possible – only those that most directly achieve the regime's aims should be included as a surfeit of reporting measures would increase complexity and reduce understandability
   - the regime's usefulness will depend on the information being reliable (and therefore not too complex to collate and calculate), and easy to interpret
   - the reporting measures should align wherever possible with the Australian regime, as the experience gained there will reduce implementation risks in New Zealand
   - measures that rely on "date invoice provided", and measures that rely on "date invoice due" will both be problematic, because some entities do not record one or the other. But overall, measures that rely on "due date" are more problematic.

8. Having considered these submissions, and consulted further with subject matter experts and key stakeholders, we propose a small set of reporting measures, that are relatively simple to collate and can be understood without a great deal of contextual interpretation. These are:
   a) average payment times, in calendar days
   b) the distribution of invoices paid within various time periods
   c) the proportion of total value of invoices paid within certain time bands
   d) qualitative information on standard payment terms and other payment practices.

9. These measures will enable a reasonably fulsome picture of reporting entities' payment practices, minimise compliance costs, and maximise understandability of the data being reported. Bar 'a', these measures are all used in Australia.

10. There is wide variation in practices in accounts payable systems, with some reporting entities easily able to comply with the proposed regulations, and some requiring significant investment to change their systems and processes. While it is impossible to estimate the expected compliance costs of this approach, the reporting measures we propose do seek to minimise them, and implementation risks more generally.

11. To achieve this, we recommend "time to pay" over "lateness" measures. Both would provide useful information, but both will be problematic for some reporting entities. A choice must be made, as introducing the two measures simultaneously would create unacceptable implementation risks.

12. In recommending "time to pay" metrics, we have been guided by the Bill's primary intent, which is to improve the terms of payment that large firms offer small ones. Late payments are also an issue, but the key problem the Bill seeks to resolve is long payment terms caused by uneven bargaining power between SMEs and large firms.

13. This choice disadvantages reporting entities that do not record the date an invoice is received. They will need to change their systems to collect this data. This issue would apply to other reporting entities, however, if "due date" was the key metric.

14. The incoming BPP regime is relatively new in international terms – no best practice around this kind of reporting has been established. The set of measures we recommend, therefore, is not necessarily the end point for the reporting regime. We will recommend further or amended reporting measures as the evidence suggests.

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Limitations and Constraints on Analysis

15. This analysis was not constrained or limited by the Minister's commissioning, nor by prior legislative and policy decisions (beyond, of course, those made in respect of the Bill itself). Nor have we been bound by the 11 potential reporting measures outlined in the Discussion Document.

16. The analysis is constrained, however, by the fact that we have limited visibility of the systems reporting entities use to manage their accounts payable. To mitigate this information deficit, we have relied on submissions, and subsequent in-depth discussions with subject matter experts and key stakeholders (refer Annexes One and Two for a full list). This includes the Government's Small Business Advisors, as representatives of the scheme's intended beneficiaries.

Responsible Manager(s) (completed by relevant manager)

Kate Challis
Manager
Small Business Policy, Ministry of Business, Innovation & Employment
25 May 2023

Quality Assurance (completed by QA panel)

Reviewing Agency:	MBIE
Panel Assessment & Comment:	MBIE's Regulatory Impact Analysis Review Panel has reviewed the attached Impact Statement prepared by MBIE. The panel considers that the information and analysis summarised in the Impact Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

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Section 1: Diagnosing the policy problem

The policy problem the Bill responds to

17. The 2021 RIS prepared for the Bill stated that:

    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.

18. Firms benefit from long payment terms because, for this period, they get to use their suppliers as a source of interest free credit. This supports their cashflow. Good cash flow is crucial to a successful business, but especially for smaller firms that have fewer financial resources. Long payment times make it harder for them to pay their bills, increase stress, and can require them to expend time and money chasing debts.

19. The 2021 RIS outlined the survey data and other evidence available on this issue. In summary, it found that large businesses sometimes impose what their smaller suppliers feel are unfair 'extended' payment terms. That is, large businesses tell their small suppliers they will only buy from them if they are allowed, for example, 90 days to pay invoices. Concrete evidence about the full extent of this issue (particularly relating to long, rather than late or extended terms), however, was not available.

The Bill's objectives

20. The Government's 2020 discussion paper on business payment practices stated that:

    We are interested in improving payment practices so that:

    - *businesses are paid in a timely manner, reflecting technology and the ability to process invoices much faster than ever before*
    - *businesses have the cash-flow they need to operate effectively*
    - *organisations don't have to waste so much time chasing debts*
    - *payment terms are fair and reasonable*
    - *technology adoption becomes 'business as usual' across the supply chain.*

21. The Bill's purpose statement states that:

    The purpose of this Act is to—

    (a) improve transparency in certain business-to-business payment practices; and

    (b) enable members of the public and entities to access information about those business-to-business payment practices so that they can make informed choices about whether to engage with certain large entities.

22. The General Policy Statement in the Bill's introductory version states that:

    The purpose of this Act 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.

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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.

23. Taken together, these documents provide a clear indication of the regime's high-level objectives. These are to:

    - provide small businesses with better information to inform their decision-making when trading (ie about which large firms have good payment practices, and which don't)
    - incentivise large businesses to improve their payment practices (ie decrease payment times, and pay on time)
    - help build an evidence base for any future government intervention in this area.

Objectives for the Regulations

24. The 2022 discussion document outlined objectives for the Regulations (page 8). These are summarised below:

    - the information disclosed is useful for end users
    - reporting is simple and understandable
    - compliance costs are reasonable
    - the risk of unintended consequences is minimised
    - the Regulations allow for effective and responsive administration.

25. The first two objectives build directly on the Bill's policy intent. If the information reported isn't relevant to end users (SMEs, the media and industry groups), the Bill will fail to achieve its policy objective. If the information reported is difficult to understand, end users won't be able to make best use of it.

26. The last three are also important objectives. The Government wants to ensure that costs on reporting entities are as low as is possible, while achieving the regime's objectives. The reporting requirements shouldn't drive perverse incentives or outcomes. And MBIE needs to ensure that public money spent on the Register and Registrar function is used efficiently and effectively – achieving maximum 'bang for buck'.

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Section 2: Deciding upon an option to address the policy problem

What criteria have been used to assess options?

27. For the purpose of this analysis, we have used the objectives in the Discussion Document to build analytical criteria. It is not a word-for-word translation, however, as this analysis pertains to the Regulations only (and not Notices issued by the Registrar), which the objectives in the Discussion Document also covered.

28. The criteria we use for this analysis are as follows.

    - **The information disclosed is useful**. Disclosed information must be relevant to small businesses and help them make informed decisions about which large firms to do business with.
    - **The information being reported is readily understandable**. We want to keep things simple. Introducing unfamiliar or overly complex measures increases the risk of confusion and inconsistent and/or inaccurate disclosures.
    - **The disclosed information allows for a fair comparison between reporting entities**. We want the reporting measures to show a firm's payment practices as they really are, for better or for worse. The measures should not cast a reporting entity in a better or worse light than others because of statistical or operational anomalies arising from the choice of reporting measures.
    - **Compliance costs are minimised**. The costs on reporting entities should be no greater than necessary. Where a choice is available (all other things being equal), the least-cost option is preferable.
    - **The regime can be efficiently administered.** MBIE must be able to operate the Register cost-effectively, including in the way that it publishes payment practice information, monitors compliance (eg reporting measures can easily be reproduced from raw data), and supports reporting entities to make accurate reports.

29. These criteria trade off in various ways. For example:

    - The most understandable information may give rise to unfair comparisons, eg an average is more easily understood than a distribution, but can be skewed by outliers.
    - The most useful information may present significant compliance costs. Some reporting entities, for example, do not record the dates invoices are due, while others do not record the date an invoice is received. Both these data points would help produce useful information, however.
    - Efficient administration calls for fewer reporting measures, which are published in simple formats such as tables and text boxes. This, however, may result in important nuance not being reported, which (in the eyes of some reporting entities) does not paint a fair picture of their actual payment practices.

What scope will options be considered within?

30. MBIE has had free rein to consider a full suite of potential reporting measures. The scope was not limited by Ministers' commissioning or previous policy decisions. The scope is limited, however, by the need to ensure that all the reporting measures considered for inclusion are feasible. They must be able to be collated and reported in practice. For example, requiring highly specific information that drills down to individual transactions is not feasible. The reporting measures need to be summary information, that can be published in a way that is possible within the constraints of a public register.

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31. We have not considered non-regulatory options, as the Bill cannot be made effective without Regulations. While any particular reporting measure may be voluntary, the requirement to put Regulations in place is not.

32. In considering the content of the Regulations, we have had a close eye to the equivalent regime in Australia.[1] This is particularly so because some of the reporting entities will need to report under both regimes. Clearly, from their perspective, alignment would be sensible and would help reduce compliance costs.

33. Nonetheless, we have not predetermined this analysis to ensure that it recommends the Australian approach. Its regime has not yet been formally evaluated, and as such, we do not know whether it has resulted in the most useful information being made available in the most understandable way. We have, therefore, approached the development of reporting measures for New Zealand as a 'de novo' exercise, albeit, with current Australian practice borne in mind.

What reporting measures are being considered?

34. The 2022 Discussion Document set out 11 potential reporting measures. We have added one (3a), in response to a change to the Bill made by the Select Committee.

NOTES:

- Invoices are only counted as paid when they are paid in full. Part invoices (eg a deposit) are counted as paid when the full amount of the part invoice (eg the full deposit) is paid.
- Firms that do not record receipt date may instead use the date in the invoice.
- Invoice receipt dates from the time that the invoice is provided in the manner and form agreed in advance by the two parties.
- Invoice due date is the date that accords with the terms of the contract entered into by the two parties prior to the invoice being submitted.
- To be included in the reporting, a firm issuing invoices to a reporting entity must be carrying on business in New Zealand.

1. Average number of days to pay invoices from suppliers e.g. "16.02 days"

35. This provides an easily comparable summary measure for payments to suppliers. It is easily understood at a glance. It can be skewed by outliers, however.

2. Percentage of the number of invoices that were paid within the agreed payment period e.g. "93%"

36. This measure gives an easy comparison of how frequently a reporting entity pays its invoices on time, and by inference, how many are late.

37. This is a headline measure in UK regime.

3. Percentage of invoices paid in full during the reporting period e.g. "100%"

38. This covers the proportion of invoices paid in full during the reporting period. The remainder will likely be disputed payments, or payments otherwise not made in full – including not made at all. This measure complements other measures which use a "time to pay" approach (1, 4, 6 and 7). These other "time to pay" measures don't factor in

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[1] And to a lesser extent, the UK.

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invoices that have been received but not yet paid (or paid in full). For example, a reporting entity that receives 100 invoices in the reporting period, pays 1 in 10 days, and doesn't pay the other 99 at all would show up in Measure 1 with an average payment time of 10 days. This would mislead, however.

3a. Invoices in dispute

39. Invoices can be paid late for many reasons, including because the supplier has overcharged or hasn't delivered their side of the contract. In these cases, the payer may elect to dispute the invoice and not pay the amount owing until the dispute is resolved.

40. The Select Committee wanted to ensure that any measure of late payments didn't include payments that are late because the invoice is in dispute. It therefore inserted clause 10(2) into the Bill. This clause provides that the Minister must be satisfied that the regulations enable separate reporting of measures relating to disputed invoices and late payments.

41. In response to this amendment, we have investigated a new and voluntary measure. It would enable reporting entities to remove disputed invoices from their other reporting, and report on the number and proportion of invoices in dispute separately.

4. The percentage of invoices unpaid 61 days or more after receipt of invoice e.g. "0%"

42. This gives an indication of the proportion of payments made well beyond the time most businesses usually receive payment. 60 days is a little more than twice the average time we understand it takes businesses to receive payment after issuing an invoice.

5. Average late payment time e.g. "0.2 days"

43. This lets potential suppliers of the reporting entity know how long they should expect to wait for payment after the agreed due date for an invoice. Regular early payments could produce a negative number.

6. The proportion of total number of invoices paid within certain time bands e.g. 0 and 20 days, 21 and 30 days, 31 and 60 days, 61 and 90 days, 91 days and higher

44. This gives a better-rounded picture of the spread of reporting entities' payment times. From this information potential suppliers can form expectations about the upper and lower limits of a reporting entity's payment practices, and how frequently they comply with the terms they offer their suppliers.

45. This reporting measure is used in Australia.

7. The proportion of total value of invoices paid within certain time bands

46. Like the measure above, this also provides a distribution, but is more concerned with relating payment times to expenditure. In other words, this measure indicates how much money is spent on prompt (or slow) payments. This complements measure number 6 by providing information that a simple invoice count could miss. For example, a large number of invoices could be paid very quickly, while accounting for a small proportion of total expenditure.

47. This measure is not just a protection against gaming. It would also shine a light on industry practice. Multiple stakeholders have asserted that some firms offer short payment terms for lower value invoices, and longer terms for high value invoices. For SMEs, however, high value invoices will be the important for cashflow, and ideally they would be paid just as fast as lower value invoices.

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48. This reporting measure is used in Australia.

Reporting measures covering invoices issued by reporting entities, paid by their purchasers

8. Average number of days for receipt of payment e.g. 10.02 days

49. Up until this point, all the measures have referred to invoices received by the reporting entity. This measure relates to invoices the reporting entity itself issues and how long the reporting entity's customers take to pay them. The purpose of this measure is to indicate how easy it may be for a reporting entity to alter their payment practices. Decreasing payment times can come at a significant cost to a reporting entity when it takes them a long time to receive payments.

9. Percentage of invoices paid on time e.g. 98%

50. As with measure 8, this measure provides context about the reporting entity. In this case the measure relates to invoices issued by the reporting entity and the payments they receive. We might expect a business who receives many late payments to encounter cashflow issues more frequently and, in turn, finding themselves needing to make late payments more frequently.

Questions asking for an explanation about payment practices and policies (qualitative information)

10. What are your standard payment terms offered to your suppliers in calendar days? e.g. 15 days, 30 days, and 60 days

51. Through this measure, potential suppliers to reporting entities can know what payment terms it can expect to be offered. This information could assist them in negotiations with reporting entities. This type of qualitative measure with a limited number of options for responses has the potential to provide useful contextual information at a glance for those reading the reports, with a minimum of reporting burden for reporting entities.

52. This reporting measure is used in Australia.

11. What other payment practices does the entity employ? eg eInvoicing, supply chain finance, more favourable terms for small businesses, charges to businesses that remain on the entity's supplier list, etc.

53. This measure provides additional qualitative information relating to reporting entities' payment practices that are not directly related to payment times or late payments.

54. This reporting measure is used in Australia.

Stakeholder and subject matter expert feedback on the reporting measures

55. Much of the feedback we received on the Discussion Document, and in subsequent discussions with subject matter experts, was concerned with higher-level matters than individual reporting measures. The main themes arising were:

    - there should be as few reporting measures as possible – only those that most directly achieve the regime's aims should be included as a surfeit of reporting measures would increase complexity and reduce understandability
    - the regime's usefulness will depend on the information being reliable (and therefore not too complex to collate and calculate), and easy to interpret

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- the reporting measures should align wherever possible with the Australian regime, as the experience gained there will reduce costs and implementation risks in New Zealand, and
- measures that rely on "date invoice provided", and measures that rely on "date invoice due" will both be problematic to some extent, because some entities do not record one or the other. But overall, measures that rely on "due date" are more problematic, because not only do some reporting entities not record them, but also, the actual due date of an invoice is not always straightforward to ascertain.

56. **Annex Two** contains a summary of the feedback we received in relation to each reporting measure. We also received a lot of other feedback that didn't relate to specific reporting measures. It is set out in **Annex Three** – along with MBIE's response.

We have ruled out two measures on the basis of this feedback

57. Almost all submitters agreed that the smallest number of reporting measures that are required to achieve the Bill's goals is preferable. They asserted that this would reduce compliance costs and maintain a focus on the most important measures rather than those of more academic interest. We agree. For this reason, we decided to discard reporting measures that relate to invoices *issued* (rather than received) by reporting entities from the analysis. They are:

    8. Average number of days for receipt of payment e.g. 10.02 days

    9. Percentage of invoices received on time e.g. 98%

58. Fundamentally, the Bill is for the benefit of small businesses that deal with large businesses. Requiring large businesses to report on how other entities pay them, therefore, is not essential to the Bill's purpose. While including them would help build an evidence base for future policy development, that is not a strong enough rationale to justify the compliance costs – which submitters considered would be substantial. For these reasons, reporting measures 8 and 9 found no support whatsoever from submitters. We have not, therefore, further analysed them in this RIS.

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How do the options compare?

The table below assesses the potential reporting measures that were set out in the Discussion Document, on the basis of submitter feedback and our further discussions with stakeholders and subject matter experts. As noted in paras 58-59, we have not analysed measures 8 and 9. Measure 3a is new and arises as a result of submissions and the Select Committee's addition to the Bill discussed in paras 40-42.

The status quo is not an option, as the Bill requires reporting measures to be set out in Regulations. The analysis below therefore examines potential reporting measures on their own merits, rather than comparing them against the status quo. A key is provided in the left hand column. The reporting measures that we recommend are shaded.

	1. Average number of days to pay invoices	**2. Percentage of invoices that were paid within the agreed payment period**	**3. Percentage of invoices paid in full during the reporting period**	**3a Proportion of invoices that are in dispute (voluntary)**	**4. Percentage of invoices unpaid 61 days or more after receipt of invoice**	**5. Average late payment time**	**6. The proportion of total number of invoices paid within various time periods**	**7. The proportion of total value of invoices paid within various time periods**	**10 & 11 Qualitative information (standard payment terms and other payment practices)**
The information disclosed is useful. Disclosed information must be relevant to small businesses and help them make informed decisions about who to do business with. ✓✓= very useful ✓= somewhat useful × = not useful	✓✓ A straightforward comparison can be made between reporting entities.	✓✓ Late payments are an important issue (as too many late payments at once can cause unexpected cashflow issues). Also provides an alternative measure where the average number or spread of "time to pay" measures doesn't give	✓ "Time to pay" measures don't account for invoices received that haven't been paid in part or in full. Using these measures only could mislead, eg if a few invoices are paid quickly but many others are not paid at all, or are only paid in part. This measure shows the other side of	✓ Small businesses are not well positioned to settle disputes on their terms, when dealing with large firms. Anything beyond a very low proportion would likely signal systemic issues with that payer.	× 61 days is a proxy for late or disputed invoices (in the absence of measures that require invoice due dates), but not necessarily a very good one.	✓✓ This would be useful information. It is similar to the information in 2 but provides a measure of magnitude too.	✓✓ A spread complements an average. The suggested division of the spread (30 day intervals) is familiar to businesses and accounts payable personnel.	✓ This measure is not particularly useful for small businesses, and it is unclear how a supplier would use that information. But it will be useful for people who are analysing disclosures (such as industry representatives and the media), because unlike measure 6 it cannot be skewed by paying low value invoices	✓✓ This is probably the most useful information (e.g. standard payment terms are often opaque to suppliers), so long as it is stated in plain language.

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		suppliers a straightforward or intuitive indication of payment practices.	the coin – invoices received that haven't been fully paid.					quickly and high value invoices slowly.	
Compliance costs are minimised. Compliance costs should be no greater than necessary. The costs on reporting entities should be justified, and where a choice is available (all other things being equal), the least-cost option is preferred. ✓✓= low compliance costs ✓ = moderate compliance costs ✘ = high compliance costs	✘ - ✓✓ Should be easy to calculate, so long as invoice receipt dates and payment dates are recorded. This is not always the case, and where payment systems cannot readily collate this information, compliance costs could be high.	✘ - ✓ Should be easy to calculate, so long as invoice due dates and payment dates are recorded. This is not always the case, and where payment systems cannot readily collate this information, compliance costs could be high. "Lateness" measures require a definition of what an agreed due date is, which can be challenging.	✓✓ All payment systems should know which invoices have been fully paid, so as not to overpay suppliers. On this basis the information should be easy to collect.	✘ As a voluntary report, there would be no additional compliance costs, beyond those the reporting entity choose to incur. Nonetheless, if the entity chooses to provide this information, it would most likely need to be collected manually or reporting functionality added.	✓ Should be easy to calculate, so long as invoice receipt dates and payment dates are recorded. This is not always the case, and where payment systems cannot readily collate this information, compliance costs could be high. "Lateness" measures require a definition of what an agreed due date is, which can be challenging.	✘ – ✓✓ Should be easy to calculate, so long as invoice due dates and payment dates are recorded. This is not always the case, and in the absence of collecting this information, compliance costs will be high.	✘ – ✓ See measure 1. This is slightly more complicated as it requires creating several subsets of invoices	✘ – ✓ Requires creating several subsets of invoices, and aggregating their value.	✓✓ Very low compliance costs.
The information being reported is readily understandable.	✓✓ Simple	✓✓ Simple	✓ While this is a useful complement to other "time to	✓✓ Simple	✓ Simple on the face of it, but not a sure indicator of	✓✓ Simple.	✓ A spread is less understandable than an average. The	✘ The significance of the spread could be hard	✓ Should be understandable, but this depends on

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Introducing unfamiliar and overly complex measures increases the risk of confusion and inconsistent and/or inaccurate disclosures. ✓✓ = easily understandable ✓ = moderately understandable ✗ = not understandable			pay" measures, it is not straightforward to interpret.		slow payment, and perhaps confusing for the minority of people who work in industries where 60 day payment terms are not uncommon (e.g. agriculture).		banding may present as arbitrary (although this banding is how many businesses present their own information for internal cashflow reporting).	to interpret, and it would need to be read alongside measure 6 to be understood. In and of itself, it does not convey easily understood information about how many invoices gave rise to that value distribution.	how the information is conveyed. Straight comparisons will be difficult.
The disclosed information allows for a fair comparison between reporting entities. We want the reporting measures to show a firm's payment practices as they really are, for better or for worse. The measures should not cast a reporting entity in a better or worse light than others simply because of statistical or operational anomalies in the applicable	✓ Can be skewed by outliers. But there would need to be a lot as this measure counts absolute numbers of invoices, not their value.	✓ Doesn't exclude invoices that were in dispute (but are now resolved) – these would need a separate count again. May be other reasons for part payments, meaning interpreting this measure as an indicator of late payments may be misleading.	✓ Required for the integrity of measures 1, 4, 6 and 7 (which use invoice receipt and payment date as the start and end point). Reporting periods may not align well with invoice receipt dates, leaving "overhang". If a reporting period ends on the 19th and bills are paid on the 20th, "overhung" invoices will be included in the	✓ What's considered to be a dispute is open to judgement.	✗ Any numeric threshold will be arbitrary and not account for specific circumstances, e.g. firms sometimes delay payment because they are awaiting receipt of goods. In addition, this type of anchor can affect firms' behaviour (such as has been seen in the EU), creating an expectation	✓ As this includes all differences between dates due and payment, this measure should provide a fair comparison between reporting entities. It can't, however, distinguish variations – eg entities which pay very late some of the time will look similar to those which pay only slightly late most of the time. In theory, this could be rectified by creating a complementary spread measures	✓✓ A spread is less likely to mislead than an average. A potential manipulation, or quirk of trading with specific suppliers, could be receiving many, small invoices, most of which can be paid quickly. Most suppliers will not provide the types of goods that allow this, but the risk remains that this can skew this distribution in a way that	✓✓ Can be used to ascertain if measure 6 has been skewed by engaging with a supplier that issues many small invoices that can be paid quickly (which has the effect of making a reporting entity look good on paper). This measure would act as a balance to ensure that it is clear when this happens.	✓✓ Low potential for unwanted impacts.

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measures. ✓✓ = low risk of misleading ✓ = medium risk of misleading ✗ = high risk of misleading			reporting. But this measure will still give valuable information when comparing similar businesses.		that if 61 days is late, then 60, or 59 days is not late.	as per 6 or 7. But adding a new distribution to the set of measures would create even more complexity and room for misunderstanding.	complicates interpretation.		
The regime can be efficiently administered. MBIE must be able to operate the Register cost-effectively, including in the way that it publishes payment practice information, monitors compliance, and supports reporting entities to make accurate reports. ✓✓ = enables efficient administration ✓ = enables moderately efficient administration ✗ = does not enable efficient administration.	✓✓ Unlikely to be any significant administrative issues.	✓ Likely to be issues discerning what is in dispute vs late, if disputed invoices can be recorded separately (ie 3a proceeds).	✓✓ Unlikely to be any significant administrative issues.	✓ Potentially issues discerning exactly what is considered as a dispute, relative to another reason for incomplete payment.	✓✓ Unlikely to be any significant administrative issues.	✓ Likely to be issues discerning what is in dispute vs late. Using 3a may assist as this would enable disputed invoices to be recorded elsewhere and be made absent from this measure.	✓✓ Unlikely to be any significant administrative issues.	✓✓ Unlikely to be any significant administrative issues.	✓✓ Unlikely to be any significant administrative issues.

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Recommended reporting measures

We recommend 'time to pay' and qualitative reporting measures

59. The potential reporting measures analysed above can be grouped into three different types.

    Time to pay measures (1, 3, 5, 6 and 7) capture the elapse of time between an invoice arriving and it being paid. These measures require the invoice receipt date to be accurately recorded.

    Lateness measures (2 and 5) capture instances where an invoice is paid after its due date. These measures require the invoice due date to be accurately recorded.

    Qualitative information (10 and 11) would describe reporting entities' standard payment terms and other matters of interest (such as whether they offer eInvoicing and/or superior payment terms for SMEs).

60. Australia uses time to pay and qualitative measures, while the UK uses a lateness measure. All three would be useful, but the implementation risks of introducing all three at once are considerable.

61. On balance, we recommend using **time to pay** measures and **qualitative information**.

62. **Time to pay** measures are the best fit with the Bill's intent, because they capture all payment times, whether paid late or not. This contrasts with lateness measures, which only capture invoices paid outside the payment terms. This is less informative overall, because if the payment terms are extended (eg 90 days), it is easier to pay the invoice on time. The time to pay measures we propose are below. The bracketed number is the number this measure had in the Discussion Document, and the analysis table above.

    - **Average payment time (1)**. This measure is straightforward to interpret, and likely to be a reasonable basis for comparison in most cases. It can be skewed by outliers, however.

    - **The proportion of total number of invoices paid within various time periods (6)**. This is a useful complement to an average. It has the added advantage of **incorporating** within it measure 4 (while in this form mitigating some unintended consequences of that measure).

    - **The proportion of total value of invoices paid within various time periods (7)**. This measure shines a light on the practice of paying small invoices quickly, and large invoices slowly. **The** Small Business Advisors have informed us that this is a fairly common practice, which is particularly problematic for SMEs given large invoices are most important for cashflow.

      By itself, this measure wouldn't be particularly useful for SMEs. But it will be useful for people who are looking at payments issues in the round, and will help ensure that the payment information disclosed by reporting entities paints a fair picture of their actual practices.

63. We also propose to use the **qualitative information** measures. These would provide context for the numeric measures, and could actually be most useful for many SMEs, so long as it is clear and simple. This information is relatively easy to provide. These measures do rely, however, on the reporting entity complying with its published payment practices, and they therefore need to be complemented with quantitative performance measures. We propose to use a hybrid of both:

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- **What are your standard payment terms offered to your suppliers in calendar days? (10)** e.g. 15 days, 30 **days**, and 60 days

- **What other payment practices does the entity employ? (11)** e.g. eInvoicing, supply chain finance, more favourable terms for small businesses, charges to businesses that remain on the entity's supplier list, etc.

... which are consistent with Australia's

64. All these reporting measures are used in Australia, apart from 1 (average payment time). We think this is a useful addition because it poses minimal additional compliance costs, and is a useful headline figure that SMEs will find easy to interpret. It can be subject to skewing, but if so, that would become apparent through the other reporting measures.

65. Trans-Tasman consistency, albeit with some modifications to suit the New Zealand context, has several advantages.

    - It will help reduce implementation costs and risks, because reporting entities can draw on data collection methodologies and lessons learned from Australia.
    - Aligning the basic terms and definitions used in respect of reporting measures will reduce confusion and room for error, especially for firms that operate in both countries.
    - It will enable comparisons to be made between reporting entities here and in Australia. For example, if New Zealand reporting entities lag significantly behind Australia's, this might invite further analysis as to what is causing this.
    - It will enable lessons learned across the Tasman to be assessed for their applicability to the New Zealand context. Australia is currently conducting an independent review of its payment times disclosure regime, and if this suggests useful improvements, New Zealand would be in a position to consider these for our own regime.

We recommend against lateness measures (2 and 5)

66. The "lateness" measures are:

    - **percentage of the number of invoices that were paid within the agreed payment period (2)**
    - **average late payment time (5)**.

67. These measures would be useful, and relevant to small businesses. But in our view, the implementation risks and potential compliance costs of introducing both "lateness" and "time to pay" measures simultaneously are too great. We recommend considering lateness measures for future inclusion, once the regime is well bedded in. Our rationale is set out below.

Submitters were split on the merits of time to pay versus lateness measures...

68. Submitters were split on which of time to pay and lateness be most difficult to implement, as some do not record invoice receipt dates, while others do not record invoice due dates. For example (each statement below is from a different submitter):

As a general note relating to all measures, the fact that payment times are measured in calendar days starting from the date of receipt of the invoice until the day the invoice has been paid in full potentially requires a system reconfiguration at significant cost for some organisations. Current systems do not

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automatically track this, and it also raises the question of how invoices that are in dispute will be considered and dealt with.

[We] would be unable to report on measures 2 *Percentage of the number of invoices that were paid within the agreed payment period* and 5 *Average late payment.* [Our] due date for the invoices is set as "immediate" to pay faster and therefore all the invoices entered in our FMIS will be deemed as the "invoices due in the period".

Given the only common location for all our vendor and customer payment and receipt data is SAP, we will need to use the dates recorded in SAP as SAP receiving the invoice for processing to produce the reporting. Trying to obtain original dates of receipt or invoices dates will be an extremely manual, time-consuming and costly process, particularly if we need to make systems changes, which may not be possible.

Reporting will be workable if all metrics referred to invoices paid within the period instead of invoices due during the period. This would also be in alignment with the Australian legislation.

69. This issue does not just relate to who bears the most compliance costs. It also relates to the Bill's intent. The Discussion Document noted that: *the Bill is intended to address issues relating to late payments and long payment times.* It further states that: *The current Bill does not make a judgement on payment practices, nor will it regulate maximum payment times.*

70. Some submitters argued that – in line with these statements – the reporting measures should focus on adherence to contractual terms rather than measuring time to pay.

A measure that reflects a reporting entity's performance against the payment period as agreed between the vendor and the purchaser should be the primary measure of the regime.

Measure 1 [average payment time] doesn't allow for companies to baseline against payment terms – i.e. if a company's payment terms are 20th month following invoice, 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.

71. Others, however, think that it is important to measure payment times, or that measures based on invoice due dates might not work as intended.

We propose that reporting periods consider the invoices paid rather than due during the reporting period. This will be logistically simpler for entities to report while still providing robust long-term insights into speed of supplier payment.

Average late payment time could be challenging to implement as there is often a difference between a supplier's due date displayed on an invoice and a customer's standard payment terms.

72. We think it is advisable to either go with only one of the time to pay and lateness approaches. Either will be challenging for some and possibly many reporting entities to implement. Requiring reporting entities to implement both types of measures simultaneously will, in our view, raise unacceptable cost and implementation risks.

... but time to pay measures are a better fit with the Bill's objectives

73. In determining which was a better fit, we have been guided by the Bill's objectives, and the policy problem that it responds to. Fundamentally, the first order policy problem is that some large firms are leveraging their market power to impose long payment terms, that advantage them over their smaller suppliers. The Bill's intent is to cause them to shorten their payment terms, and therefore pay their bills faster.

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74. Long payment terms can be distinguished from late payments. For example, a firm may choose to pay its bills on the last day of a three-month payment term. This is not a late payment, as it adheres to the contractual terms. But it is a long time to pay an invoice.

75. Late payments (ie payment times than are longer than the contractual terms allow for) are also a concern for many small businesses. Ideally, the reporting regime will also act to reduce their incidence. But late payments are not the primary policy problem – we have no evidence to suggest that large firms systematically pay late because of their market power. In fact, anecdotal feedback suggests that a larger firms may have no

... and lateness measures would be costlier and more complex to implement.

76. A further consideration is the likely balance of costs. Time to pay measures will pose significant implementation challenges (and costs) for reporting entities which don't currently capture invoice receipt dates, as they will need to start doing so. This may involve substantial changes to their processes and systems.

77. The same situation would arise for other reporting entities, however, if lateness measures were used because they don't record the invoice due date. Furthermore, lateness measures are less straightforward. We heard from several firms that some invoices arrive after the due date, while others are provided with a due date that doesn't reflect the terms of the contract. In these cases, ascertaining the correct due date for reporting purposes would require manual intervention, and increase the cost of reporting.

78. It is difficult to assess exactly where the balance lies in respect of firms that record invoice receipt dates versus those that record invoice due dates (versus those that record both or neither). Business New Zealand's submission on the Discussion Document provides some guidance on this, however. It states that:

    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).

79. This doesn't specifically address the question of whether time to pay measures will be cheaper to implement than lateness measures. It does indicate, however, that Business New Zealand's members are expecting an approach to be taken here that is similar to that used in Australia – which uses time to pay measures.

80. We are also mindful that Australia's reporting measures use the time to pay approach. Trans-Tasman consistency in respect of the basic approach (if not every single reporting measure) is clearly desirable, not least because the experience gained across the Tasman will help reduce implementation risks in New Zealand.

For these reasons, we think that reporting measures which are based on time to pay rather than lateness will work best at this stage.

81. Lateness measures might usefully be required as a reporting measure subsequently, once reporting entities are routinely reporting high quality information, but should not be required initially as, judging from the Australian experience, reporting entities will already likely be challenged in producing high quality reports in the lead-in time between Royal Assent and the scheme's commencement.

82. Where reporting entities are engaged with a wide range of suppliers, who all engage in a wide variety of payment practices (sometimes simply because of convention and historical reasons), a wide range of payment terms may be employed that are acceptable to the parties. In this case, time to pay measures may not necessarily give a

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straightforward indication of whether a reporting entity is paying in a way acceptable to its suppliers. Where this is the case, lateness measures can be useful. The absence of this information is the main opportunity cost of not including lateness measures.

Other measures that we think do not warrant inclusion in the initial set of reporting measures

83. These are set out below.

- **Percentage of invoices *not* paid in full during the reporting period (3)**

  Measures 1, 6 and 7 only count invoices that are fully paid. Therefore, the absence of a “% received but not fully paid” measure might leave issues with their integrity. Including measure 3 makes would help ensure that the reporting is fair, by measuring how many invoices are received, but not paid.

  This buttress against gaming, however, needs to be balanced against the desire to include only the most meaningful reporting measures, and to avoid complexities arising from the need for context around part payments, and an additional count of invoices in dispute.

  After consulting with industry practitioners and other stakeholders, however, we do not think that measure 3 needs to be included. Each reporting period lasts six months. We expect that most invoices arriving in that period would be paid by the end of it, unless they arrived close to the end of the reporting period, or are subject to a drawn out dispute. Both will be a minority of the total number of invoices received over that time, and in the case of disputed invoices, a very small minority.

  No stakeholder we have spoken to thinks it likely that reporting entities would try to skew their disclosures by paying a high proportion of their invoices in part, or not at all. We have now spoken with many accounts payable practitioners, and their uniform intent is to pay bills, in full, as soon as is practical (within the constraints of their firm’s policies and systems).

  On this basis, we don’t think the risk of gaming is high enough to justify including this measure. We note that Australia takes this approach also.

- **Proportion of invoices that are in dispute as a voluntary measure (3a)**

  SMEs are likely to have a strong interest in how likely a payer is to dispute invoices from its suppliers. On the face of it, it should be relatively straightforward to implement. But the reporting entities we discussed this measure with do not support it because it they would feel obliged to use it, and as such it would increase their compliance costs. It would also add to the regime’s complexity.

  In light of this feedback, we do not recommend including measure 3a. This measure was not put forward in the Discussion Document, and therefore we may not be aware of other advantages or disadvantages it presents. In the absence of a compelling need for it, and in light of the adverse feedback we did receive on it, we don’t consider it essential.

  If the reporting measures we recommend are adopted, the Bill will not require a count of disputed invoices, because no measures of lateness (nor of part payments, as discussed above) would be used. If lateness or part payment measures are added to the set of reporting measures, however, then a separate count of invoices in dispute will also need to be added.

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- **Percentage of invoices unpaid 61 days or more after receipt of invoice (4)**

  This is a useful test of who routinely pays late or has very late payment terms. But it is not necessary to establish this as a separate measure, because it can be incorporated within Measure 6. Doing so will minimise compliance costs.

- **Time to pay and lateness measures for invoices issued by the reporting entity (8 and 9)**

  These measures were put forward in the Discussion Document to elicit feedback on whether reporting entities would find them useful, and whether they would find them difficult to calculate. Submitters uniformly stated that they would not be useful and would be difficult to report on. Given that they are not central to the Bill's intent, the case to proceed with them is not strong.

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What are the marginal costs and benefits of the option?

Overall costs and benefits of the Bill’s transparency regime

84. MBIE’s 2021 RIS set out the expected costs and benefits of a business payments transparency regime. It analysed three potential approaches to the problem:

    a. non-regulatory options (including a voluntary code and/or voluntary reporting)

    b. a mandatory transparency regime

    c. legislated maximum payment times for businesses.

85. It found that option b was most likely to achieve the policy objectives of bringing greater transparency to business-to-business payment terms and practices, thereby giving businesses better information to inform their decision-making when engaging in trade, and incentivising larger businesses to mitigate reputational risk by improving their business payment practices.

86. This RIS takes the decision to proceed with a mandatory transparency regime as a given, and does not seek to further analysis the costs and benefits of this approach. Rather, the analysis below relates solely to the choice of reporting measures.

Costs and benefits for reporting entities

Costs for reporting entities

87. MBIE’s 2021 RIS stated that (with a medium level of certainty) the costs for reporting entities would be low. It estimated that the transitional and ongoing reporting costs for reporting entities as follows:

    United Kingdom (which uses a lateness measure)

    - Transitional costs - £1,798 in 2016 ($4,600 NZD today)
    - Annual operational costs - £1,012 ($2,600 NZD today)

    Australia (which uses time to pay measures)

    - Transitional costs - $2,000-3,000 AUD per entity or group
    - Annual operational costs – approx. $2,000 AUD per entity or group.

88. Our subsequent consultation suggests that implementation costs for many reporting entities will be higher than the 2021 RIS estimated. The cost will primarily relate to whether (and how) reporting entities record invoice receipt dates.

89. We understand that most reporting entities do ‘frank’ invoices once they enter the payments system – although the date recorded may not actually align in all cases with the date the invoice was actually received. In that case, the reporting entity will need to change its system. Reporting entities in this situation will face potentially significant implementation costs. We do not know how many reporting entities will be in this situation, but suspect it is a significant minority.

90. Implementation costs for reporting entities that need to start recording invoice receipt dates will vary widely from business to business. Feedback from one large New Zealand company indicated that the potential cost of changing a payments system to accommodate new reporting requirements could be in the order of $1 million.

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91. This may be a worse-case scenario, however, which would most likely apply in situations where the business operates multiple accounts payable systems, none of which support the reporting requirements. We are aware of some firms that have, for example, 10 separate accounts payable systems, with each system employing different processes.

92. Reporting entities that already record receipt dates accurately, in contrast, should face low implementation costs. We engaged with payments systems providers to ascertain how readily their systems could accommodate the proposed reporting measures. They said that their products already enable the recommended reporting calculations to be automated and, as such, should be straightforward to compute.

93. Other costs relate to ongoing compliance with the regime. When developing this RIS, we spoke with an international consultancy that assists Australian firms to become compliant with its reporting regime. The consultants told us that they have a full time team active in Australia assisting firms to comply with its regime.

94. We understand that it is not standard practice for this type of consultancy to establish a permanent team tasked with a particular reporting regime. This indicates that there is considerable market demand for this service. The consultancy indicated that upfront technology and process change costs were only part of the picture - operational costs also arise from the need to access data relating to invoices that fall outside automated channels.

Benefits for reporting entities

95. The 2021 RIS estimated (with a low degree of confidence) that reporting entities could receive a low indirect benefit from the opportunity to improve their reputation by demonstrating good payment practices. This relates to the overall policy approach however, not the choice of reporting measures.

96. It is not possible to precisely estimate the cost difference between the recommended reporting measures (time to pay), and those which are not recommended (lateness). But as discussed in paras 74 – 78, lateness measures would most likely be costlier and more complex to implement. Therefore, the expected benefit of the recommended approach is that it will avoid some compliance costs and implementation risks that reporting entities would incur if lateness measures were also used.

Costs and benefits for suppliers

Costs for suppliers

97. The 2021 RIS did not envisage any costs for suppliers, and nothing in the analysis in this document suggests that any will arise. A lack of ‘lateness’ measures in the reporting would mean that SMEs will not receive the benefit of knowing which reporting entities are most likely to pay their bills on time, nor will the media be able to focus their scrutiny on late payers. This is a significant opportunity cost of not including lateness measures.

Benefits for suppliers

98. The 2021 RIS estimated, with a low degree of confidence, that suppliers could receive a medium level of benefit. This was on the basis that most SMEs would not access the register, because they have too many other priorities. Also, the value of the information would depend on the degree of choice they have around who they do business with. Rather, most benefits would be indirect and would depend on how reporting entities respond to the additional transparency their payment times are subject to.

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99. This indirect benefit does not relate to the choice of reporting measures, however. In respect of these, the time to pay measures and qualitative information we recommend be disclosed are relatively straightforward to understand and will be informative for those suppliers who choose to access the register.

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Section 3: Delivering the recommended option

How will the new arrangements be implemented?

100. MBIE's Chief Executive will appoint a Registrar, who will be responsible for the operation and enforcement of the BPP regime. The Registrar will most likely be located in the Companies Office. It has significant experience of establishing and operating public registers, including for comparable new regimes like that for climate-related disclosures.

101. The Bill provides for the Registrar's powers and functions to come into effect on Royal Assent. The first reporting period will begin six months later. For the first reporting period, however, only very large companies (those with $100 million revenue) will be required to report.

102. A common theme of submissions was that reporting entities should be provided with sufficient time to implement systems changes. Most submitters suggested that a period in the range of 12-24 months would be sufficient. MBIE is cognisant of this feedback but this RIS concerns the Regulations, not the Bill's commencement provisions.

103. The Registrar will work with Inland Revenue to identify entities that likely fall in scope of the BPP regime, and provide them with advance warning of their new reporting requirements. This outreach will take place well before the first reporting period commences (most probably in the month after Royal Assent). We expect that most if not all large companies will already be aware of the new requirements, however, as information about the new regime will also be disseminated by professional associations such as Chartered Accountants of New Zealand and Australia.

104. The implementation risks relate primarily to the ability of reporting entities to provide the required information. When the equivalent Australian regime was introduced, there was only a three month transitional period before the first reporting period commenced. But, in light of this, Australia also provided for a 12 month grace period, during which the regulator focused on outreach and education, and no compliance action was taken.

105. The Bill does not specify any "compliance-free" grace period here, but nonetheless, MBIE's standard regulatory practice is to focus first and foremost on helping entities meet their requirements by providing information and guidance. Compliance action is generally considered a last resort, only to be taken in cases where deliberate malfeasance is identified, or entities fail to respond in good faith when the regulator attempts to engage with them. That will be the case for the BPP regime too.

How will the new arrangements be monitored, evaluated, and reviewed?

106. As with all the regulatory regimes MBIE administers, we will be open to stakeholder feedback on its operation. While there is no statutory review provision in the Bill, the responsible policy team will work with the Registrar to ensure that the Minister for Small Business is made aware of emerging issues and trends. In particular, we will be alert to:

- significant or widespread challenges arising with particular reporting measures
- gaps in the suite of reporting measures, as reported by end-users
- improvements in payment times which could be attributable to the BPP regime.

107. Information on the first two of these bullets will be gained from the Registrar and stakeholders directly. Information on trends in payment times will be gained from Xero and MYOB's regular payment time reporting.

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Annex One: Organisations we have consulted with

Organisations submitting on the Discussion Document

Avanti Finance

Bank of New Zealand

Business New Zealand

Centrix

Chartered Accountants Australia and New Zealand

CIPS Australia and New Zealand

Financial Services Federation

Fonterra

Foodstuffs New Zealand

IAG

Insurance Council of New Zealand

KPMG

Livestock Improvement Corporation

Loktronic Limited

Ministry of Education

New Zealand Banking Association

New Zealand Food and Grocery Council

Pamu

PJF Services Ltd

Rangitīkei District Council

Spark NZ

Todd Corporation

Vodafone

Organisations participating in follow up discussions

Australian Treasury

ASB

Centrix

Co-operative Bank

BNZ

Business NZ

Centrix

Chartered Accountants of Australia and NZ

Datacom

Deloitte

External Reporting Board

Financial Services Federation

Fonterra

Foodstuffs

IAG

Landcorp

Livestock Improvement Corporation

Kiwibank

KPMG

Ministry of Education

Microsoft

MYOB

NZ Banking Association

OneNZ (Vodafone)

Oracle

Reveal

Spark

Summerset

Westpac

Xero

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Annex Two: Feedback we received on specific reporting measures

Measure 1 – average payment time

The consensus was that this measure is simple, calculated easily, easy to understand at a glance, and makes for easy comparison. Most submitters considered that the measure reasonably realistically reflects performance of the business, but accepted that this measure can be skewed by outliers.

Some submitters commented that the information conveyed by this measure is not really meaningful if the company has a very diverse range of suppliers, and therefore subject to many differing payment practices. In other words, they worry that this information cannot be meaningfully reduced to a single number. Some submitters also noted that this measure might be misleading in terms of payments to small business supplier terms, particularly if more lenient terms are given to small businesses. These submitters tended to prefer measures like measure 2, which gives an indication of prompt payment relative to the terms that reporting entities agree which can accommodate a wide range of payment conventions.

There was some comment on the invoices that were counted in the measure. Most comments related to the face that MBIE suggests that the invoices counted are those which are due during the period. Given that due dates are difficult for many reporting entities to measure (more about this in Measure 2) submitters suggest that this measure, as well as measures 3, 4, 6, and 7, count only the invoices paid in full that were received during the reporting period. While this was a popular view, submitters also noted that counting invoices in this way will exclude invoices that fall outside of the period, and will not pick up reporting measures for periods beyond 6 months (as by definition they cannot be received and paid in a single reporting period).

Submitters noted that definition of 'received' needs to take into account a range of practices that could frustrate reporting including:

- early invoicing, where invoices are issued (or payment even due) before receipt of goods and services
- slow payments coming about through supplier error – because of this, we suggest that invoices are only considered to be received when they are received in line with the payment method as required by purchaser i.e. with a correct purchase order, and received in right inbox.

It was also noted that when thousands or tens of thousands of invoices are received in a period, these will not always be able to be quickly matched to a goods and services received, or the invoices might be received through several channels, and it mightn't be easy to know exactly when the real receipt date is. (Where this is the case, the invoice date written on the invoice can be used in the absence of information about the date received.)

Measure 2 – proportion of invoices paid on time

Some submitters thought that this measure was particularly useful. Late payments provide a way to measure how reporting entities pay relative to the payment dates they agree. This is especially useful where reporting entities' suppliers have very diverse conventions and expectations about payment, making other measures more difficult to meaningfully interpret.

More submitters, however, considered that this measure posed serious technical challenges, that would require a long period of time to address. To begin with, what is an "agreed" payment time is difficult to define, especially where there is not a contract in place and no explicit agreement between supplier and purchaser about a due date. They suggested that

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work would need to be undertaken to make a functional definition of payments due, or the measure altered to only include invoices subject to a supplier agreement or other contract.

Some submitters noted that measures of lateness – rather than time to pay – are less relevant to timely reporting. For example, invoices can more easily be paid on time if I offer less favourable payment times (eg payment within 90 days instead of 10).

Measure 3 – proportion of invoices paid in full during the reporting period

There was some support for this measure, but submitters also identified a range of issues with it. The main objection to this measure related to problems with incomplete invoices being presented out of context, as there will always be valid reasons for incomplete payments and disputes. Submitters worried that this measure might reflect poorly on them, for example where a dispute is reasonable, or where poorly processed invoices were the supplier's fault, as apparently they often are.

Some submitters noted that they don't pay very few part invoices so wouldn't have anything to report (i.e. it would always be 100%).

From a technical standpoint, submitters noted that if due date is a required part of the denominator for the calculation, it will make it very tricky for many reporting entities to report.

Measure 3a – invoices in dispute

We discussed this potential measure with subject matter experts and submitters subsequent to the Discussion Document being issued. None of them support it, as they thought that disputed invoices would be difficult to identify. They were also concerned that this measure would:

- lead to a "damned if you do and damned if you don't" situation for reporting entities, which would feel obliged to use it simply because it would look remiss not to
- need to be recorded manually, thereby increasing compliance costs
- create definitional issues around what "in dispute" actually means in particular cases
- add a further measure to the set, thereby increasing complexity.

Measure 4 – percentage of invoices unpaid 61 days or more after receipt of invoice

Submitters mainly considered this measure to be superfluous, as it is already included as part of measure 6. The purpose of setting out this measure in the discussion document was to explore the idea of setting out a date, that does not rely on establishing a due date, that can be almost universally recognised as "late". The rationale for attempting this was acknowledged by submitters, but they generally found it problematic in two senses.

- Firstly anchoring an expectation that 61 days is late, might cause people to believe that any earlier is reasonable (despite being much later than average). This could perversely increase payment times.

- Secondly, some large firms accept longer payment times, noting that the longer payment period is priced into the transaction, and so they are fairly compensated. That is, in many cases 60 day or longer terms will be considered reasonable to suppliers, and this measure will disadvantage reporting entities with relatively more of these types of suppliers.

Some submitters suggested that if this measure is included, they would like to have an opportunity to provide context to their results.

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Measure 5 - average late payment time

As per measure two, this measure was considered to be useful for those firms who could put it together, but was technically difficult to calculate because of the lack of the necessary data.

Submitters thought that this measure provides similar information to measures 2 and 4, while providing more of a "magnitude" of lateness which would likely be informative. One submitter noted that it is less understandable at a glance than measure 2, especially when payments are routinely paid early, which might produce a negative number (which in turn might confuse people).

Regarding the technique of calculating the measure – some submitters noted that it might be easier to report this measure for suppliers that have existing contracts with suppliers already, or to split out contracted and non-contracted suppliers.

Measure 6 - The proportion of total number of invoices paid within various time periods

Measure 6 was the most preferred measure out of the whole suite. Most submitters consider it important to provide context to measure 1 through also providing a spread. They thought that while requiring a little extra work to produce than measure 1, it would still be achievable to implement.

Some submitters noted that it still won't capture all of the relevant information about a reporting entities' payment practices. This is because some invoicing behaviours - like those where many small invoices are issued for services - can skew distribution, and in many cases the measure's results will simply reflect the usual payment practices of the types of organisations that the reporting entity happens to be trading with.

Measure 7 - the proportion of total value of invoices paid within various time periods

Some submitters thought that measure 7 did not provide enough complementarity to measure 6 to be justified. But others thought that it was justified, because measure 6, presented on its own, would not capture situations where reporting entities deliberately have slow payment terms for large invoices, and fast payment terms for small invoices. The Small Business Advisors support this measure, because in their experience, the practice of demanding slower payment terms for large invoices is not uncommon.

Measures 8 and 9 - average number of days for receipt of payment, and percentage of invoices issued that are paid on time

These were easily the least preferred measures in the whole suite. Submitters informed us that the information required for the measures would typically need to be sourced from different places, making it technically challenging to calculate. Some submitters mentioned that industry specific quirks regarding large payments would make it difficult for suppliers to interpret this information in a report.

Measure 10 - What are your standard payment terms offered to your suppliers in calendar days?

This information was generally considered to be informative, easy to report on, and a good means to for suppliers to ensure that they are treated consistently. Some reporting entities noted, however, that they offer many (in the dozens) of payment terms, such as those provided via 'grandparented' legacy arrangements, or where "standard" terms are applied less frequently than the terms negotiated through a contract. Some submitters suggested that a narrative disclosure be available, and others recommended that entities be given the option to disclose the terms relevant to SMEs.

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Measure 11 - What other payment practices does the entity employ? e.g. eInvoicing, supply chain finance, more favourable terms for small businesses, charges to businesses that remain on the entity's supplier list, etc.

This measure was generally well received. Reporting entities in particular were interested in the opportunity to provide additional context to their reports, and frequently asked to ensure there's an open text field option available within this measure. This measure could also act as a catch all for additional payment information, which was a concept that was had wide support.

Some submitters cautioned that overly restricting the range of answers through tick boxes in this measure would be detrimental, although others noted that text boxes are likely to be useful, and easy to report.

Submitters noted that more detail about the range of policies and practices the reporting entity has can be very useful to suppliers.

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Annex Three: Stakeholder feedback not relating directly to the proposed reporting measures, and MBIE's response

Definition of 'invoice'

10 All the potential numeric reporting measures put forward in the Discussion Document involve a supplier providing an invoice to the reporting entity. Submitters were keen to understand how "invoice" will be defined.

11 We agree that this is an important definition, and the Regulations should make clear what this term means for the purposes of the reporting regime. We recommend using the definition that is applied in Australia, to ensure trans-Tasman consistency. Also, the Australian definition is clear and simple. It is worded as follows:

A reporting entity must report on an invoice payment if all of the following apply.

- *The invoice relates to supply of a good or service from a small business supplier.*
- *The entity procured the good or service from the small business supplier under a trade credit arrangement.*
- *The reporting entity is contractually obliged to pay the invoice.*

12 As seen above, Australia's scheme applies to payments made to small businesses only. The Australian scheme includes a small business identification tool that enables reporting entities to check which suppliers must be included in their calculations. New Zealand has no means to distinguish large suppliers from small ones, however, so the definition of invoice to be used here should not contain this reference. The Bill is clear that invoices from all suppliers, regardless of their size, are *prima facie* in scope.

Separating out invoices from Small to Medium Enterprises (SMEs)

13 Two large companies submitted that they offer advantageous payment terms to small suppliers, and that it would be unfair for these terms to be masked by reporting measures that capture all payments made to all suppliers. They said that it is not uncommon for large suppliers to accept long payment terms, particularly if there is a discount on the price they pay for a transaction. They suggested that they be permitted to report on their payments to small businesses only.

14 We agree that where a reporting entity offers advantageous payment terms to small suppliers, it would be ideal for it to report solely on payments to those small suppliers. This would mirror the Australian regime. But it would be challenging for the reporting entity to always be confident about which suppliers are in scope, as there is no New Zealand equivalent to the Australian small business identification tool

15 Also, this would make comparison between entities who are able to report on small business transactions only, and everyone else (which MBIE expects will be the majority) much more difficult. Interpretation of reporting entities' results is most informative when considered relative to similar businesses.

16 Given these complexities, we think that all reporting entities should need to report on all their invoices, regardless of whether the supplier is an SME or not. This is the most straightforward approach, enables like for like comparisons, and avoids situations where a reporting entity inadvertently excludes invoices from its calculations because it did not identify the supplier as an SME. Reporting measures 10 and 11 would enable companies that offer preferential terms to SMEs to highlight these as additional context for their numeric reporting.

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Technical challenges and potential for the reporting to misrepresent

17 Submitters also raised a myriad of technical challenges, which also give rise for potential for the data reported to misrepresent the entity's actual payment practices. For example, in relation to "time to pay" measures, when the clock actually starts ticking – and in relation to "lateness" measures, when the actual due date really is.

If "invoice receipt date" is not defined as the date the invoice is entered into FMIS, it would be unachievable for us to calculate the measure as we would need to go through individual emails from our suppliers. Also, we have had several instances where **suppliers have dated their invoices earlier than when they were submitted**, so this is not a robust method to track "receipt date".

We receive a material number of invoices after their due date has passed – between 4% and 5% over the last two years.

There will be countless of combinations of payment terms across the different reporting entities, with [us] alone having over 100 different payment terms (including as a result of numerous legacy contracts with suppliers). Moreover, factors like human error with contract loading (on the reporting entity's side) and invoice submission (on the supplier's side) will have an impact on the results both in the actual data and the perception of the data.

… organisations may have suppliers who invoice customers on the date of dispatch of goods, where there is a long lead time to actually deliver and pay for the goods – particularly in the case of overseas suppliers. If these are material supplies to an organisation in terms of invoice volume this will distort the average result for this metric.

18 In respect of challenges recording invoice receipt dates for "time to pay" measures, in order to ensure a level playing field, the Regulations will not be able to offer any flexibility. Firms will need to accurately report on invoice receipt dates and those dates will need to be the date the invoice was actually provided, not the date it was 'franked' in the reporting entity's payment system.

19 This said, we recommend that invoice receipt date from *the time that the invoice is provided in the form and manner required by the contract between the two parties*. Invoices that are sent to the wrong email address, for example, or that do not include the necessary information (as specified in the contract), would not count has having been provided.

20 In respect of challenges capturing accurate invoice due dates, we do not recommend using measures of "lateness. If this recommendation is accepted, these challenges will not arise.

Part payments

21 Several submitters noted that part payments would normally only be made when only some of the goods or services that have been billed for have actually been provided. They suggested that measures tracking part payments are likely to mislead, because people will not see this context.

22 This is relevant to measure 3 in particular. It was put forward in the Discussion Document because measures which use date received and date paid (in full) as the start and end points for the count do not account for invoices which have been received but not paid, or not paid in full – and can therefore misrepresent the true picture. If ministers accept our recommendation not to include measure 3, however, then the concerns stakeholders had around the need for context in relation to part payments will not arise.

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