

# **Business Payment Practices Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill 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.

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.

The Bill addresses feedback from small businesses that late payments and lengthy payment terms harm their business. Late payments lead to cash flow problems, businesses having to borrow funds temporarily, and, at worst, going out of business. That has wider implications for economic efficiency (for example, a higher cost of capital, or unnecessary insolvencies).

Under this regime, entities with more than \$33 million in revenue (including goods and services tax) for 2 or more consecutive accounting periods will be required to disclose their payment practices twice a year. In particular, these entities will need to disclose—

- payment practices in relation to late and overdue payments made; and
- practices in relation to the payment terms they set.

Entities will be required to submit a set of data twice yearly covering invoices received or paid, the time taken to pay invoices, and the proportion of invoices paid in full during the disclosure period, as well as other information relating to payment practices and policies. This data will be published on a publicly searchable register and on the entity's Internet site.

The Bill provides the Minister with the ability, via notice, to issue class exemptions from the payment practices disclosure requirements.

Entities will be required to certify their information disclosures.

The Bill provides for infringements, penalties, and criminal offences for contraventions of the obligations.

Payment practices information will be required to be submitted to, and held on, a publicly available and searchable register housed within the Ministry of Business, Innovation, and Employment. The Bill provides for the appointment of a registrar who will be responsible for the establishment and maintenance of the register and the associated assurance, compliance, and enforcement functions to support the integrity of the register. That includes providing for inspection powers, consistent with other similar Acts.

In order to give effect to the policy intent of transparency for business-to-business payment practices in New Zealand, the Bill will make minor amendments to 2 other Acts. An amendment will be made to the Summary Proceedings Act 1957 in relation to infringement offences and an amendment to provide for information sharing will be made to the Tax Administration Act 1994.

### **Departmental disclosure statement**

The Ministry of Business, Innovation, and Employment is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2022&no=179>

### **Regulatory impact statement**

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 2 December 2021 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact statement can be found at—

- <https://www.mbie.govt.nz/assets/regulatory-impact-statement-better-business-to-business-payment-practices.pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

### **Clause by clause analysis**

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause, which provides for the Bill to commence on the day after Royal assent.

## Part 1

### Preliminary provisions

*Clause 3* sets out the purpose of the Bill.

*Clause 4* provides an overview of *Parts 2 and 3*.

*Clause 5* defines terms used in the Bill.

*Clause 6* indicates that the transitional, savings, and related provisions (if any) are set out in *Schedule 1*. The Bill contains 1 transitional provision, which provides that entities are only required to make disclosures under the Act in relation to disclosure periods that begin after the Act commences.

*Clause 7* provides that the Act will bind the Crown.

## Part 2

### Obligations, register, and Registrar

*Clause 8* requires a large entity to disclose payment practices information to the Registrar of Business Payment Practices (the **Registrar**) by deadlines set by the Registrar. A large entity must make a disclosure in relation to a disclosure period of up to 6 months as set by the Registrar (*see clause 48*). An entity does not need to make a disclosure if part of the disclosure period falls within an accounting period in which the entity is not large. If the entity has subsidiaries, the entity must provide information for the group as a whole. If the entity is large on its own without its subsidiaries, the entity must also separately disclose payment practices information about itself. An entity must also disclose certain identifying information with its first disclosure to the Registrar.

*Clause 9* provides that an entity is large in respect of accounting periods in which that entity would be large under section 45 of the Financial Reporting Act 2013, which applies with some modifications. Under section 45(1)(b) of that Act, an entity is large in respect of an accounting period if, in each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds \$33 million. *Clause 9* also applies this test to overseas companies and their subsidiaries.

*Clause 10* defines payment practices information, which includes information specified by regulations that relates to invoices received or paid by the entity during a disclosure period. Further information about an entity's payment practices may be required by the regulations.

*Clause 11* defines the identifying information that an entity must provide if that information is not already on the register. That information includes the entity's legal name, trading name, registered address, email address, New Zealand Business Number, industry classification (*see* <https://www.businessdescription.co.nz>), and any other information specified by the regulations.

*Clause 12* provides that *clauses 13 to 17* apply to entities that are required to make a disclosure under *clause 8*.

*Clause 13* requires an entity to publish payment practices information on its Internet site and keep it on that site for 7 years.

*Clause 14* requires an entity to keep records for 7 years of information used to prepare for and fulfil its disclosure obligations.

*Clause 15* requires an entity to notify the Registrar of any error or omission in information that it has disclosed.

*Clause 16* requires an entity to notify the Registrar of any changes to its identifying information.

*Clause 17* requires an entity to notify the Registrar as soon as practicable when it is no longer large.

*Clause 18* requires the Registrar to establish and maintain the Business Payment Practices Register.

*Clause 19* sets out the purpose of the register.

*Clause 20* describes what information the register must contain. This information includes the entity's identifying information, its payment practices information, and a statement about how many pecuniary penalties or fines have been imposed on it in the last 7 years.

*Clause 21* provides for a range of ways that information must or may be removed from the register. The Registrar must remove payment practices information after 7 years. If there is no payment practices information on the register for an entity, the Registrar must remove all information about the entity. The Registrar may remove information that would be likely to prejudice the privacy or personal safety of any person.

*Clause 22* requires the chief executive of the Ministry of Business, Innovation, and Employment to appoint the Registrar.

*Clause 23* sets out the Registrar's functions.

*Clause 24* enables the Registrar to delegate their functions or powers under the Bill to any employee of the public service.

### Part 3

#### Compliance, enforcement, and offences

*Clause 25* gives the Registrar certain powers to monitor and investigate compliance with the Act. The powers include the following:

- a power to require a person to provide documents that contain information about an entity or its disclosures (**relevant documents**);
- a power to inspect and take copies of relevant documents;
- if the Registrar believes that a person is not complying, or has not complied, with the Bill, a power to require the person to engage a qualified auditor to review the person's payment practices information.

*Clause 26* allows the Registrar to issue a compliance notice to a person if satisfied that the person has failed to comply with *clause 8* or any of *clauses 13 to 17*. A compliance notice must include the information set out in *clause 26(2)*.

*Clause 27* requires the Registrar to ensure that a compliance notice is served on the person to whom it is issued. The process for serving an infringement notice applies to serving a compliance notice (*see clause 36*).

*Clause 28* requires a person that has been issued with a compliance notice to comply with the notice within the period specified in the notice.

*Clause 29* allows a person that has been issued with a compliance notice to apply to the Registrar for a review of the notice. The application must state the reasons why the applicant thinks the notice should be reviewed and the outcome they are seeking.

*Clause 30* sets out how a review of a compliance notice must be conducted. The person conducting the review may decide to confirm, vary, cancel, or cancel and substitute the compliance notice.

*Clause 31* makes it an infringement offence to fail to comply with *clause 8* or any of *clauses 13 to 17*.

*Clause 32* sets out how proceedings in relation to infringement offences may be commenced.

*Clause 33* gives the Registrar the power to issue an infringement notice to a person if they believe on reasonable grounds that the person is committing, or has committed, an infringement offence.

*Clause 34* allows the Registrar to revoke an infringement notice before the infringement fee is paid or an order for payment of a fine is made or deemed to be made by a court.

*Clause 35* sets out the information that an infringement notice must contain. The information includes the details of the alleged infringement offence, the amount of the infringement fee, and the time within which the infringement fee must be paid.

*Clause 36* sets out the ways in which an infringement notice may be served on a person. For example, a notice may be served by delivering it to an officer of the person at the person's principal place of work, sending it to the person's last known place of work, or emailing it to the person if they do not have a known place of residence or business in New Zealand.

*Clause 37* requires infringement fees to be paid into a Crown Bank Account.

*Clause 38* provides for reminder notices for infringement offences. A reminder notice must be in the form specified in the regulations and include the same information, or information that is substantially the same, as the infringement notice.

*Clause 39* allows the High Court to order a pecuniary penalty against a person who has contravened, or been involved in the contravention of, the requirement to comply with a compliance notice. The maximum penalty is \$50,000 for each act or omission in the case of an individual and \$500,000 for each act or omission in any other case.

*Clause 40* sets out the matters the court must consider when determining an appropriate pecuniary penalty under *clause 39*. For example, the court must consider the nature and extent of the contravention, or involvement in the contravention, and the circumstances in which the contravention, or involvement in the contravention, took place.

*Clause 41* provides for the rules of civil procedure and a balance of probabilities standard of proof to apply to a proceeding under *clause 39*.

*Clause 42* requires a proceeding under *clause 39* to commence within 3 years after the person's contravention, or involvement in a contravention, was discovered or ought reasonably to have been discovered.

*Clause 43* sets out the relationship between pecuniary penalties and criminal liability. Specifically, *clause 43* provides that—

- once criminal proceedings against a person for an offence under *clause 44* or *45* are determined, the High Court may not order a pecuniary penalty for the conduct that was the subject of the proceedings:
- once civil pecuniary penalty proceedings against a person for an offence under *clause 39* are determined, the person may not be convicted of an offence under *clause 44* or *45* for the conduct that was the subject of the proceedings:
- any uncompleted pecuniary penalty proceedings against a person in relation to particular conduct must be stayed if criminal proceedings are started, or have already been started, for an offence that relates to the same conduct.

*Clause 44* makes it an offence for a person to knowingly fail to comply with certain requirements to confirm or correct information, produce relevant documents, or undergo an audit, or to knowingly obstruct or hinder the Registrar while the Registrar is exercising certain investigative powers. The offence has a penalty of a fine not exceeding \$50,000 for an individual or a fine not exceeding \$500,000 in any other case.

*Clause 45* makes it an offence for a person to disclose information that they know is false or misleading in a material particular or to omit a matter from a disclosure knowing that the omission makes the disclosure false or misleading in a material particular. The offence has a penalty of a fine not exceeding \$50,000 for an individual or a fine not exceeding \$500,000 in any other case.

## **Part 4**

### **Miscellaneous**

*Clause 46* provides that the Minister may make class exemptions from the Bill by notice.

*Clause 47* provides that the Governor-General may make regulations for a range of matters, including to prescribe fees for infringement offences (which must not exceed \$3,000) and maximum fines for infringement offences (which must not exceed \$9,000).

*Clause 48* empowers the Registrar to set disclosure periods and disclosure deadlines by notice. A disclosure period must not be longer than 6 months, so an entity is required to make at least 2 disclosures in any 12-month period. A disclosure deadline must not be earlier than 1 month after the end of the relevant disclosure period, so an entity has time to gather the information it is required to disclose.

## **Part 5**

### **Amendments to other Acts**

*Clauses 49 and 50* amend the Summary Proceedings Act 1957 to include a reference to infringement notices issued under the Bill.

*Clauses 51 and 52* amend the Tax Administration Act 1994 to enable information sharing between the Inland Revenue Department and the Ministry of Business, Innovation, and Employment for the purpose of monitoring compliance with the Bill.





*Hon Stuart Nash*

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**Business Payment Practices Bill**

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### Part 5

#### Amendments to other Acts

##### *Amendment to Summary Proceedings Act 1957*

49	Principal Act	19
50	Section 2 amended (Interpretation)	19

##### *Amendment to Tax Administration Act 1994*

51	Principal Act	19
52	Schedule 7 amended	19

### Schedule

#### Transitional, savings, and related provisions

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#### The Parliament of New Zealand enacts as follows:

##### 1 Title

This Act is the Business Payment Practices Act **2022**.

##### 2 Commencement

This Act comes into force on the day after Royal assent.

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### Part 1

#### Preliminary provisions

##### 3 Purpose

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.

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##### 4 Overview

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##### *Obligations, register, and Registrar*

- (1) **Part 2** requires large entities to disclose certain information about their payment practices.

- (2) **Part 2** also establishes a register for that information and a Registrar.

##### *Compliance, enforcement, and offences*

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- (3) **Part 3** provides for monitoring, investigative, and enforcement powers of the Registrar.

- (4) **Part 3** also establishes infringement offences, pecuniary penalties, and offences for breaches of this Act.
- (5) If a person breaches an obligation under this Act, the Registrar may issue them with an infringement notice, a compliance notice, or both.
- (6) If a person contravenes a compliance notice, they may be subject to a pecuniary penalty. 5
- (7) A person may be subject to an offence if they knowingly—
- (a) fail to comply with certain requirements to confirm or correct information or provide or retain relevant documents; or
  - (b) obstruct or hinder the Registrar while the Registrar is exercising certain investigative powers; or 10
  - (c) provide false or misleading information to the Registrar.
- (8) In addition to liability for infringement offences, pecuniary penalties, and offences, **section 20** provides that certain information about a pecuniary penalty or a fine for a criminal offence imposed on an entity must be published on the register for a period of 7 years after it is imposed. 15
- (9) This section is only a guide to the general scheme and effect of this Act.

## 5 Interpretation

In this Act, unless the context otherwise requires,—

**accounting period** has the same meaning as in section 5(1) of the Financial Reporting Act 2013 20

**director** means,—

- (a) in relation to a company or an overseas company, a person occupying the position of a director of the company or overseas company by whatever name they are called: 25
- (b) in relation to a partnership (other than a limited partnership), a partner:
- (c) in relation to a limited partnership, any general partner:
- (d) in relation to a charitable entity (within the meaning of the Charities Act 2005), an officer (within the meaning of that Act):
- (e) in relation to any other body corporate or unincorporate, a person occupying a position in the body that is comparable with that of a director of a company: 30
- (f) in relation to any other person, that person

**disclosure** means a disclosure under **section 8**

**disclosure deadline** has the meaning given in **section 48** 35

**disclosure period** has the meaning given in **section 48**

	<b>entity</b> includes—	
	(a) a company, an overseas company, or any other body corporate:	
	(b) a corporation sole:	
	(c) a trust, a partnership, or an association of persons, whether incorporated or not:	5
	(d) a society or a branch of a society registered or deemed to be registered under the Friendly Societies and Credit Unions Act 1982:	
	(e) a department or an office of Parliament (within the meaning of those terms in section 2(1) of the Public Finance Act 1989) or an organisation named or described in Schedule 4 of the Public Finance Act 1989:	10
	(f) a Crown entity (within the meaning of section 7 of the Crown Entities Act 2004):	
	(g) a local authority (within the meaning of section 5(1) of the Local Government Act 2002)	
	<b>group</b> means a group comprising an entity and its subsidiaries	15
	<b>identifying information</b> has the meaning given in <b>section 11</b>	
	<b>infringement fee</b> , in relation to an infringement offence, means the infringement fee for the offence specified in the regulations	
	<b>infringement offence</b> means an offence against <b>section 31</b>	
	<b>large</b> has the meaning given in <b>section 9</b>	20
	<b>overseas company</b> has the same meaning as in section 5(1) of the Financial Reporting Act 2013	
	<b>payment practices information</b> has the meaning given in <b>section 10</b>	
	<b>register</b> means the business payment practices register established under <b>section 18</b>	25
	<b>Registrar</b> means the Registrar of Business Payment Practices appointed under <b>section 22</b>	
	<b>regulations</b> means regulations made under <b>section 47</b>	
	<b>subsidiary</b> has the same meaning as in section 5(1) of the Financial Reporting Act 2013.	30
<b>6</b>	<b>Transitional, savings, and related provisions</b>	
	The transitional, savings, and related provisions set out in the <b>Schedule</b> have effect according to their terms.	
<b>7</b>	<b>Act binds the Crown</b>	
	This Act binds the Crown.	35

## Part 2 Obligations, register, and Registrar

### *Obligation to make disclosures*

- 8 Large entities must make disclosures**
- (1) This section applies if an entity is large in respect of an accounting period. 5
- (2) The entity must make a disclosure for each disclosure period that—
- (a) falls within that accounting period; or
- (b) spans that accounting period and another accounting period, but only if the entity is also large in respect of that other accounting period.
- (3) The disclosure must be made to the Registrar by the applicable disclosure deadline and in the way required by the Registrar. 10
- (4) The disclosure must—
- (a) contain payment practices information for the disclosure period; and
- (b) contain the entity’s identifying information if that information is not already recorded on the register; and 15
- (c) confirm that a director of the entity is satisfied that the information disclosed is complete and accurate.
- (5) If the entity has 1 or more subsidiaries, payment practices information is required—
- (a) for the group as a whole; and 20
- (b) for the entity alone, if the entity is independently large.
- (6) In this section, **independently large**, in relation to an entity that has 1 or more subsidiaries, means that the entity would be large in respect of the accounting period referred to in **subsection (2)(a)** or both of the accounting periods referred to in **subsection (2)(b)** (whichever is applicable) on the basis of its revenue alone (that is, without counting the revenue of its subsidiaries). 25
- 9 Meaning of large**
- For the purpose of this Act, an entity is **large** in respect of an accounting period if it would be large in respect of that accounting period under section 45 of the Financial Reporting Act 2013, which applies— 30
- (a) as if section 45(1) did not exclude overseas companies or their subsidiaries; and
- (b) as if section 45(1)(a) and (2) did not apply.
- 10 Meaning of payment practices information**
- (1) In this Act, **payment practices information**, for an entity and a disclosure period, means— 35

- (a) the information specified by the regulations about invoices received or paid by the entity or a subsidiary of the entity during that period (for example, information about the time taken to pay invoices and information about the proportion of invoices paid in full during that period); and
- (b) the information specified by the regulations about invoices issued by the entity or a subsidiary of the entity during that period; and 5
- (c) any other information specified by the regulations about the entity's payment practices during that period.
- (2) In this section, **paid** means paid in full or in part.
- 11 Meaning of identifying information** 10
- In this Act, **identifying information**, for an entity, means the following information about the entity:
- (a) its legal name:
- (b) its trading name or names:
- (c) its registered address: 15
- (d) its email address:
- (e) its New Zealand Business Number:
- (f) its industry classification (within the meaning of section 170 of the Accident Compensation Act 2001):
- (g) any other information specified by the regulations. 20
- Other obligations*
- 12 Application of sections 13 to 17**
- Sections 13 to 17** apply to entities that are required to make disclosures under **section 8**.
- 13 Entities must publish payment practices information** 25
- (1) As soon as practicable after making a disclosure, an entity must publish the payment practices information contained in the disclosure on an Internet site maintained by, or on behalf of, the entity.
- (2) The entity must ensure that the information remains available on an Internet site maintained by, or on behalf of, the entity for 7 years after the end of the relevant disclosure period. 30
- 14 Entities must keep certain records for 7 years**
- (1) An entity must keep records of any information it uses to prepare for, and make, a disclosure.
- (2) The entity must keep the records for 7 years after the end of the relevant disclosure period. 35

**15 Entities must notify Registrar of error or omission**

- (1) This section applies if an entity becomes aware of an error or omission in a disclosure.
- (2) The entity must notify the Registrar of the error or omission—
  - (a) in the way required by the Registrar; and 5
  - (b) as soon as practicable after the entity becomes aware of the error or omission.

**16 Entities must notify Registrar of changes in identifying information**

- (1) This section applies if an entity's identifying information as recorded on the register changes. 10
- (2) The entity must notify the Registrar of the information that has changed—
  - (a) in the way required by the Registrar; and
  - (b) as soon as practicable after that information changes.

**17 Entities must notify Registrar when no longer large**

- (1) This section applies if— 15
  - (a) an entity is large in respect of an accounting period; and
  - (b) the entity is not large in respect of its next accounting period.
- (2) As soon as practicable after the accounting period referred to in **subsection (1)(b)** begins, the entity must notify the Registrar that it is not large in respect of that accounting period. 20

*Business Payment Practices Register***18 Business Payment Practices Register established**

- (1) The Registrar must establish and maintain a register called the Business Payment Practices Register.
- (2) The register may be kept as an electronic register or in any other form that the Registrar thinks fit. 25
- (3) The register must be operated at all times unless—
  - (a) the Registrar suspends the operation of the register, in whole or in part, under **subsection (4)**; or
  - (b) otherwise specified by the regulations. 30
- (4) The Registrar may refuse access to the register or otherwise suspend the operation of the register, in whole or in part, if the Registrar considers that it is not practical to provide access to the register.

**19 Purpose of register**

The purpose of the register is to enable members of the public and entities— 35



- 
- (a) to access information about certain business-to-business payment practices of large entities; and
- (b) to help them make informed choices about whether to engage with those entities.
- 20 Contents of register** 5
- The register must, to the extent that the Registrar has received the information, contain the following information for each entity:
- (a) its legal name:
- (b) its trading name or names:
- (c) its registered address: 10
- (d) its New Zealand Business Number:
- (e) its industry classification (within the meaning of section 170 of the Accident Compensation Act 2001):
- (f) payment practices information disclosed by the entity:
- (g) if a pecuniary penalty under **section 39** or fine under **section 44** or **45** has been imposed on the entity during the last 7 years, a statement about the number of penalties and fines that have been imposed on the entity during that period: 15
- (h) if the entity is no longer large and has notified the Registrar of that fact under **section 17**, a statement that the entity is not required to make disclosures: 20
- (i) any other information specified by the regulations.
- 21 Removing information from register**
- (1) The Registrar must remove payment practices information from the register after the expiry of 7 years after the end of the disclosure period to which the information relates. 25
- (2) If no payment practices information for an entity remains on the register after a removal under **subsection (1)**, the Registrar must remove all information about the entity from the register.
- (3) The Registrar may, despite **section 20**, omit or remove any information that relates to an individual from the register if the Registrar considers that public access to that information would be likely to prejudice the privacy or personal safety of any person. 30
- Registrar*
- 22 Registrar of Business Payment Practices** 35
- (1) The chief executive of the Ministry must appoint a Registrar of Business Payment Practices under the Public Service Act 2020.

- (2) The Registrar is an employee of the Ministry, and the appointment may be held separately or in conjunction with any other office in the Ministry.
- (3) In this section, **Ministry** means the Ministry of Business, Innovation, and Employment.
- 23 Registrar’s functions** 5
- The functions of the Registrar are, in accordance with this Act and the regulations, to—
- (a) establish and maintain the register; and
- (b) receive information that entities are required to disclose under this Act; and 10
- (c) perform or exercise functions and powers conferred on the Registrar relating to matters of compliance and enforcement; and
- (d) perform or exercise other functions and powers conferred on the Registrar by this Act or the regulations.
- 24 Registrar’s power to delegate** 15
- (1) The Registrar may, either generally or particularly, delegate functions and powers under this Act to any employee of the public service (within the meaning of the Public Service Act 2020) (except this power of delegation).
- (2) A delegation under this section must be in writing.
- (3) Subject to any general or special directions given or conditions imposed by the Registrar, the person to whom any functions or powers are delegated may perform those functions or exercise those powers in the same manner, subject to the same restrictions, and with the same effect as if it had been conferred on them directly by this Act. 20
- (4) A person acting under a delegation must, in the absence of proof to the contrary, be presumed to be acting within the terms of the delegation. 25
- (5) A delegation does not affect or prevent the performance of a function or the exercise of a power by the Registrar or affect their responsibility for the actions of the person acting under the delegation.
- (6) A delegation may be revoked in writing at will. 30
- (7) A delegation continues in force until it is revoked.

## Part 3

### Compliance, enforcement, and offences

#### *Registrar's compliance and enforcement powers*

- 25 Registrar may monitor and investigate compliance with Act**
- (1) The Registrar may exercise a power described in **subsection (3)** for any of the following purposes: 5
- (a) to ascertain whether information provided to the Registrar is correct:
  - (b) to ascertain whether a person is complying, or has complied, with this Act:
  - (c) to ascertain whether the Registrar should exercise any of the Registrar's powers under this Act: 10
  - (d) to detect offences against this Act.
- (2) However, the Registrar may exercise the power only if they are satisfied that it would be in the public interest to do so.
- (3) The powers are the following: 15
- (a) to require a person, in relation to information provided to the Registrar, to confirm that the information is correct or to correct the information:
  - (b) to require a person to produce for inspection relevant documents within that person's possession or control:
  - (c) to inspect and take copies of relevant documents: 20
  - (d) to take possession of relevant documents and retain them for a reasonable period for the purpose of taking copies:
  - (e) to retain relevant documents for a longer period if—
    - (i) the Registrar reasonably believes that the documents are evidence of the commission of an offence; and 25
    - (ii) the period is reasonable in all of the circumstances:
  - (f) if the Registrar reasonably believes that a person is not complying, or has not complied, with this Act, to require the person to—
    - (i) engage a qualified auditor (within the meaning of section 35 of the Financial Reporting Act 2013) to review the person's payment practices information for 1 or more disclosure periods; and 30
    - (ii) provide the results of that review to the Registrar.
- (4) When exercising the power described in **subsection (3)(a)**, the Registrar may specify, in relation to the confirmation or correction,—
- (a) a particular form in which it must be provided; and 35
  - (b) a date by which it must be provided; and

- (c) whether it must be verified by the production of original documents or certified copies of original documents or by a statutory declaration.
- (5) A person must not obstruct or hinder the Registrar while the Registrar is exercising a power conferred by this section.
- (6) In this section, **relevant documents** means documents that contain information relating to an entity or its disclosures. 5
- 26 Registrar may issue compliance notice**
- (1) If the Registrar is satisfied that a person has failed to comply with any of the provisions listed in **section 31(2)**, the Registrar may issue a written notice to the person (a **compliance notice**). 10
- (2) A compliance notice must state—
- (a) the name of the person to whom it is issued; and
- (b) the reasons why the Registrar issued it; and
- (c) the steps the person must take—
- (i) to avoid, remedy, or mitigate any actual or likely adverse effects arising from the non-compliance; or 15
- (ii) to ensure that the non-compliance is not continued or repeated; and
- (d) a reasonable period within which the person must take the required steps; and 20
- (e) the conditions, if any, imposed by the Registrar; and
- (f) the consequences of not complying with the notice; and
- (g) the right of review in **section 29**; and
- (h) the Registrar's name and address.
- 27 Service of compliance notice** 25
- (1) The Registrar must ensure that a compliance notice is served on the person to whom it is issued.
- (2) **Section 36** applies to the service of a compliance notice as if it were an infringement notice.
- 28 Person must comply with compliance notice** 30
- A person to whom a compliance notice is issued must comply with it within the period specified in the notice.
- 29 Review of compliance notice**
- (1) A person to whom a compliance notice is issued may apply to the Registrar for a review of the notice. 35
- (2) The application must state—

- (a) the reasons why the applicant thinks the notice should be reviewed; and
  - (b) the outcome the applicant is seeking.
- (3) The notice remains in force until the decision on the review is notified to the applicant under **section 30**.

### **30 How review must be conducted** 5

- (1) The Registrar must ensure that a review applied for under **section 29** is conducted by a person (the **reviewer**) who was not involved in issuing the compliance notice concerned.
- (2) The reviewer must review the compliance notice on the papers within 20 working days after the date on which the application for review was made. 10
- (3) The reviewer may—
- (a) confirm or vary the compliance notice; or
  - (b) cancel the compliance notice; or
  - (c) cancel the compliance notice and substitute another compliance notice that the reviewer considers appropriate. 15
- (4) The reviewer must give the applicant written notice of the reviewer's decision.

### *Infringement offences*

### **31 Infringement offences**

- (1) A person that fails to comply with any of the provisions listed in **subsection (2)** commits an infringement offence and is liable to— 20
- (a) an infringement fee of an amount prescribed by the regulations; or
  - (b) a fine imposed by a court that must not exceed an amount prescribed by the regulations.
- (2) The provisions are the following:
- (a) **section 8** (large entities must make disclosures): 25
  - (b) **section 13** (entities must publish payment practices information):
  - (c) **section 14** (entities must keep certain records for 7 years):
  - (d) **section 15** (entities must notify Registrar of error or omission):
  - (e) **section 16** (entities must notify Registrar of changes in identifying information): 30
  - (f) **section 17** (entities must notify Registrar when no longer large).

### **32 Proceedings for infringement offences**

- (1) A person who is alleged to have committed an infringement offence may—
- (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or 35

- (b) be issued with an infringement notice under **section 33**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See* section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued. 5
- 33 When infringement notice may be issued**
- The Registrar may issue an infringement notice to a person if the Registrar believes on reasonable grounds that the person is committing, or has committed, an infringement offence. 10
- 34 Infringement notice may be revoked before payment made**
- (1) The Registrar may revoke an infringement notice before—
- (a) the infringement fee is paid; or
- (b) an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957. 15
- (2) The Registrar must take reasonable steps to ensure that the person to whom the notice was issued is made aware of the revocation of the notice.
- (3) The revocation of an infringement notice before the infringement fee is paid is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter. 20
- 35 What infringement notice must contain**
- An infringement notice must be in the form prescribed by the regulations and must contain the following particulars:
- (a) details of the alleged infringement offence that fairly inform a person of the time, place (if any), and nature of the alleged offence: 25
- (b) the amount of the infringement fee:
- (c) the address of the Registrar:
- (d) how the infringement fee may be paid:
- (e) the time within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957: 30
- (g) a statement that the person served with the notice has a right to request a hearing:
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing: 35
- (i) any other matters prescribed in the regulations.

**36 How infringement notice may be served**

- (1) An infringement notice may be served on a person that the Registrar believes is committing or has committed the infringement offence by—
- (a) delivering it to an officer or employee of the person at the person’s head office, principal place of business or work, or registered office, or by bringing it to the officer’s or employee’s notice if that person refuses to accept it; or 5
  - (b) sending it to the person by prepaid post addressed to the person’s last known place of business or work; or
  - (c) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand. 10
- (2) Unless the contrary is shown,—
- (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted; and 15
  - (b) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first enters an information system that is outside the control of the Registrar.

**37 Payment of infringement fees** 20

All infringement fees paid for infringement offences must be paid into a Crown Bank Account.

**38 Reminder notices**

A reminder notice must be in the form prescribed in the regulations, and must include the same particulars, or substantially the same particulars, as the infringement notice. 25

*Pecuniary penalties***39 Pecuniary penalty for contravention of compliance notice or involvement in contravention**

- (1) The High Court may, on the application of the Registrar, order a person to pay to the Crown a pecuniary penalty if the court is satisfied that the person has contravened the requirement in **section 28** or has been involved in the contravention. 30
- (2) For the purposes of this Part, a person is **involved** in a contravention if the person has— 35
- (a) aided, abetted, counselled, or procured any other person to contravene the requirement; or

- (b) induced any other person, whether by threats or promises or otherwise, to contravene the requirement; or
- (c) been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other person; or
- (d) conspired with any other person to contravene the requirement. 5
- (3) The amount of any pecuniary penalty under **subsection (1)** must not exceed,—
- (a) in the case of an individual, \$50,000 for each act or omission; and
- (b) in any other case, \$500,000 for each act or omission.
- 40 Considerations for court** 10
- In determining an appropriate penalty under **section 39**, the court must have regard to—
- (a) the nature and extent of the contravention or involvement in the contravention; and
- (b) the circumstances in which the contravention or involvement in the contravention took place; and 15
- (c) any previous contraventions or involvement in contraventions of a similar nature; and
- (d) any other relevant matter.
- 41 Rules of civil procedure and civil standard of proof apply** 20
- A proceeding under **section 39** is a civil proceeding and the rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).
- 42 Limitation period for proceedings**
- A proceeding under **section 39** must be commenced within 3 years after the person's contravention or involvement in a contravention was discovered or ought reasonably to have been discovered. 25
- 43 Relationship between pecuniary penalties and criminal liability**
- (1) Once criminal proceedings against a person for an offence under **section 44** or **45** are determined, the High Court may not order the person to pay a pecuniary penalty in respect of the conduct, events, transactions, or other matters that were the subject of the criminal proceedings. 30
- (2) Once civil proceedings against a person for a pecuniary penalty under **section 39** are determined, the person may not be convicted of an offence under **section 44** or **45** in respect of the conduct, events, transactions, or other matters that were the subject of the civil proceedings. 35



- (3) Any uncompleted proceedings for an order under this Act that a person pay a pecuniary penalty must be stayed if criminal proceedings are started, or have already been started, against the person for the same act or omission, or substantially the same act or omission, in respect of which the pecuniary penalty order is sought. 5

### *Offences*

#### **44 Offence relating to failure to comply with inspection requirements**

- (1) A person commits an offence if they knowingly fail to comply with—
- (a) a requirement under **section 25(3)(a), (b), or (f)** (which empowers the Registrar to require a person to confirm information is correct, produce relevant documents, or undergo an audit): 10
  - (b) **section 25(5)** (which provides that a person must not obstruct or hinder the Registrar while the Registrar is exercising any of their powers under **section 25**).
- (2) A person that commits an offence under this section is liable on conviction to a fine of,— 15
- (a) in the case of an individual, \$50,000; or
  - (b) in any other case, \$500,000.

#### **45 Offence relating to filing false or misleading information**

- (1) A person commits an offence if they— 20
- (a) provide, or authorise the provision of, information in a disclosure to the Registrar that the person knows is false or misleading in a material particular; or
  - (b) 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. 25
- (2) A person that commits an offence under this section is liable on conviction to a fine of,—
- (a) in the case of an individual, \$50,000; or
  - (b) in any other case, \$500,000. 30

## **Part 4 Miscellaneous**

#### **46 Exemptions**

- (1) The Minister may exempt by notice a class of entities from all or any of its obligations under this Act. 35
- (2) The Minister may grant the exemption only if—

- (a) they have had regard to—
- (i) the purpose of this Act and regulations; and
  - (ii) the overall impact that the exemption would have on the effectiveness of, and compliance with, this Act; and
- (b) they are satisfied that— 5
- (i) there is good reason for granting the exemption that outweighs the interests of the public in having the obligation met; and
  - (ii) the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- (3) The Minister may grant the exemption unconditionally or subject to any conditions that the Minister may prescribe in the notice. 10
- (4) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).
- 47 Regulations**
- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes: 15
- (a) providing for anything this Act says may or must be provided for by regulations:
  - (b) prescribing fees for infringement offences under this Act, which must not exceed \$3,000: 20
  - (c) prescribing maximum fines for infringement offences under this Act, which must not exceed \$9,000:
  - (d) providing for anything incidental that is necessary for carrying out, or giving full effect to, this Act.
- (2) Regulations made under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements). 25
- 48 Registrar may specify disclosure periods and disclosure deadlines**
- (1) The Registrar may specify by notice—
- (a) the periods for which an entity or class of entity must make a disclosure (**disclosure periods**); and 30
  - (b) the deadlines by which those disclosures must be made (**disclosure deadlines**).
- (2) A disclosure period must not be longer than 6 months.
- (3) A disclosure deadline must not be earlier than 1 month after the expiry of the relevant disclosure period. 35
- (4) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements), unless it applies only to 1 or more named entity.

## Part 5 Amendments to other Acts

### *Amendment to Summary Proceedings Act 1957*

- 49 Principal Act**
- Section 50** amends the Summary Proceedings Act 1957. 5
- 50 Section 2 amended (Interpretation)**
- In section 2(1), definition of **infringement notice**, after paragraph (ji), insert:  
(jj) **section 33** of the Business Payment Practices Act **2022**; or

### *Amendment to Tax Administration Act 1994*

- 51 Principal Act** 10
- Section 52** amends the Tax Administration Act 1994.
- 52 Schedule 7 amended**
- In Schedule 7, Part C, after clause 25, insert:
- 25B Business, Innovation, and Employment: Registrar of Business Payment Practices** 15
- Section 18 does not prevent the Commissioner disclosing to the Registrar of Business Payment Practices information for the purpose of monitoring compliance with the requirements of the Business Payment Practices Act **2022** under which certain entities must disclose and publish their payment practices information. 20

**Schedule**  
**Transitional, savings, and related provisions**

**s 6**

**Part 1**  
**Provisions relating to Act as enacted**

5

**1 Disclosures not required for disclosure periods that start before Act commences**

**Section 8(2)** does not apply in respect of a disclosure period that starts before this Act commences.