



## COVERSHEET

<b>Minister</b>	Hon Stuart Nash Hon Kris Faafoi	<b>Portfolio</b>	Small Business Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	New Zealand Business Number Funding (Validation and Authorisation) Bill: Approval for Introduction	<b>Date to be published</b>	1 July 2019

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
Considered by CBC on 13 May 2019	<i>Cabinet paper: New Zealand Business Number Funding (Validation and Authorisation) Bill: Approval for Introduction</i>	Office of Minister for Small Business  Office of Minister of Commerce and Consumer Affairs
13 May 2019	<i>Cabinet Committee minute: CBC-19-MIN-0017</i>	Cabinet Office

### Information redacted

**NO**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982.

Security classification – Sensitive

Office of the Minister for Small Business  
Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Business Committee

## **New Zealand Business Number Funding (Validation and Authorisation) Bill: Approval for Introduction**

### **Proposal**

1. We are seeking approval to introduce the attached New Zealand Business Number Funding (Validation and Authorisation) Bill, and for the Bill to pass through all stages under urgency on budget night.

### **Policy**

2. The New Zealand Business Number (NZBN) is a unique, numeric identifier available to all entities in New Zealand, regardless of whether or not they are in business. It enables easier and more efficient interactions for entities with government agencies and between entities. Entities with an NZBN are recorded on the NZBN register.
3. Since its establishment, the NZBN register has been mostly funded by fees charged under the Companies Act 1993 [CAB Min (15) 10/5 refers]. In November 2018, we became aware that funding the NZBN register in this way is outside the scope of the relevant fee setting power in the Companies Act. In order to resolve this, Cabinet agreed [CAB-19-MIN-0142]:
  - 3.1 to retrospectively validate the collection and use, for NZBN registry purposes, of fees prescribed and collected under the Companies Act;
  - 3.2 to amend the Companies Act to provide that fees collected under that Act may be used to fund NZBN registry services and related functions, including information and education activity; and
  - 3.3 to amend the NZBN Act 2016 to insert a regulation making power to enable all or some entities which have been allocated a New Zealand Business Number to be charged fees and levies for NZBN registry services and related functions.

### **Risks**

4. There are two potential risks.
5. First, there is a minor risk that some entity principals and managers may oppose the introduction of an NZBN-specific fee for their entities being on the NZBN register. This is because companies, limited partnerships and other classes of incorporated

entities did not choose to be placed on the NZBN register. They were allocated NZBNs automatically by the Registrar of NZBNs.

6. However, this change will only have the effect of making the existing situation transparent. All companies are indirectly paying for the operation of the NZBN register. In addition:
  - 6.1. the approach we are recommending will be more transparent and principled;
  - 6.2. the current amount per entity is only \$2.60 a year; and
  - 6.3. the Companies Office will consult publicly on the NZBN fee when it carries out the next general review of fees and levies in 2019/20.
7. Secondly, there may be some controversy around retrospectively validating the collection and use of fees under the Companies Act to fund NZBN registry services. However, this part of the proposal is needed in order to avoid legal risks to the Crown. If the imposition, collection and use is not validated, an assessment will need to be made about if, and how, the money which has historically been used to fund the NZBN register is to be refunded.
8. The retrospectivity of provisions in the Bill will not impact on unincorporated entities (e.g. sole traders and partnerships). The cost of providing the NZBN system to those entities has been met through Crown funding since the outset.

#### **Outstanding policy issues**

9. Cabinet authorised the Minister for Small Business and the Minister of Commerce and Consumer Affairs to jointly make decisions on any minor or technical matters that may arise during the drafting of the Bill [CAB-19-MIN-0142].
10. We have agreed to the automatic repeal of the provision inserted into the Companies Act by the Bill, providing that fees collected under that Act may be used to fund NZBN registry services and related functions, four years after the Bill comes into effect.
11. We have done this to make sure that funding the NZBN Register in this manner is truly a short term measure, which was the policy intent behind the inclusion of this provision.
12. We consider that this is a reasonable timeframe for the necessary regulations to be made under the NZBN Act 2016.

#### **Impact analysis**

13. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions in this paper are exempt from the requirement to provide a Regulatory Impact Assessment, as they have no or minor impacts on businesses, individuals or not-for-profit entities.

## Compliance

14. The Bill complies with:
  - 14.1. the principles of the Treaty of Waitangi;
  - 14.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
  - 14.3. the disclosure statement requirements – a disclosure statement has been prepared and is attached to the paper; and
  - 14.4. the principles and guidelines set out in the Privacy Act 1993.
15. Chapter 12 of the LDAC Guidelines on the Process and Content of Legislation (2018 edition) states that “the starting point is that legislation should not have retrospective effect. It should not interfere with accrued rights and duties.” However, Chapter 12 goes on to provide that “Retrospective legislation might, however, be appropriate if it is intended to ... “validate matters generally understood and intended to be lawful, but that are, in fact, unlawful as a result of a technical error.” While the precise scope of the term “technical error” is not clear, it is correct to state that to the extent that the Bill has retrospective effect it validates a matter that was understood and intended to be lawful.
16. We also note that the predominant focus of chapter 12 relates to criminal law and the potentially very serious concerns of later punishing individuals for acting in ways that were lawful at the time not the correction of technical errors.
17. Chapter 17 of the LDAC Guidelines on the Process and Content of Legislation (2018 edition) deals with authorising the charging of fees and levies. The existing practice of using fees charged under the Companies Act 1993 to fund NZBN registry functions is in breach of these guidelines.
18. By allowing this practice to continue the Bill is inconsistent with this aspect of the guidelines. We are conscious of the issues surrounding continuing to use fees collected under the Companies Act 1993 to fund NZBN registry services and related functions.
19. We note that the Bill is designed to provide a short term legislative solution to enable the NZBN Register to continue to operate while a funding mechanism, which is consistent with the guidelines, is put in place.
20. We also note that, in order to make sure that this is truly a short term measure, we have decided that the provisions allowing this practice to continue will be automatically repealed four years after the Bill comes into effect.

## Consultation

21. MBIE officials have consulted with the Treasury, and Parliamentary Counsel Office.
22. The Ministry of Justice has been consulted in relation to consistency with the New Zealand Bill of Rights Act 1990.

23. The proposals contained in this paper have not been publicly consulted on, due to the sensitive nature of the issues they seek to address.

### **Binding on the Crown**

24. The changes proposed by the Bill will be binding on the Crown because the two Acts that the Bill will amend (i.e. the Companies Act and the NZBN Act) already have provisions to this effect.

### **Allocation of decision making powers**

25. Fees, levies and charges can be set by regulation on the recommendation of the Minister responsible for the administration of the NZBN Act. The Minister will be required to consult with potential fee and levy payers and others who may be significantly affected.
26. The Companies Office periodically carries out a general review of a range of fees and levies, and this always includes a public consultation process. The next consultation, which will take place during the 2019/20 financial year, will include a discussion on the fees associated with NZBN registry services and related functions.

### **Associated regulations**

27. Regulations will be needed to bring fees and levies payable under the NZBN Act into effect. Those regulations will need to address the following substantive matters:
- 27.1. the class or classes of entities that are required to pay a fee or levy;
  - 27.2. the amount of the fees and levies, or the method of calculating or ascertaining the amount of fees and levies;
  - 27.3. the ability to include in levies, or provide for the inclusion in levies of, any shortfall in recovering the actual costs of the NZBN register;
  - 27.4. the payment and collection of levies; and
  - 27.5. any waivers or refunds of the whole or any part of a levy for any entity or class of entity.
28. The Bill will also amend the Companies Act 1993 Regulations 1994 to provide that the fees collected under that Act may be used to fund NZBN registry services and related functions.

### **Other instruments**

29. The Bill does not include provision to make other instruments that are deemed to be legislative instruments or disallowable instruments.

### **Commencement of legislation**

30. The Bill will come into force on the day after the date of the Royal assent.

## Parliamentary stages

31. We propose that the Bill be introduced, and passed through all stages, under urgency on Budget night.

## Proactive Release

32. We are intending to release this Cabinet paper and the earlier Cabinet Economic Development Committee paper that agreed to the policy of the Bill after Budget night (30 May). The 30 working day deadline will be met in relation to this paper, but not the other paper. Cabinet confirmed the minute [DEV-19-MIN-0065] on 8 April 2019 [CAB-19-MIN-0142], which means that the 30 working days will expire on 23 May. We consider that the delay in releasing the DEV paper is appropriate:

32.1. because of the conventions relating to Budget secrecy; and

32.2. because of the legal risks to the Crown if the retrospective changes were to be made public before they are enacted.

## Recommendations

The Minister for Small Business and Minister of Commerce and Consumer Affairs recommend that the Committee:

1. **note** that the New Zealand Business Number Funding (Validation and Authorisation) Bill holds a category 2 priority on the 2019 Legislation Programme (must be passed in the year);
2. **note** that the New Zealand Business Number Funding (Validation and Authorisation) Bill will:
  - 2.1. amend the Companies Act 1993 and the Companies Act 1993 Regulations 1994 to provide that fees collected under that Act may be used to fund New Zealand Business Number registry services and related functions;
  - 2.2. amend the New Zealand Business Number Act 2016 to insert a regulation-making power to enable all or some entities which have been allocated a New Zealand Business Number to be charged fees and levies for New Zealand Business Number registry services and related functions;
  - 2.3. retrospectively validate the imposition, collection and use, for New Zealand Business Number registry purposes, of fees prescribed and collected under the Companies Act 1993;
3. **note** that Cabinet authorised the Minister for Small Business and the Minister of Commerce and Consumer Affairs to jointly make decisions on any minor or technical matters that may arise during the drafting of the New Zealand Business Number Funding (Validation and Authorisation) Bill;
4. **note** that the Minister for Small Business and the Minister of Commerce and Consumer Affairs have jointly decided to insert a provision in the New Zealand Business Number Funding (Validation and Authorisation) Bill repealing the ability for

fees collected under the Companies Act 1993 to be used to fund New Zealand Business Number registry services and related functions four years after that Bill comes into force;

5. **approve** the New Zealand Business Number Funding (Validation and Authorisation) Bill for introduction, subject to the final approval of the government caucus; and
6. **agree** that the New Zealand Business Number Funding (Validation and Authorisation) Bill be introduced on 30 May (Budget night) and passed through all stages under urgency.

Authorised for lodgement

Hon Stuart Nash  
Minister for Small Business

Hon Kris Faafoi  
Minister of Commerce and  
Consumer Affairs

PROACTIVELY RELEASED