

Departmental Disclosure Statement

Companies (Levies) Amendment 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.

26 May 2022

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Part One: General Policy Statement

This Bill amends the Companies Act 1993 to create a new regulation-making power that will enable regulations to be made that impose levies on certain users of the registers administered by the New Zealand Companies Office. The regulation-making power will expressly provide that the money collected in levies can be used to fund the registry system as a whole, rather than on a register-by-register basis.

The New Zealand Companies Office, a business unit of the Ministry of Business, Innovation and Employment (**MBIE**), administers the corporate registry system. There are 16 different registers including entity registers (eg, the Companies Register), occupational licensing registers (eg, the register of licensed insolvency practitioners), and disclosure registers (eg, the register of Personal Property Securities). The Companies Office also supports other statutory functions of the various registrars responsible for these registers.

Each register was established under separate legislation. The legislation requires each register to be independently funded from fees charged to the users of the relevant register. This funding model was predicated on each register being operated separately.

Over time the Companies Office has moved towards providing shared services to the registers. A unified approach to the registers has allowed the Companies Office to—

- establish an organisational structure and operating model that produces economies of scale in the delivery of registry services; and
- leverage technological developments enabling registry services to be centralised and shared across registers.

These changes have contributed to reduced cost to users. However, it has also made it increasingly difficult to distinguish between the cost of providing services for each register. In addition, the fees charged on some smaller registers have not kept up with the costs of operating them. This shortfall has been met from surpluses that have been generated from fees collected under legislation governing other registers. This practice is not authorised by the legislation.

The Companies Office's unauthorised funding practices have been addressed by the Companies Office Registers Funding Validation Act 2022 (the **Validation Act**) by retrospectively validating the Companies Office's charging and expenditure practices.

This Bill, which forms a package with the Validation Act, supports the Companies Office's approach to running the corporate registry system by moving away from it being entirely funded on a register-by-register basis, as it is now. The Bill achieves this by amending the Companies Act 1993 to allow for regulations to be made for the Companies Office to charge its users levies as well as fees. The money collected in levies will be able to be used across the different registers to fund the shared registry system.

The Bill provides that the levies will be set by regulations, following consultation. It also sets out the purpose of the levy-making power, which the Minister must have regard to when recommending to the Governor-General that regulations should be made by Order in Council.

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

Relevant international treaties

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

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Title: Regulatory Impact Statement: Funding of Companies Office Functions Authoring Agency: Ministry of Business, Innovation and Employment Date: 3 November 2021 This is available on the Ministry of Business, Innovation and Employment's website at https://www.mbie.govt.nz/document-library	

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
The Regulatory Impact Statement was reviewed by an internal panel at the Ministry of Business, Innovation and Employment. This did not meet the threshold for RIA Team assessment.	

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

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

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
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
Information on the size of the potential costs and benefits can be found in the Regulatory Impact Statement.	

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?

No steps were taken. The Bill relates solely to the collection and internal use of fees for the registering and administration of entities, people and documents.

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 Ministry of Business, Innovation and Employment undertook internal consideration to determine that the Bill is consistent with 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

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)?

NO

While the Bill does not create any offences, it allows the Governor-General to make regulations by Order in Council, stipulating penalty payments for the late payment of a levy. If a penalty payment is to be imposed, the Minister, in recommending those regulations to be made must:

- consider the matters set out at new section 405;
- consult with the persons that the Minister considers are able to represent the views of persons that will be liable to pay a levy and any other representatives of persons who the Minister believes will be significantly affected by the proposed regulations.

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
This Bill forms a package with the Companies Office Registers Funding Validation Act 2022. These Bills have not been publicly consulted on due to the sensitive nature of the issues the Companies Office Registers Funding Validation Act 2022 addresses.	

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?	NO

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

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?	YES
<p>Clause 7 of the Companies (Levies) Amendment Bill inserts new section 405 into the Companies Act 1993. The new section empowers the Governor-General to make, by Order in Council made on the recommendation of the Minister, regulations providing for the levies.</p> <p>The power is necessary to ensure efficient, fair and transparent funding of the corporate registry system, which comprises 16 separate registers.</p> <p>The Bill requires that levies be set by regulations, following appropriate consultation. It also sets out matters to which Minister must have regard to when making the regulations.</p>	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

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

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

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?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Clause 7 of the Bill inserts new section 405 into the Companies Act 1993. The new section empowers the Governor-General to make, by Order in Council made on the recommendation of the Minister, regulations providing for the levies. New subsections 405(3) and (4) set out the basis on which levies may be prescribed.</p> <p>This power is necessary because:</p> <ul style="list-style-type: none">• the amount to be charged as levies is a matter of detail for which it is not appropriate to utilise Parliamentary time;• the levies may need to be changed from time-to-time following the Companies Office's regular charging reviews. <p>The Bill includes the following safeguards for the delegated power:</p> <ul style="list-style-type: none">• New section 407, which sets out the matters to which the Minister must have regard before recommending the making of regulations setting the levies; and• New section 408, which requires the Minister to consult with people the Minister considers able to represent the views of levy payers before recommending the making of regulations, as well as representatives of the person the Minister considers will be significantly affected by the proposed regulations.	

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