

Departmental Disclosure Statement

New Zealand Business Number Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Business, Innovation and Employment.

The Ministry of Business, Innovation and Employment certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

25 March 2015

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Part One: General Policy Statement

The purpose of the Bill is to enable easier and more efficient interactions for business in New Zealand by enabling businesses to interact more easily with government and reducing the costs of business transactions. The Bill enables certain entities to obtain, or be allocated, a New Zealand Business Number and to be registered on a New Zealand Business Number register. Entities that may be registered include corporate and public entities (including government agencies) or unincorporated entities such as sole traders, partnerships and trustees of trusts. The Bill sets out the type of data that the New Zealand Business Number register can contain for an entity, rules about collection, access and sharing of that information and protections for information that is private.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p><i>Preliminary Privacy Impact Assessment: New Zealand Business Number. Ministry of Business, Innovation and Employment, March 2014</i></p> <p>https://nzbn.business.govt.nz/sites/default/files/PIA.pdf</p> <p><i>The purpose of this document was to provide a preliminary privacy impact assessment of the proposal to introduce a New Zealand Business Number and options for addressing the privacy risks identified.</i></p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>1. <i>Extending the New Zealand Business Number, Ministry of Business, Innovation and Employment, May 2014</i></p> <p>2. <i>Offences for the New Zealand Business Number Bill, Ministry of Business, Innovation and Employment, February 2015</i></p> <p>http://www.mbie.govt.nz/what-we-do/better-for-business/nzbn</p> <p>http://www.treasury.govt.nz/publications/informationreleases/ris</p> <p><i>The following information has been withheld:</i></p> <ul style="list-style-type: none">• <i>Withholding of a stakeholder name</i>• <i>Implementation plan and costs</i>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
<p><i>Neither of the RIS identified above met the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury.</i></p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
<i>The first of the two Regulatory Impact Statements referred to in Question 2.3 above contains information about the size of the potential costs and benefits.</i>	
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p><i>Allocation of an NZBN will be automatic for public and corporate entities registered on a statutory register, and there is no requirement for these entities to use it.</i></p> <p><i>Allocation of an NZBN for unincorporated entities will be a mixture of automatic and by application. Application for, and use of, an NZBN for unincorporated entities is also voluntary.</i></p> <p><i>The Bill contains a provision whereby a government agency can apply to be able to require an unincorporated entity to obtain an NZBN. Non-compliance in this instance may mean the entity will forego services relevant to the purposes of the Bill (easier interaction with government and reduction in the costs of business transactions) that the agency provides.</i></p> <p><i>However, the benefits of the NZBN will accrue to the economy in proportion to the amount of use by business in general. Therefore a high level of voluntary compliance will maximise benefits.</i></p> <p><i>The value an entity ascribes to the NZBN will determine the level of voluntary compliance.</i></p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The policy of the Bill does not impact on New Zealand's international obligations.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The policy of the Bill does not impact on the principles of the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

<http://www.justice.govt.nz/policy/constitutional-law-and-human-rights/human-rights/bill-of-rights>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:

(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?

YES

(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?

NO

*Clause 39: use of an NZBN that is not the entities or use of a number as if it were an NZBN.
Clause 40: false or misleading statement given to the Registrar.*

3.4.1. Was the Ministry of Justice consulted about these provisions?

YES

The Ministry of Justice was consulted on potential offence provisions when these were first being considered and its views were taken into account.

The Ministry of Justice was privy to analysis on the proposed offences and was given draft briefings to Ministers and draft Cabinet papers to consider for comment.

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
<p><i>Override of Privacy Principle 2(1)</i></p> <ul style="list-style-type: none"> • <i>Clause 20 allows the NZBN register to contain information on individuals that may not have been collected directly from the individual concerned.</i> • <i>Clause 22 allows amendment to the information on individuals contained in the NZBN register.</i> • <i>Clause 27(1) allows government agencies to access information on individuals from the NZBN register and not directly from the individual concerned if it is authorised by an enactment to collect that information.</i> <p><i>Override of Privacy Principle 12(1).</i></p> <ul style="list-style-type: none"> • <i>Clause 16 allows the Registrar of New Zealand Business Number to allocate numbers to individuals.</i> • <i>Clause 28 allows government agencies to use an NZBN to identify an individual for the purposes of the Bill.</i> <p><i>Override of Privacy Principle 12(4)</i></p> <ul style="list-style-type: none"> • <i>Clause 29 allows government agencies, on prescription, to require an individual to have an NZBN for the agency to use to identify an individual for the purposes of the Bill.</i> 	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p><i>The Office of the Privacy Commissioner was consulted on potential privacy issues when the inclusion of individuals as businesses in the NZBN regime was first being considered and its views were taken into account.</i></p> <p><i>The Office of the Privacy Commissioner was privy to analysis on the privacy issues and was given draft briefings to Ministers and draft Cabinet papers to consider for comment.</i></p> <p><i>The Office of the Privacy Commissioner is comfortable with the privacy protections, including agreeing that protecting the security and confidentiality of information and the privacy of individuals in business is a primary purpose of the Bill.</i></p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p><i>There has been external consultation on the policy to be given effect by this Bill.</i></p> <p><i>Over March/April 2014 a public consultation was undertaken on the policy to include unincorporated entities such as sole traders, partnerships and trustees of trusts in the NZBN regime. Sixteen written submissions were received with approximately 40 comments via the online consultation portal. Face-to face meetings were held with 17 businesses and industry representative groups, some of whom also made written submissions.</i></p> <p><i>Over August/September 2014 an exposure draft of the Bill was released for consultation. Thirteen written submissions were received. Face-to face meetings were held with 11 businesses and industry representative groups, some of whom also made written submissions.</i></p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p><i>The NZBN Bill facilitates the implementation of cross-agency use of NZBNs by obtaining the statutory powers needed to establish and maintain a register. Use of the register is not compulsory but any use will have operational impacts including on other agencies.</i></p> <p><i>Operational expertise has been a part of the policy development process. Wider agency input was included via specific working groups.</i></p> <p><i>The implementation of the first phase of an NZBN programme for companies will be functional from July 2015. This will enable testing of the regime prior to the expansion to include other business forms.</i></p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<i>Clause 22 creates the power for the list of primary business data in Schedule 3 to the Bill to be amended.</i>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p><i>Clause 22 creates the power for the list of primary business data to be amended.</i></p> <p><i>Clause 29 creates the power to authorise government agencies to require an eligible entity to register for an NZBN and provide that NZBN to the agency.</i></p> <p><i>Clause 37 creates:</i></p> <ol style="list-style-type: none"> <i>1. the power to prescribe, for the purposes of implementation of the Act:</i> <ul style="list-style-type: none"> <i>• the manner of application for an NZBN;</i> <i>• how notices and other information may or must be given to, or provided and other matters relating to that procedure;</i> <i>• periods of time for the purpose of giving notices or other information;</i> <i>2. the power to prescribe other matters</i> <ul style="list-style-type: none"> <i>• declaring an entity to be a corporate or public entity or an unincorporated entity;</i> <i>• declaring an entity or a type of entity to be ineligible for an NZBN;</i> <i>• prescribing primary business data for a type of entity;</i> <i>• specifying fees and charges;</i> <i>• providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.</i> <p><i>These powers are required to address:</i></p> <ul style="list-style-type: none"> <i>• matters of detail for which it is not appropriate to utilise Parliamentary time, for example, matters of implementation, details of procedures, fees, forms, lists and technical matters;</i> <i>• unforeseen matters that may be required to implement and administer an Act;</i> <i>• flexibility in how the Act is applied and matters that may need to be frequently changed.</i> <p><i>The safeguard that will apply to the powers to make delegated legislation to ensure it is properly constrained and used appropriately is that the delegated legislation will be made by Order in Council so is subject to Cabinet scrutiny, drafting by Parliamentary Counsel, and an expectation that the regulations will not come into force until at least 28 days after their making.</i></p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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