

The Business Payment Practices Act 2023 (Act) will require "large entities" to disclose details of their payment practices

The Act received Royal assent on 26 July 2023 and will come into force on 25 May 2024.

The purpose of the Act is to improve transparency in business to business payment practices of "large entities" and to enable the public to access information about business to business payment practices so that they can make informed choices about whether to engage with particular entities.

The idea is that the increased transparency will encourage large businesses to improve their payment practices with small suppliers.

Summary

An online and publicly searchable Business Payment Practices Register (**Register**) is to be established that will publish the following information:

- payment practices information for each 6 month "disclosure period";
- identifying information about each entity that is subject to the Act (legal and trading names, NZBN, email and registered address and industry classification); and
- confirmation that the information disclosed is complete and accurate.

The Register will be administered by a registrar (**Registrar**) who will have certain powers under the Act. The "payment practices information" that must be disclosed will be determined by separate regulations that have not yet been passed. However, the information to be disclosed will be focused on invoices received or paid by that entity (for example, information about the time taken to pay invoices, information about the proportion of invoices paid in full during that period and information about invoices that are paid late). The following types of payments have been specifically excluded from the Act:

- salaries or wages;
- tax;
- rent;
- charges related to utilities;
- local body rates; and
- any other types of transactions specified by the regulations.

We note that entities will be subject to payment timeframes in respect of many of the above matters (e.g. tax) under other primary or secondary legislation.

Entities that the Act is subject to must keep records of any information used to prepare for and make a disclosure for 7 years after the end of the relevant disclosure period.

Who will the Act impact?

An entity that is "large" that meets the "payment threshold test" will be subject to the Act. An entity is "large" if:

- as at the balance date of each of the two preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed \$66 million; or
- in each of the two preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds \$33 million.

An entity will meet the "payment threshold test" if its total expenditure (excluding wages, salaries and goods and services supplies by related parties) is equal to or greater than \$10 million in each of the 2 preceding accounting periods.

Where an entity has subsidiaries, the same information must be disclosed on the Register for the entity and each subsidiary, or the group and for the entity alone if it is independently large notwithstanding its subsidiaries.

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Enforcement and penalties

The Registrar will have the following enforcement powers:

- to require a person to confirm that the information disclosed is correct, or to correct inaccurate information;
- to inspect, take and copy of relevant documents and to require a person to produce such documents for inspection;
- to retain documents (if the Registrar reasonably believes that the documents are evidence of an offence);
- if the Registrar believes that a person is not complying, or has not complied with, the Act, to require the person to engage with a qualified auditor to review the entity's payment practices information and provide the results to the Registrar.

If the Registrar is satisfied that a person has failed to comply with the Act, the Registrar may issue a written compliance notice to the entity that specifies the steps that the entity must take to remedy the non-compliance or ensure that the non-compliance is not continued/repeated. A failure to comply with certain requirements of the Act constitutes an infringement offence that can result in an infringement fee or a fine imposed by a court.

A person commits an offence under the Act if they:

- knowingly fail to confirm information is correct;
- fail to produce relevant documents;
- fail to undergo an audit;
- intentionally hinder or obstruct the Registrar while the Registrar is exercising any of its powers;
- provide, or authorise the provision of, information in a disclosure to the Registrar that the person knows is false or misleading in material particular;

- omit, or authorise the omission of, any matter from a disclosure knowing that the omission makes the disclosure false or misleading in a material particular.

A person or entity who commits an offence or fails to comply with a compliance notice, can be ordered to pay, in the case of an individual, a pecuniary penalty of \$50,000 for each act or omission and, in the case of an entity, \$500,000 for each act or omission.

Implications

Businesses should consider whether Act will, or will likely, apply to them. A business that may not be subject to the Act immediately could become subject to the Act as its assets, revenue and expenses grow and this should be monitored accordingly.

Businesses may wish to complete their own internal reviews of their payment data ahead of the Act coming into force to ensure they are "match fit" and comfortable with what this would portray.

Businesses of any size (particularly small to medium sized businesses) may wish to include a search of the Register in their due diligence of potential customers to understand the likelihood of being paid within their usual timeframes. If the data on a particular entity appears to be troublesome, additional comfort can be sought by way of amendment to the supplier's terms of trade (e.g. to ensure that payment timeframes are clear and default interest/enforcement costs are payable in the event of delay). We anticipate that, over time, the Register will become an everyday tool to be used by businesses (and the public) to decide whether they wish to do business with a particular entity.

Want to know more?

If you have any questions about the Business Payment Practices Act 2023, please contact our specialist [commercial team](#).