

Invoices not being paid on time?

A steer for debtors and creditors

The continued rise of input costs, finance costs, labour shortages, ongoing material shortages and compliance costs are forcing many businesses to tighten their belts. In this article we give some advice to assist both creditors and debtors with managing their business relationships and financial accounts when it comes to unpaid invoices.

Protecting your business from outstanding invoices

Terms of trade and contractual terms: Having robust terms of trade is one of the best ways your business can protect itself from bad debtors. Including clauses for default interest and the recovery of your legal costs means that you are less likely to be left out of pocket if you need to take action to recover an outstanding debt. You should also consider whether your business should take security over your customer's personal property or land assets, or a guarantee

¹ The Construction Contracts Act 2002 provides a process for dealing with payments and disputes under a construction contract. For help on this, please be in touch.

(backed up by a security); these are highly recommended where substantial amounts are involved, or where a customer has few assets and/or extensive liabilities.

Invoicing discipline: Nobody likes getting one large invoice at the end of a contract; it also presents a risk in terms of cashflow if your debtor cannot pay you in full and on time.

Your business should regularly review its billing practices to improve the way it invoices. Do you require deposits? Can you issue interim invoices? Should you seek payment in advance and, if so, in full or in part? Are you invoicing in accordance with your industry's best practice? And for businesses in the construction sector, are you issuing valid payment claims to take advantage of the construction contracts regime?¹

Accounting software is a lifesaver for businesses; it enables easy tracking of outstanding invoices and cashflow. Invoices and payments should be tracked promptly to give an accurate projection of cashflow and ensure no payments slip through the cracks. Ensuring your staff are trained in how to use your

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accounting software, and to report on cashflow, is just as important.

If you aren't motivated to invoice work or chase payment in a timely manner, the chances are your customer won't be motivated to pay on time. For creditors, invoicing your work promptly can assist in resolving issues before they arise. The longer you wait to invoice your work, the more likely your customer is to complain about receiving the invoice and it's less likely they will have funds ready to pay the invoice by the due date.

Coordinating cashflow: Your business will rely on prompt payment from your customers to pay your own suppliers. If your business can't afford to pay your suppliers' invoices on time then it risks getting stung with penalties and default interest.

You should coordinate your business's income and expenditure to reduce the risk of default. If, for example, your business has outgoing payments due on the 20th of each month then it would be sensible to require your invoices to be paid by the 15th of the month, or a certain number of days after the invoice is issued. You should also consider building up a business contingency fund to act as a buffer if your incoming invoices aren't paid on time.

Why pay invoices on time?

Credit ratings: Missing or defaulting on invoice payments will adversely impact the credit score of your business and therefore its ability to obtain finance. Some lenders look back through years of financial reports to assess your ability to pay, so even if you don't think you'll need a good credit rating now, it is important to stay on top of your outstanding bills.

Business reputation: Businesses pride themselves on their reputation among customers – for quality work and/or friendly customer service. But they also need to have a good reputation in their industry. Consistently failing to pay bills on time may cause suppliers to stop working with you and, depending on your industry, word of mouth can travel fast.

Reputation is also important for creditors. If you have a reputation for litigiousness rather than acting in a reasonable manner, businesses may be hesitant to work with you. On the other side of the coin, if your business has a reputation for not chasing outstanding debts, then your customers may try to take advantage of you.

Compounding debts: The failure of many businesses can be attributable to having compounding debt – that is, invoices going unpaid for months while more invoices to be paid pile up. Having the discipline to be on top of debt by paying invoices regularly can help to keep your finances manageable and preserve your business relationships.

Disputes are costly: There is a range of legal methods available to creditors to enforce outstanding debts, including obtaining or enforcing a security interest over property, issuing a statutory demand or bankruptcy notice, or starting court proceedings (including liquidator appointments) against a debtor. Debt collection agencies might also be engaged.

Some methods (notably caveats and security interests) can have a detrimental effect on a debtor's business operations. They can be a great bargaining chip for creditors, but potentially disastrous for debtors if enforcement of those interests is pursued. As well, a creditor's terms of trade will often state that debt recovery costs will be borne by the debtor, so it is very much in the debtor's interests to pay invoices on time to avoid costly legal disputes and disruption.

Be upfront: If you aren't sure how much a job is going to cost, it is wise to ask for an estimate or quote before you enter into an agreement. If costs escalate during a contract (either from your supplier or for your customer) or you find yourself cash-strapped, it is generally best to talk with them early on about that too.

Negotiating a compromise with an element of commercial nous, such as a payment plan, rather than forcing disruptive cancellations or costly court proceedings is often a better outcome for both sides.

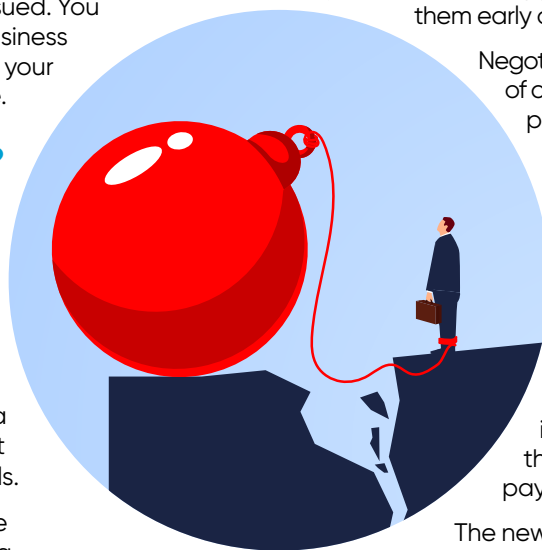
Possible reform

In 2023, the Business Payment Practices Act 2023 was passed that would have required large public and private entities to publish information about how long it takes them to pay their invoices and their payment terms.

The new government, however, has repealed the Act and will replace it with a voluntary code to ensure SMEs are paid in a timely manner. While we are unlikely to see the effects of these changes for some months, the impact of large market players paying invoices on significantly extended payment terms appears to be front of mind for politicians. We are also likely to see improvements in the way public service entities pay their invoices, resulting in quicker payment times for suppliers. Businesses should be mindful of possible changes being implemented in the future.

Need a hand?

If you find yourself being pulled into a dispute or are unsure how to protect your business then it is always best to talk with us, whether it be in relation to developing or reviewing contractual documents, or with initiating or defending a claim for payment of money. Your accountant or financial planner will also be able to help with any cashflow issues or with advising how best to manage your finances. +



Personal grievances

Employers must act in good faith

In today's ever-changing employment landscape, employers face a myriad of challenges. A single misstep can lead to (amongst other things) personal grievance claims, a fractured workplace culture and tainted reputations. Understanding the risk of making a blunder is essential.

If one of your employees has a complaint about their employment, they can raise a personal grievance claim against you. The grounds for a grievance are almost limitless, but common grounds include complaints about being unfairly fired, discriminated against, bullied or disadvantaged in some way.

Employees have 90 days (or 12 months in the case of sexual harassment) to bring a grievance. This begins on the date that the action allegedly occurred or came to the notice of your employee, whichever is later.

As an employer, you can agree to a grievance being raised late or you may inadvertently do so by responding to it (ie: it has been raised out of time, but you mistakenly legitimised it by responding to it). The Employment Relations Authority (ERA) can allow a longer period, but only in exceptional circumstances and if it is just to do so.

Good faith

As an employer, you can reduce the risk of grievances by having a sound understanding of your responsibilities. The key is to always act in good faith. This means acting reasonably and honestly, and communicating well with your employees about anything that may affect their employment.

It is not always obvious, however, what good faith requires in practice. It often goes wrong if you want to end your employee's employment. You must be able to point to good reasons for their dismissal and demonstrate that a fair process has been followed. If you trip up on either part, a successful grievance for unjustified dismissal can result.

All employers also have a range of statutory duties that must be followed, such as:

- + Providing safe work and a safe workplace
- + Paying the agreed wages or salary, and paying at least the minimum wage
- + Providing rest and meal breaks, and
- + Ensuring you provide minimum leave entitlements.

Consequences

The consequences of getting it wrong can be severe for a business. These include:

- + Legal costs
- + Time and cost of taking part in mediation and/or a hearing in the ERA (and a potential appeal)
- + Cost of settling a grievance, including being ordered to pay compensation, lost wages, legal costs or other monetary penalties by the ERA



- + Negative publicity and reputational damage, and
- + Disruption in your workplace, and negative impacts on your workplace culture.

Compensation awards have been trending upwards in recent years. In June 2023,² for example, the Employment Court awarded an employee \$25,000 in compensation as well as three months' lost wages following a successful unjustified dismissal claim.

An issue in that case was their employer had included Tikanga practices and values into its employment framework but failed to comply with them when undertaking its dismissal process. The court found the failure to do so was a breach of their employer's good faith obligations.

However, it's not just mistakes in dismissal processes that can lead to successful grievances. In a very recent case,³ the ERA ordered an employer to pay \$13,720 to their employee; they had failed to keep accurate leave records, pay proper holiday pay and a dispute had arisen over bereavement and other leave. Their employee was unjustifiably disadvantaged.

In another recent case,⁴ an employee was awarded \$105,000 in compensation for bullying, unjustified suspension and unjustified dismissal. Their employer was also ordered to pay more than \$32,000 for lost wages and to pay a \$1,000 penalty. Although this was at the high end of the compensation awards range, this case not only shows us what can happen when an employer gets it wrong, but also the range of potential awards the ERA can make and punishments that can be imposed on an employer.

Be proactive

All employers should navigate the risks of grievances by being proactive. If you are unsure about your workplace processes and/or have a potential personal grievance claim on the horizon, do talk with us early on. That is always better than the ambulance at the bottom of the cliff. +

2 *GF v Comptroller of the New Zealand Customs Service* [2023] NZEmpC 101 EMPC 317/2021.

3 *Stringer v McBride* [2024] NZERA 59.

4 *Parker v Magnum Hire Ltd* [2024] NZERA 85.



Receiving an inheritance during your relationship



Relationships can be complicated waters to navigate at the best of times, but it can become even trickier when thought needs to be given to relationship property matters.

One such thorny issue is when one person receives an inheritance or other significant gift from a third party. For a variety of reasons, it may be important for that inheritance to be kept separate from other property of the relationship. This article focuses on the complications of keeping it separate.

Relationship property and intermingling

In most cases, after three years in a relationship, all property acquired during that relationship will be classed as relationship property to be divided equally between the couple if their relationship ends (either by separation or death).

Property that each person owned before the relationship is separate property and does not get divided with the other person. Inheritances or other gifts received during the relationship are, in most situations, also separate property and are not divided.

Separate property can, however, become relationship property in a variety of ways during the relationship. In the case of an inheritance, this happens when that property is 'intermingled' with other relationship property with the express or implied consent of the owner. The law says that the intermingling needs to have had the effect of making it too difficult or impractical to continue to identify the portion of separate property.

How this can happen

The most common example of intermingling occurs when money is inherited. If the money is deposited into a joint or other relationship bank account and other money is going in and out of that account, it can be very difficult to identify what part of the funds left in that account are still inheritance funds.

Another example is when inheritance funds are used to buy assets for family use or pay relationship debts.

In both examples, the inheritance could well be regarded to have been intermingled with the express or implied consent of the inheritance recipient. The inheritance would become relationship property.

Another common issue is when a party intends to keep an inheritance separate by putting it into a separate account (in their own name) but also uses that account to receive money that would be classed as relationship property, such as income. The inheritance may be regarded as intermingled with relationship property because income generally is a relationship property asset, despite the income being received into a separate account. Ultimately, however, each case will depend on its own facts.

While inheritances often take the form of cash, the same principles apply to a house or any other type of property that has the potential to be intermingled. In the case of a house, although it is usually easily identifiable as the source of the inheritance, that might change if significant renovations are undertaken by both parties to the relationship, or if the house is sold and the money received from the sale is intermingled with other relationship money.

Protecting inheritance

If you know you are going to receive an inheritance and you wish to protect it, it is important that you get professional advice to discuss how the inheritance might be used and how it can be best protected. The best option for you will depend entirely on your circumstances and plans for the inheritance. Some common protections include:

- + Keeping the inheritance completely separate either in a bank account set up for that purpose or in a separate investment in your sole name
- + Establishing a trust to hold the inheritance and keep it separate from your relationship, or
- + Having a contracting out agreement (prenup) prepared that sets out your separate property and the relationship property, and how all of that property would be divided if you separate or when one of you dies. These agreements can be entered into at any stage of the relationship.

No option is completely fool proof and each option has its own pros and cons.

If you are expecting an inheritance, or have recently received one, it can be a delicate topic to bring up with your spouse or partner. You may of course be perfectly happy to intermingle inherited property. It would, however, be prudent for you to talk first with us to discuss the options above and any implications that may bring to your relationship. +



Do I still need a trust?

Thousands of Kiwis have, over the years, established family trusts for a variety of reasons. However, it's well worth considering whether those reasons are still relevant today and evaluating whether your trust may have outlived its usefulness.

You may have established your family trust for:

1. **Avoiding estate duty:** before 1992 it was common for high value assets (such as farms) to be transferred to a trust so your personal estate would not have to pay estate duty
2. **Eligibility for the residential care subsidy:** trusts were often settled to increase the likelihood of being eligible for the residential care subsidy; the Ministry of Social Development (MSD) only considered assets you owned personally when considering eligibility for the subsidy
3. **Minimising tax:** Fluctuating tax rates over the years have sometimes provided a lower tax rate for trusts than the highest rate of personal tax
4. **Creditor protection:** Transferring your personal assets to trust ownership means that your personal creditors may have more difficulty accessing those assets to recover personal debts you owe
5. **Estate planning:** Children may make claims against their parents' estates where they believe their parents have made no, or inadequate, provision for them. Transferring assets to a trust during one's lifetime leaves little or nothing for children to claim against on your death. Trusts also allow assets to be ring-fenced to help with the care of differently abled children

6. **Relationship property:** settling a trust, either before your relationship is 'in contemplation' or afterwards (provided a contracting out agreement is also signed), is one way to help remove assets from the potential pool of relationship property that would be available for division if your relationship ends.

Things have changed

These days, however, estate (and gift) duty is no more, the top personal tax rates will soon be realigned with trust tax rates, and MSD takes a closer look at trusts when considering residential care subsidy applications. There has also been increasing court action on trusts where it is believed they may have been used to avoid creditors, claims by children and relationship property claims.

In addition, there are further consequences in settling trusts in New Zealand if you are an American citizen, from the UK (even though you may be tax resident in New Zealand), or if you are tax resident in Australia.

Notwithstanding the above, trusts are still very useful vehicles, particularly for creditor protection, estate planning and relationship property purposes.

Trust deeds, however, should be carefully drafted and have the correct documentation in place around them. Excellent legal, accounting and tax advice is needed to ensure that your trust will do the job you want it to.

If you have a family trust that may no longer be fit for purpose, or you think you need an asset protection plan, please talk with us about the options available to you. +

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Postscript

Incorporated societies: must reregister by April 2026

The clock is ticking for New Zealand's 24,000 incorporated societies to reregister by 5 April 2026. Under the Incorporated Societies Act 2022, if your incorporated society does not reregister by this time, it will automatically cease to exist.

During the next two years, every existing incorporated society must decide whether to retain its incorporated status by seeking reregistration. If it opts to reregister, it must check that its constitution (the rules of the society) comply with the requirements of the new Act. This will almost always involve amendments being made to the constitution and, in a significant number of cases, an entirely new constitution being adopted.

There is quite a list of requirements to reregister. To learn more, go to: www.is-register.companiesoffice.govt.nz If you need advice on any aspect of reregistering, please don't hesitate to contact us.



Minimum wage increases

On 1 April the minimum wage increased. This covers:

- + Adult minimum wage increased from \$22.70 to \$23.15/hour
- + Starting-out and training minimum wage rose from \$18.16 to \$18.52/hour

Remember that all rates are gross and before any lawful deductions such as PAYE, student loan repayments, child support, etc.

Make sure your payroll people, HR/finance teams and your accountant are all aware of these changes.



Before you dig

Whether you want to replace a fence around your property, are a contractor installing a new cable along a street or a new gas pipe, or are working for the council in resurfacing the road, it is vital that you check there are no cables or pipes below ground.

beforeUdig is an online service which enables anyone undertaking design and excavation works to obtain information on the location of cables, pipes and other utility assets in and around any proposed dig site.

It provides a 'one stop shop' for contractors to communicate about their planned activities with utilities and asset owners.

To find out more, go to www.beforeudig.co.nz/home.



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