

# Departmental Disclosure Statement

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New Zealand Business Number Funding (Validation and Authorisation) Bill
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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.

8 May 2019

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## Part One: General Policy Statement

A small portion of fee money collected from companies under the Companies Act 1993 has been used to fund the New Zealand Business Number register (the NZBN register) established under the New Zealand Business Number Act 2016 (the NZBN Act). However, the Companies Act 1993 does not provide for fees collected under that Act to be used for purposes that are not related to that Act.

This Bill validates the imposition and collection of fees under the Companies Act 1993 and the use of the fees to fund the NZBN register and provides for future funding. In particular, the Bill—

- retrospectively validates the imposition, collection, and use, for NZBN register and related functions, of fees prescribed and collected under the Companies Act 1993:
- amends the Companies Act 1993 to provide that regulations under that Act may authorise fees collected under that Act to be used to fund the NZBN register and related functions (and amends the Companies Act 1993 Regulations 1994 accordingly):
- amends the NZBN Act to insert a regulation-making power that will enable the NZBN register and related functions to be funded from fees, charges or levies payable by entities that have been allocated a New Zealand Business Number.

The amendments to the Companies Act 1993 and to the Companies Act 1993 Regulations 1994 that authorise fees collected under the Companies Act 1993 to be used to fund the NZBN register and related functions are intended as an interim measure and will expire on 1 July 2023. The intention is that, from that date, the NZBN register and related functions will be funded from fees, charges, or levies imposed by regulations made under the NZBN Act.

## 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?	NO
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### 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?	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?	NO
(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

## 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?**

*None.*

### 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?**

Officials considered whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi and concluded that no Treaty of Waitangi or broader Crown Māori Relations issues arose

### 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?**

**NO**

### 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)?**

**NO**

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

**YES**

The amount of any fee, charge or unpaid levy is recoverable by the Registrar of New Zealand Business Numbers in court as a debt due to the Registrar.

This is a standard part of a charging provision to ensure that amounts due are able to be recovered.

### 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?**

**NO**

### 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?**

**NO**

Due to the subject nature of this Bill, and the need to retrospectively validate past practices no external consultation was undertaken.

### Other testing of proposals

<b>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?</b>	<b>NO</b>
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## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

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

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>YES</b>
<p>The Bill inserts new Sections 37A, 37B and 37C into the NZBN Act, which enable regulations to be made that would impose fees and levies.</p> <p>The fees, charges and levies would cover a portion of the costs incurred by the Registrar of NZBN's in performing their functions, powers and duties under the NZBN Act.</p> <p>These fees, charges and levies would potentially be payable by all entities with an NZBN.</p> <p>Different types of entity could be charged a different levy or only some types of entity may be charged.</p> <p>We anticipate that any levy will be collected at the same time as when an entity makes its annual filings and would be payable alongside any other levies collected at that time (such as is the case with the Financial Markets Authority levy).</p> <p>The NZBN provides benefits to businesses as opposed to the general public. We therefore consider that the NZBN should be funded by business directly (rather than through general taxation). It is standard for legislation providing for the creation of a register to allow for the costs associated with that registry function to be recovered from registered entities.</p> <p>The Minister (responsible for the NZBN Act) will be required to consult about the setting of fees, charges and levies, and the regulations setting the levies will have scope to, among other things:</p> <ul style="list-style-type: none"><li>• provide for refunds of any over-recovery of the actual costs of providing independent oversight of insolvency practitioners</li><li>• provide for waivers or refunds (if any) of the whole or any part of a fee or levy.</li></ul> <p>The Bill also inserts new section 372(3C) into the Companies Act 1993 which provides that fees collected under that Act may be used to fund NZBN registry services and related functions.</p> <p>This is necessary to ensure that the practice, of using the fees collected under the Companies Act to fund NZBN registry services and related functions, can continue until fees and levies begin being charged under new Sections 37A, 37B and 37C of the NZBN Act. The provision will be repealed on 1 July 2023.</p>	

### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>YES</b>
<p>Clause 5 of the Bill will retrospectively validate the imposition, collection and use of money under the <i>Companies Act 1993</i> to meet the costs of the NZBN register.</p> <p>The use of fees collected under the Companies Act for NZBN registry purposes is consistent with the policy decisions made at the time the NZBN register was established. However the need to have a provision in the Companies Act to enable this was not identified at the time the NZBN Act was passed.</p> <p>There will be no adverse effects on fee payers compared to the status quo from this provision.</p>	

### Strict liability or reversal of the usual burden of proof for offences

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

### Civil or criminal immunity

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

<b>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?</b>	<b>NO</b>
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### Powers to make delegated legislation

<b>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?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill inserts new Sections 37A, 37B and 37C into the NZBN Act, which enable regulations to be made that would impose fees, charges and levies.</p> <p>Regulations will provide for the matters of detail necessary to implement:</p> <ul style="list-style-type: none"> <li>• Fees</li> <li>• A levy to cover a portion the costs of the NZBN Registrar in performing or exercising the Registrar's functions, powers and duties under the NZBN Act.</li> </ul> <p>The Minister (responsible for the administration of the NZBN Act) is required to consult interested parties before making any changes to the levies.</p> <p>The Regulations will be drafted by the Parliamentary Counsel Office, subject to Cabinet scrutiny, and will not come into force until at least 28 days after their making. In addition, any regulations made will be subject to disallowance under the Legislation Act 2012 and to review by the Regulations Review Committee under Standing Order 319.</p> <p>The Bill also inserts new section 372(3C) into the Companies Act 1993 which provides that fees collected under that Act may be used to fund NZBN registry services and related functions where authorised by Regulation.</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?	YES
<p>New clauses 372(3C) and (3D) of the Companies Act provide that fees collected under that Act may be used to meet the costs of providing NZBN registry services under the NZBN Act.</p> <p>The use of Companies Act fees for this purpose is intended to be a short term measure. The Bill inserts new Sections 37A, 37B and 37C into the NZBN Act, which enable regulations to be made that would impose fees, charges and levies under that Act.</p> <p>Once these regulations are in place new clauses 372(3C) and (3D) will no longer be necessary as there will be an alternative source of third party funding for the NZBN register.</p> <p>New clause 372(3E) of the Companies Act will accordingly repeal both itself and clauses 372(3C) and (3D) of the Companies Act on 1 July 2023. We consider that this is a reasonable timeframe for fee and levy regulations to be made under the NZBN Act.</p>	