



26 February 2023

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

Email: bppregulations@mbie.govt.nz

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Business Payment Practices Regulations: Discussion Document*.

Yours sincerely

A handwritten signature in blue ink, appearing to be "Raewyn Bleakley". The signature is stylized and fluid.

Raewyn Bleakley
Chief Executive



Business Payment Practices Regulations: Discussion Document

**Submission by the New Zealand Food & Grocery
Council**

26 February 2023

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“**NZFGC**”) welcomes the opportunity to comment on the *Business Payment Practices Regulations: Discussion Document* (“**the Discussion Document**”).
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

OVERARCHING COMMENTS

3. There is a close relationship between the Australian and New Zealand markets and businesses and the BPPR in New Zealand needs to take into account the relatively recent Australian regime, including its requirements and the upcoming review of the Australian *Payment Times Reporting Act 2020* regime by the Australian Government due to be provided by 30 Jun 2023.
4. The Australian review provides an opportunity to examine and learn from the Australian experience and consider a range of issues that operators in that system have. It is also an opportunity to increase the efficiency of the New Zealand regime for businesses operating across both countries by standardising systems demands and reporting.
5. While the Discussion Document states that compliance costs should be modest, and that reports should be able to be automated, we are sceptical this will be the case especially over the first 1-2 years. We expect there to be a significant amount of compliance costs for many businesses that have to comply during the early days of the BPPR. Large-sized businesses may be better placed to manage the introduction of a BPPR, but many medium-sized businesses will need a lot of manual data manipulation to undertake the calculations required based on the draft regulations. The appropriate time to do so will be a critical factor in success.
6. NZFGC believes the proposed dates for decisions and commencement are too soon and must be adjusted out for reasons set out in the body of this submission. It is also vital to take into account the difficulties and stress that the current national emergency has created. NZFGC recommends MBIE provides sufficient time (end 2024 – mid 2025 minimum) for commencement.
7. NZFGC considers a definition of an invoice, when an invoice is deemed to be received and guidance are critical elements to ensure businesses are able to properly comply.
8. The new arrangements will be monitored, evaluated and reviewed, and that evaluation and review of the regime would be undertaken within three years of commencement. NZFGC strongly supports a formal review within three years. We would also support MBIE seeking early feedback from businesses about how the regime is operating from an administrative and compliance perspective.
9. In relation to reporting measures, we strongly agree that the measures are the most important part of the regime. It will be important that any set of measures ensures the right mix of providing sufficient information for small businesses to make an informed business

decision, minimise compliance costs, and be both realistic and practical in terms of data provision.

10. NZFGC considers the preferable number of measures be 'as few as possible' to minimise set up, ongoing costs and compliance burden of the regime.
11. We note that the Australian Government has a webpage dedicated to providing detailed information for businesses on their regime. We would expect a similar arrangement/resources to be available for New Zealand businesses.
12. In relation to disclosure periods, NZFGC would likely consider the option of the Registrar assigning disclosure periods based on industry classification codes as worthy of further consideration. However, we would point to Australia's regime being more aligned to standard and calendar income tax years. We therefore support the prospect of disclosure period rules better aligning with both the users of the data, as well as those who have to provide it. We would add that it will be important to avoid overlap with other reporting due dates such as annual accounts and other statutory filings due in January and April each year in order to give businesses sufficient time to report accurately.
13. In relation to proposed class exemptions, NZFGC suggests that specific exemptions might be included for certain types of transactions (such as related party transactions/ inter-company payments and employee payments should be exempt) and the regime should only apply to businesses (and their subsidiaries) that operate in New Zealand. This is particularly important for both trans-Tasman businesses and for multinationals.
14. NZFGC would not want any exemption to apply to grocery business subsidiaries operating in New Zealand as the data collected could be useful to the Grocery Regulator as well.

DETAILED COMMENTS

Australian System and Review

15. There is a close relationship between the Australian and New Zealand markets and Business Payment Practices Regulations (BPPR) in New Zealand needs to take into account the relatively recent Australian regime, including its requirements and the upcoming review of the *Payment Times Reporting Act 2020* regime by the Australian Government (announced 6 Dec 2022 with terms of reference). A written report is to be provided by 30 Jun 2023.
16. It is important to be aware that the business community in Australia has found the reporting requirements very complex, not least having to report on around 60 fields of information in their official Payment Times Reporting Template. We note that, in terms of payments measures, the key focus has been the proportion, which is determined by total number and total value, of small business invoices paid by an entity in each of the following periods:
 - Within 20 days after the issue day
 - 21-30 days after the issue day
 - 31-60 days after the issue day
 - 61-90 days after the issue day
 - More than 120 days after the issue day
17. This information needs to be reported by total number and total value, of small business invoices in aggregate against each of the day bands stipulated expressed as percentages only. Large businesses and government enterprises must submit payment times reports to the Payment Times Reporting Regulator (the regulator) every six months.

18. The Australian review provides an opportunity to examine and learn from the Australian experience and consider a range of issues that operators in that system have. It is also an opportunity to increase the efficiency of the New Zealand regime for businesses operating across both countries by standardising systems demands and reporting.

19. We therefore suggest MBIE considers potential changes and improvements in the Australian BPPR regime to leverage the best for the New Zealand regime.

Compliance for Businesses

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

21. On balance, we would expect large-sized businesses to be able to manage the introduction of a BPPR, but many medium-sized businesses will need a lot of manual data manipulation to undertake the calculations required based on the draft regulations. While not insurmountable for medium-sized businesses, they will nevertheless take a relatively longer time and proportionately more resources compared with large businesses. We strongly recommend that timeframes around implementation be well thought through, with a view towards more, rather than less, time to prepare. The Discussion Document (p9) concurs. However, MBIE's indicative timeline proposes May 2023 as the date policy decisions would be made on regulations and May 2024 as the estimated date the scheme is operational. These dates were set before the report back date of Select Committee and the announcement and report back of the Australian regime review were known.

22. NZFGC believes these dates for decisions and commencement are too soon and must be adjusted out for several reasons:

- the structure of the Bill may differ from its original draft once reported back
- the estimated date the scheme is operational (May 2024) is insufficient for those affected to have all their processes and systems in place to comply with the new regulations, no matter what measures are chosen
- even though the Australian regime was rolled out in a relatively quick time period, there was essentially no compliance for the first year, while many businesses got their systems in order to undertake the reporting with sufficient accuracy.

23. As noted above, NZFGC recommends MBIE provides sufficient time (end 2024 – mid 2025) to:

- consider the changes to the Bill
- determine potential flow-on decisions that will need to be made concerning the regulations
- provide for any additional consultation that may be required
- provide for regulations and guidance to be published
- determine a transition time before commencement.

Definition of an Invoice

24. NZFGC considers a definition of an invoice, when an invoice is deemed to be received and guidance are critical elements to ensure businesses are able to properly comply. A specific definition of 'invoice' does not appear to be discussed in the Discussion Document. Targeted consultation with businesses is required on this. The Australian approach for

invoice receipt is likely to be used in New Zealand: 'Invoice issue (receipt) day' is when an invoice is received by the reporting entity in accordance with the contract's invoicing requirements. NZFGC suggests MBIE use this definition.

Future Review

25. Section 3 of the associated Regulatory Impact Statement ("**RIS**") for the Discussion Document outlines how the new arrangements will be monitored, evaluated and reviewed, that evaluation and review of the regime would be undertaken within three years of commencement. NZFGC strongly supports a formal review within three years. We would also support MBIE seeking early feedback from businesses about how the regime is operating from an administrative and compliance perspective.
26. payment periods are required, overall, we would expect to see the business community having increasingly shorter payment periods. Obviously, this will eventually call into question the need for regulations around business payment practices, so a regular review of the regulations is required when at some point the question will be asked whether New Zealand needs the regime at all.

Section 1 Proposed Reporting Measures

Q1. Do the objectives outlined in the overview section cover off the most important considerations for the set of measures? Are there other important considerations?

Q2. What information would you most like to see through the measures?

27. The Discussion Document (p10) states that "the measures are the most important part of the regime". NZFGC strongly agrees. We also agree with the point made in the Discussion Document that measures will determine whether businesses can make more informed decisions about who to do business with. However, we also believe that the disclosure measures selected will be where compliance will be most active for those businesses that have to comply with the new regulations. Therefore, we believe any set of measures needs to ensure the right mix of providing sufficient information for small businesses to make an informed business decision, minimise compliance costs, and are both realistic and practical in terms of data provision.

28. We expect many businesses will be impacted by the requirements, so even moderate implementation costs per business could add up to significant overall costs. We expect the Australian review to report costs to Australian businesses in excess of A\$1m to implement the Australian regime.

Q3. How many measures are preferable, and which measures would you prioritise?

29. NZFGC has no views on the preferable number of measures that should be included. However, 'as few as possible' would minimise set up and ongoing costs of the regime. As noted above, the Australian regime has chosen to focus its measures on proportion, which is determined by total number and total value, of small business invoices paid by an entity for periods matching two of the measurement options outlined in New Zealand's discussion document.

30. It's important to be aware of Australia's measures in setting the measures for the New Zealand regime. The Discussion Document outlines 11 proposed measures and while we would hope there to be around half this number going forward, the total number of measures needs to provide a balance between effective information for the purposes intended and a reasonable compliance burden. NZFGC strongly supports a minimum number of measures to reduce the onus on business to the maximum extent possible.

Q4. For any individual measure in the set of proposed measures:

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

Summary views on proposed measures

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

31. NZFGC supports this measure being paid invoices due during the reporting period as realistically reflecting performance of the business.

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

32. NZFGC supports this measure. Some businesses may need to modify systems to collect this data but costs could be reduced by greater time to implement. Guidance on what an 'agreed' date for payment is in the absence of a formal contract. Reporting on invoices paid within a period is not an indication of performance if there is a substantial lag between invoicing and payment.

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

33. NZFGC is aware that there may be reasons why an invoice would not be paid in full and provision should be made for these as well as for disputes about an invoice if this measure proceeds.

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

34. NZFGC does not support this measure proceeding on the basis that:

- the number of days 'after receipt of invoice' may or may not be relevant to the users of this data
- this measure is a clear overlap with measure 6, which is discussed below. A calculation for invoices not paid 61 days after 'receipt' would be workable and will be effectively required by measure 6
- this measure may duplicate from a different perspective the material necessary for measure 2.

Measure 5. Average late payment time

35. This measure may need to be identified in two parts: average late payment time for contracted and for non-contracted suppliers.

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

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

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

37. In addition, since these are two of the key measures required by the Australian regime, there would be less issues associated with compliance for those businesses that operate on both sides of the Tasman.

38. Two aspects need considering:

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- implementation for reporting these measures may still require resources and systems changes and both need time to give effect
 - these two calculations have the potential to distort results in terms of their detail and therefore have the potential to be misleading. Addressing this will be important.

Measure 8. Average number of days for receipt of payment

39. Although this measure takes a different perspective on payments the data could be much more difficult for the payment business to collect and needs further thought if this measure proceeds.

Measure 9. Percentage of invoices received on time

40. NZFGC is not clear on what this measure will reflect but it might well be built into another measure to reflect discrepancies between invoice receipt and payment.

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

41. Individual businesses will be better placed to provide this information. However, NZFGC considers this measure would provide useful information, and should be straightforward for businesses to provide, noting however that 'standard payment terms' may vary across the business.

Measure 11. What other payment practices does the business employ?

42. As mentioned in the Discussion Document, measures 10 and 11 are both about asking for an explanation of payment practices and policies, rather than the strictly quantitative aspect of the preceding measurement options. This measure may need to be an open field and asked only once a year to reduce cost to set up and report.

Q5. Can you recommend any measures not in the set that would provide useful information?

43. NZFGC has no suggestions on additional measures.

Q6. 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?

44. Best practice policy processes would mean the proposed set of measures determined would be field tested (perhaps through targeted consultation of medium and large businesses) before they are locked into regulations.

Q7. Please share any other thoughts about the proposed set of measures

Data provision expectations

45. There is no indication in the Discussion Document around what the form of the data transferred from a business to MBIE is to be. In Australia, businesses are required to supply a large CSV file filled with data. NZFGC would expect data to be entered into some form of template. If this is not to be the case, MBIE will need to provide additional guidance sooner rather than later, given further compliance obligations and potential privacy issues relating to large private sector datasets being handed over to the Government.

Future review and technological advancements

46. Regarding the question around if/when MBIE should consider changing certain measures, we note that the associated RIS for the Discussion Document points to a formal evaluation and review of the regime within three years of commencement. We strongly support this process.

Tolerances for error

47. With the best will in the world as to compliance, small percentages of error are largely unavoidable, especially when large datasets are involved. Human error with contract loading (on the reporting business's side) and invoice submission (on the supplier's side) will significantly vary the results both in the data and perception. Guidance around an acceptable tolerance would be welcomed. This may involve, for example, regular reviewing by businesses to ensure data errors are kept at a minimum. A possible starting point for further consideration could be an error rate of 1%, assuming a sufficient time for implementation is provided.

Regulatory resources

48. We note that the Australian Government has a webpage dedicated to providing detailed information for businesses on their regime. These regulatory resources are to assist reporting businesses to comply with their obligations and understand the regime. The regulatory resources include both a series of guidance notes that provide detailed guidance and practical examples to assist reporting businesses to comply with their obligations and understand how they interpret the law, as well as information sheets that are short guidance documents on a specific process or function.

49. We would expect a similar arrangement/resources to be available for New Zealand businesses.

Section 2 Proposed Disclosure Periods

Q8. 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.

50. The objectives generally cover the most important considerations for the regime's reporting periods. However, the efficiency of reporting is an additional consideration that should be added. For example, while there may be value in aligning the timing of this reporting with other reporting in terms of auditing or signoffs etc. As this is new and additional reporting, it does not derive from any existing statutory reporting.

Q9. 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.

Q10. Which disclosure period option do you prefer and why?

51. NZFGC would rank the statements in Q9 equally. Suppliers may rank c) higher but it is also likely that other businesses required to comply will seek clarity early on in areas such as terminology and prescribed formats for reporting.

52. In relation to disclosure period options all are workable, but each one does have trade-offs that need to be well worked through and considered. NZFGC would likely consider the option of the Registrar assigning disclosure periods based on industry classification codes as worthy of further consideration. However, we would point to Australia's regime being more aligned to standard and calendar income tax years. We therefore support the prospect of disclosure period rules better aligning with both the users of the data, as well as those who have to provide it.

53. Concerning the option around disclosure periods based on industry classification codes, the Discussion Document points out two disadvantages with this option, namely it may

make it more difficult to compare the payment practices of reporting businesses that do not have the same industry classification, plus since reporting businesses self-select their industry codes, two reporting businesses providing very similar goods and services may opt to be classified in different industries. We acknowledge the potential disadvantages here, but we also believe that this option creates the greatest degree of flexibility for businesses to decide their overall reporting disclosure period.

54. If the option of disclosure periods based on industry classification codes proceeds, NZFGC would be interested in the process around both the assigned dates by industry, as well as the level of feedback sought from those in the various sectors to ensure the right timeframes are set.

55. NZFGC considers it would also be helpful for businesses to have the opportunity to request a change in the allocated reporting period if it conflicts with other business activities such as month or year-end. This would help ensure that compliance is minimised and that adequate resources can be allocated on the reporting businesses' end to dedicate the time and care needed to ensure the reporting is correct.

Q11. 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?

56. NZFGC considers one month may be insufficient to create and finalise a report and have it signed off. The equivalent Australian regime provides businesses with three months after the end of the reporting period to provide the report to the regulator. We therefore support a deadline of three months following the reporting period.

Q12. How might we know if the disclosure periods and deadlines chosen are working effectively, and when we should consider changing reporting entities' disclosure periods?

57. It will be important to avoid overlap with other reporting due dates such as annual accounts and other statutory filings due in January and April each year in order to give businesses sufficient time to report accurately.

Q13. 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.

58. NZFGC does not propose any alternative option.

Section 3 Proposed Class Exemptions

59. NZFGC does not have specific comments to make regarding the questions in this section (**Questions 14-20**) in relation exemptions. Some general comments for consideration are:

- that specific exemptions might be included for certain types of transactions, such as related party transactions. Given the intent of the law is to understand the supplier payment practices of businesses, mandatory reporting should focus on arms-lengths third party transactions. Therefore, transactions such as inter-company payments and employee payments should be exempt.
- the regime should only apply to businesses (and their subsidiaries) that operate in New Zealand. This is particularly important for trans-Tasman businesses as for multinationals.

60. One area that may give rise to consideration around some form of exemption is that some larger businesses may need to submit more than one return due to the structure of their business which involves a number of subsidiaries. Breaking out the data and calculating individual measures for each subsidiary could involve a greater level of compliance and

resource, which may not be worthwhile if the results show little difference between the various elements of the business. However, we would not want this to apply to subsidiaries within the grocery sector as the data collected could be useful to the Grocery Regulator as well.

61. MBIE's preference is that no sunsets, regular reviews, or annual reporting requirements are included in exemption notices. NZFGC agrees on the basis that exemptions would most likely be low, the bar for getting them relatively high, and that other mechanisms such as a broader review of the policy itself would likely be a more cost-effective process for the taxpayer and better suited for consideration.