

Version  
as at 8 March 2024



## Business Payment Practices Act 2023

Public Act 2023 No 40  
Date of assent 26 July 2023  
Commencement see section 2

Business Payment Practices Act 2023: repealed, on 8 March 2024, by section 3 of the Business Payment Practices Act Repeal Act 2024 (2024 No 8).

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Ministry of Business, Innovation, and Employment.**

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

**1 Title**

This Act is the Business Payment Practices Act 2023.

## 2 Commencement

### *Main commencement*

- (1) This Act comes into force 10 months after the date on which this Act receives Royal assent.

### *Exception for specified provisions*

- (2) However, the following provisions come into force on the day after the date on which this Act receives the Royal assent:
  - (a) section 6 (transitional, savings, and related provisions):
  - (b) sections 26 to 28 (appointment of Registrar, Registrar's functions, and Registrar's power to delegate):
  - (c) section 51 (exemptions):
  - (d) section 52 (regulations):
  - (e) section 53 (disclosure periods and disclosure deadlines):
  - (f) sections 56 and 57 (amendment to Tax Administration Act 1994).

## 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.

## 4 Overview

### *Obligations, register, and Registrar*

- (1) Part 2 requires certain 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*

- (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.
- (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
  - (c) provide false or misleading information to the Registrar.
- (8) In addition to liability for infringement offences, pecuniary penalties, and offences, section 23 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.
- (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

**carrying on business in New Zealand** means carrying on business in New Zealand within the meaning of section 332 of the Companies Act 1993

**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:
- (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:
- (f) in relation to any other person, that person

**disclosure** means a disclosure under section 8

**disclosure deadline** has the meaning given in section 53

**disclosure period** has the meaning given in section 53

**entity** means—

- (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:
- (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:
- (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)

**group** means a group comprising an entity and its subsidiaries

**identifying information** has the meaning given in section 15

**infringement fee**, in relation to an infringement offence, means the infringement fee for the offence specified in the regulations

**infringement offence** means an offence against section 36

**large** has the meaning given in section 9

**limited partnership** means a partnership registered as a limited partnership under section 51 of the Limited Partnerships Act 2008

**overseas company** means a body corporate carrying on business in New Zealand that is incorporated outside New Zealand

**partnership** has the meaning given in section 8 of the Partnership Law Act 2019

**payment practices information** has the meaning given in section 14

**payment threshold test** has the meaning given in section 10

**register** means the business payment practices register established under section 21

**Registrar** means the Registrar of Business Payment Practices appointed under section 26

**regulations** means regulations made under section 52

**subsidiary** has the same meaning as in section 5(1) of the Financial Reporting Act 2013.

## 6 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1 have effect according to their terms.

## 7 Act binds the Crown

This Act binds the Crown.

## Part 2

### Obligations, register, and Registrar

#### *Obligation to make disclosures*

#### **8 Certain large entities must make disclosures**

- (1) This section applies if an entity, in respect of an accounting period,—
  - (a) is large; and
  - (b) meets the payment threshold test.
- (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, in respect of that other accounting period,—
    - (i) is also large; and
    - (ii) meets the payment threshold test.
- (3) The disclosure must be made to the Registrar by the applicable disclosure deadline and in the way required by the Registrar.

#### **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—

- (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 Payment threshold test**

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

#### **11 Contents of disclosure if entity does not have any subsidiaries**

If an entity to which section 8 applies does not have any subsidiaries, a disclosure must—

- (a) contain the entity's payment practices information for the disclosure period; and
- (b) contain, if the entity's identifying information is not already recorded on the register,—
  - (i) the entity's identifying information; or

- (ii) as much of the entity's identifying information as the Registrar is satisfied the entity is able to provide; and
- (c) confirm that a director of the entity, or any other person authorised for that purpose, is satisfied that the information disclosed is complete and accurate.

## 12 Contents of disclosure if entity has 1 or more subsidiaries

- (1) If an entity to which section 8 applies has 1 or more subsidiaries, a disclosure must—
  - (a) contain the payment practices information for the disclosure period—
    - (i) for—
      - (A) the entity and each subsidiary; or
      - (B) the group as a whole; and
    - (ii) for the entity alone, if it is independently large and the entity's information is not provided under subparagraph (i)(A); and
  - (b) identify, for each set of payment practices information provided, the group or entity to which the information relates; and
  - (c) specify the trading name or names and New Zealand Business Number of each subsidiary; and
  - (d) contain, if the entity's identifying information is not already recorded on the register,—
    - (i) the entity's identifying information; or
    - (ii) as much of the entity's identifying information as the Registrar is satisfied the entity is able to provide; and
  - (e) confirm that a director of the entity, or any other person authorised for that purpose, is satisfied that the information disclosed is complete and accurate.
- (2) In this Part, **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 section 8(2)(a) or both of the accounting periods referred to in section 8(2)(b) (whichever is applicable) on the basis of its revenue alone (that is, without counting the revenue of its subsidiaries).

## 13 Certain subsidiaries may make disclosures

- (1) This section applies to an entity (**entity S**) if—
  - (a) it is a subsidiary of an entity (**entity A**) to which section 8 applies; and
  - (b) section 8 does not apply to it; and
  - (c) entity A discloses payment practices information for the group as a whole in accordance with section 12(1)(a)(i)(B).

- (2) Entity S may make a disclosure for each disclosure period that applies to entity A.
- (3) The disclosure must be made to the Registrar by the applicable disclosure deadline and in the way required by the Registrar.
- (4) The disclosure must contain the particulars set out in section 11(a) to (c).

#### **14 Meaning of payment practices information**

- (1) In this Act, **payment practices information**, for an entity and a disclosure period, means—
  - (a) the information specified by the regulations about particular invoices received or paid in full or in part 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
  - (c) any other information specified by the regulations about the entity's payment practices during that period.
- (2) If an invoice provides for payment by instalments on specified dates, for the purposes of payment practices information, each instalment is to be treated as a separate invoice that—
  - (a) is received, for the second and any subsequent instalment, on the day after the date on which the previous instalment is due; and
  - (b) is due on the date specified in the invoice as the due date for that instalment.
- (3) Payment practices information is not required for invoices or payments that relate to all or any of the following:
  - (a) salary or wages to employees or office holders:
  - (b) income tax, goods and services tax, or any other form of tax:
  - (c) rent or a lease:
  - (d) charges related to electricity, gas, telecommunications services, or other utilities:
  - (e) local body rates and charges:
  - (f) any goods or services or types of transactions specified by the regulations.
- (4) Regulations may define invoice for the purposes of this section.
- (5) The Minister may recommend that regulations be made that specify information about late invoices only if the Minister is satisfied that the regulations enable an entity to disclose information about disputed invoices separately from other late invoices.

- (6) In this section, **late invoice** means an invoice in respect of which payment is late.

### **15 Meaning of identifying information**

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:
- (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.

#### *Other obligations*

### **16 Application of sections 13 to 20**

Sections 13 to 20 apply to entities that are required to make disclosures under section 8.

### **17 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.

### **18 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 that involves a substantial departure from the requirements of this Act or the regulations relating to that disclosure.
- (2) The entity must notify the Registrar of the error or omission—
  - (a) in the way required by the Registrar; and
  - (b) as soon as practicable after the entity becomes aware of the error or omission.
- (3) In this section, **substantial departure from the requirements** includes,—
  - (a) if regulations specify permitted departures, any departure that is greater than an amount or a percentage specified in the regulations (if the requirement is to disclose a figure or percentage):
  - (b) any non-compliance with a requirement (if the requirement is to disclose something other than a figure or percentage).

- (4) Regulations for the purpose of subsection (3)(a) may specify a different amount or percentage as a permitted departure for each class of things required to be disclosed.

**19 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.
- (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.

**20 Entities must notify Registrar when Act ceases to apply**

An entity must notify the Registrar as soon as practicable after this Act ceases to apply to it.

*Business Payment Practices Register*

**21 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.
- (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.
- (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.

**22 Purpose of register**

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

- (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.

**23 Contents of register**

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:
- (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 44 or fine under section 49 or 50 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:
- (h) if this Act no longer applies to the entity and it has notified the Registrar of that fact under section 20, a statement that the entity is not required to make disclosures:
- (i) any other information specified by the regulations.

#### **24 Search of register**

- (1) A person may search the register under this Act or the regulations.
- (2) The register may be searched only by reference to the following criteria in relation to an entity:
  - (a) its legal name:
  - (b) its trading name or names:
  - (c) its New Zealand Business Number:
  - (d) its industry classification (within the meaning of section 170 of the Accident Compensation Act 2001):
  - (e) any other criteria specified by the regulations.
- (3) A person may search the register only for the following purposes:
  - (a) a purpose referred to in section 22:
  - (b) to advise a person in connection with a purpose referred to in section 22.

#### **25 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.
- (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 23, 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.

### *Registrar*

#### **26 Registrar of Business Payment Practices**

- (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.

#### **27 Registrar's functions**

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
- (c) perform or exercise functions and powers conferred on the Registrar relating to matters of compliance and enforcement.

#### **28 Registrar's power to delegate**

- (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.
- (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.
- (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.
- (7) A delegation continues in force until it is revoked.

## Part 3

### Compliance, enforcement, and offences

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

#### **29 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:
  - (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;
  - (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:
  - (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;
  - (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
    - (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
    - (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
  - (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.

### **30 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 36(2), the Registrar may issue a written notice to the person (a **compliance notice**).
- (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
    - (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
  - (e) the consequences of not complying with the notice; and
  - (f) the right of review in section 33; and
  - (g) the Registrar’s name and address.

### **31 Service of compliance notice**

- (1) The Registrar must ensure that a compliance notice is served on the person to whom it is issued.
- (2) Section 41 applies to the service of a compliance notice as if it were an infringement notice.

### **32 Person must comply with compliance notice**

A person to whom a compliance notice is issued must comply with it within the period specified in the notice.

### **33 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.
- (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 application for review must be received by the Registrar no later than 10 working days after the date on which the notice was served.
- (4) The notice remains in force until the decision on the review is notified to the applicant under section 34.

### **34 How review must be conducted**

- (1) The chief executive of the Ministry must appoint a person, other than the Registrar or a delegate of the Registrar, to conduct a review applied for under section 33 (the **reviewer**).
- (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.
- (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.
- (4) The reviewer must give the applicant and the Registrar written notice of the reviewer's decision.
- (5) The reviewer's decision is final, except as provided in section 35.

### **35 Appeal against review decision**

- (1) An applicant or the Registrar may appeal to the District Court against a decision of the reviewer under section 34(3).
- (2) The appeal must be lodged within 10 working days after the date on which the notice referred to in section 34(4) was served.
- (3) On an appeal under subsection (1), the court must inquire into the decision and may—
  - (a) confirm or vary the decision; or
  - (b) set aside the decision; or
  - (c) set aside the decision and substitute another decision that the court considers appropriate.

### *Infringement offences*

### **36 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—
  - (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):
  - (b) sections 11 and 12 (contents of disclosure):
  - (c) section 13(3) and (4) (certain subsidiaries may make disclosures):
  - (d) section 17 (entities must keep certain records for 7 years):
  - (e) section 18 (entities must notify Registrar of error or omission):
  - (f) section 19 (entities must notify Registrar of changes in identifying information):
  - (g) section 20 (entities must notify Registrar when Act ceases to apply).

### **37 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
  - (b) be issued with an infringement notice under section 38.
- (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.

### **38 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.

### **39 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.
- (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.

**40 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:
- (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:
- (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:
- (i) any other matters prescribed in the regulations.

**41 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
  - (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.
- (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
  - (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.

**42 Payment of infringement fees**

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

#### **43 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.

#### *Pecuniary penalties*

#### **44 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 32 or has been involved in the contravention.
- (2) For the purposes of this Part, a person is **involved** in a contravention if the person has—
  - (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.
- (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.

#### **45 Considerations for court**

In determining an appropriate penalty under section 44, 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
- (c) any previous contraventions or involvement in contraventions of a similar nature; and
- (d) any other relevant matter.

#### **46 Rules of civil procedure and civil standard of proof apply**

A proceeding under section 44 is a civil proceeding and the rules of court and rules of evidence and procedure for civil proceedings apply (including the standard of proof).

**47 Limitation period for proceedings**

A proceeding under section 44 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.

**48 Relationship between pecuniary penalties and criminal liability**

- (1) Once criminal proceedings against a person for an offence under section 49 or 50 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.
- (2) Once civil proceedings against a person for a pecuniary penalty under section 44 are determined, the person may not be convicted of an offence under section 49 or 50 in respect of the conduct, events, transactions, or other matters that were the subject of the civil proceedings.
- (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.

*Offences***49 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 29(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):
  - (b) section 29(5) (which provides that a person must not obstruct or hinder the Registrar while the Registrar is exercising any of their powers under section 29).
- (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.

**50 Offence relating to filing false or misleading information**

- (1) A person commits an offence if they—
  - (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.
- (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.

## Part 4 Miscellaneous

### 51 Exemptions

- (1) The Minister may exempt by notice a class of entities from all or any of its obligations under this Act.
- (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—
    - (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.
- (4) A notice made under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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### 52 Regulations

- (1) The Governor-General may, by Order in Council on the recommendation of the Minister, make regulations for all or any of the following purposes:

- (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:
  - (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).

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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### 53 Registrar may specify disclosure periods and disclosure deadlines

- (1) The Registrar may specify by notice—
- (a) the timing of the periods for which an entity or a class of entity must make disclosures (**disclosure periods**); and
  - (b) the deadlines by which those disclosures must be made (**disclosure deadlines**).
- (2) The length of a disclosure period must be 6 months.
- (3) A disclosure deadline must not be earlier than 1 month after the expiry of the relevant disclosure period.
- (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.

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**Legislation Act 2019 requirements for secondary legislation made under this section**

<b>Publication</b>	The maker must publish it in accordance with the Legislation (Publication) Regulations 2021	LA19 s 74(1)(aa)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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## Part 5 Amendments to other Acts

### *Amendment to Summary Proceedings Act 1957*

**54 Principal Act**

Section 55 amends the Summary Proceedings Act 1957.

**55 Section 2 amended (Interpretation)**

In section 2(1), definition of **infringement notice**, after paragraph (ji), insert:

(jj) section 38 of the Business Payment Practices Act 2023; or

### *Amendment to Tax Administration Act 1994*

**56 Principal Act**

Section 57 amends the Tax Administration Act 1994.

**57 Schedule 7 amended**

In Schedule 7, Part C, after clause 25, insert:

**25B Business, Innovation, and Employment: Registrar of Business Payment Practices**

Section 18 does not prevent the Commissioner disclosing information to the Registrar of Business Payment Practices for the following purposes:

- (a) establishing and maintaining the register under the Business Payment Practices Act 2023;
- (b) monitoring compliance with the requirements of that Act (under which certain entities must disclose their payment practices information).

### *Amendments to Financial Reporting Act 2013*

**58 Principal Act**

Sections 59 and 60 amend the Financial Reporting Act 2013.

**59 Section 48 amended (Minister must regularly review amounts to take into account inflation)**

In section 48(1)(a), after “sections 45 and 46 of this Act,”, insert “section 10 of the Business Payment Practices Act 2023,”.

**60 Section 49 amended (Order may amend amounts)**

After section 49(1)(c), insert:

(caa) amending the amount specified in section 10 of the Business Payment Practices Act 2023:

## Schedule 1

### Transitional, savings, and related provisions

s 6

#### Part 1

##### Provisions relating to Act as enacted

**1 Disclosures not required for disclosure periods that start before section 8 commences**

Section 8(2) does not apply in respect of a disclosure period that starts before that section comes into force.

**2 Only entities with revenue of \$100 million required to disclose for first disclosure period**

Despite section 8(2), an entity to which section 8 applies is not required to make a disclosure for its first disclosure period after the date on which section 8 comes into force unless the total revenue of the entity and its subsidiaries (if any) in each of the 2 preceding accounting periods exceeds \$100 million.

**3 Provisions relating to commencement**

- (1) If a power conferred by one of the provisions referred to in section 2(2)(a) to (f) is exercised during the period that starts when those provisions come into force and ends when the rest of this Act comes into force, the power may be exercised only with effect on or after the end of that period.
- (2) Subclause (1) applies as if—
  - (a) all other legislation that is relevant to the power's exercise, and that has not yet commenced, has commenced; and
  - (b) a legal position that would be conferred or imposed by legislation that is relevant to the power's exercise, and that has not yet commenced, has been conferred or imposed.
- (3) This clause does not affect the application of Part 2 of the Legislation Act 2019 to this Act.

## Notes

### **1**    *General*

This is a consolidation of the Business Payment Practices Act 2023 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2**    *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3**    *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4**    *Amendments incorporated in this consolidation*

Business Payment Practices Act Repeal Act 2024 (2024 No 8): section 3